COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FINANCING OF TERRORISM (MONEYVAL)

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Report on the 4th Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

ANDORRA

8 March 2012

Andorra is a member of MONEYVAL. This evaluation was conducted by MONEYVAL and the mutual evaluation report on the 4th assessment visit of Andorra was adopted at its 38th Plenary (Strasbourg, 5-9 March 2012)

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LIST OF ACRONYMS USED

AML/CFT	Anti-money laundering and combating the financing of terrorism
C	Compliant
CC	Criminal Code
CETS	Council of Europe Treaty Series
CPC	Code of Criminal Procedure
CDD	Customer Due Diligence
DNFBPs	Designated non-financial businesses and professions
FATF	Financial Action Task Force
FT	Financing of terrorism
FIU	Financial Intelligence Unit (the UPB)
IMF	International Monetary Fund
IN	Interpretative Note
INAF	Andorran National Institute of Finance
IT	Information technologies
LC	Largely compliant
LCPI	Anti-money laundering Act (Act on international criminal co-operation against money laundering and the proceeds of international crime)
RLCPI (or LCPI regulation)	Regulation on the implementation of the LCPI
MOU	memorandum of understanding
ML	money laundering
MLA	Mutual legal assistance
NA	Not applicable
NC	Non-compliant
OPCVM	mutual fund management company
PC	Partially compliant
PEP	Politically exposed persons
RILO	Regional Information Liaison Office
STR	Suspicious transaction report
UPB	Unit for the prevention of money laundering of Andorra (the FIU)
WCO	World Customs Organisation

I. PREFACE

1. This is the report in MONEYVAL's fourth round of mutual evaluations, principally following up the recommendations made in the third round. This evaluation of Andorra follows the current version of the 2004 AML/CFT Methodology,[1] but does not necessarily cover all the 40+9 FATF Recommendations and Special Recommendations. MONEYVAL decided that the 4th round should be shorter and more focused and primarily follow up the recommendations made in the 3rd round. The evaluation team, in line with procedural decisions taken by MONEYVAL, have examined the current effectiveness of implementation of all key and core and some other important FATF recommendations (i.e. Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 35, 36 and 40, and SR I, SR II, SR III, SR IV and SR V), whatever the rating achieved in the 3rd round.

2. Additionally, the examiners have reassessed the compliance with and effectiveness of implementation of all those other FATF recommendations where the rating was NC or PC in the 3rd round. Furthermore, the report also covers in a separate annex issues related to Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter the "The Third EU Directive") and Directive 2006/70/EC (the "implementing Directive"). No ratings have been assigned to the assessment of these issues.

3. The evaluation was based on the laws, regulations and other materials supplied by the Andorran authorities, and information obtained by the evaluation team during its on-site visit to Andorra la Vella from 20 to 26 March 2011, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in Andorra. A list of the bodies met is set out in Annex I to the mutual evaluation report.

4. The evaluation was conducted by an assessment team which consisted of MONEYVAL and FATF experts in criminal law, law enforcement and regulatory issues and comprised: Mr Boudewijn VERHELST (Deputy Director, CTFI-CFI (Financial Intelligence Processing Unit), Belgium), evaluator for the legal aspects and MONEYVAL scientific expert, Mr Frédéric COTTALORDA (Head of Division, Service d'Information et de Contrôle sur les Circuits Financiers (Financial Intelligence Unit), Principality of Monaco), **evaluator for the financial aspects,** Mr Arben DOCI (Director General of the Albanian Financial Intelligence Unit), evaluator for the criminal law aspects, Mr Diego BARTOLOZZI (Principal Administrative Officer - Department of International Relations, Financial Intelligence Unit, Bank of Italy), FATF evaluator for the financial aspects. The team was accompanied by Ms Livia STOICA BECHT and Ms Irina TALIANU of the MONEYVAL Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

5. The structure of this report broadly follows the structure of MONEYVAL and FATF reports in the 3rd round, and is split into the following sections:
   1. General information
   2. Legal system and related institutional measures
   3. Preventive measures - financial institutions
   4. Preventive measures – designated non-financial businesses and professions
   5. Legal persons and arrangements and non-profit organisations
   6. National and international co-operation

[1] As updated in February 2009.

7. Statistics and resources
Appendices

6. This 4th round report should be read in conjunction with the 3rd round adopted mutual evaluation report (as adopted at MONEYVAL's 24th Plenary meeting – 10 to 14 September 2007), which is published on MONEYVAL's website. FATF Recommendations that have been considered in this report have been assigned a rating. For those ratings that have not been considered the rating from the 3rd round report continues to apply.

7. Where there have been no material changes from the situation as described in the 3rd round report, this report remains the text of reference and information provided in that assessment has not been repeated in this report. This applies firstly to general and background information. It also applies in respect of the 'description and analysis' section discussing individual FATF Recommendations that are being reassessed in this report and to the effectiveness of implementation. Again, only new developments and significant changes are covered by this report. The 'recommendations and comments' in respect of individual Recommendations that have been re-assessed in this report are entirely new and reflect the position of the evaluators on the effectiveness of implementation of the particular recommendation at the time of the 4th round, taking into account all relevant information in respect of the essential and additional criteria which was available to this team of examiners.

8. The ratings that have been reassessed in this report reflect the position as at the on-site visit in 2011 or shortly thereafter.

II. ANALTICAL SUMMARY

General information

This report summarises the principal AML/CFT measures that were in place in Andorra at the time of the 4th on-site evaluation visit (20 to 26 March 2011) or immediately thereafter. It describes and analyses these measures and makes recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th round of assessments is a follow-up round, in which core and key FATF Recommendations have been re-assessed, as well as those for which Andorra received non-compliant (NC) or partially compliant (PC) ratings in the 3rd round report. This report is therefore not a full assessment of implementation of the 40+9 FATF Recommendations, but is intended to update readers on major issues in Andorra's AML/CFT system.

Key findings

- This is the 4th round mutual evaluation report on Andorra by MONEYVAL. Since the last assessment the Andorran Government has adopted an AML/CFT action plan (in 2007), which resulted in a series of tangible measures as from 2008. Among the main new developments mention can be made in particular of: (1) amendment of the AML/CFT legislation and regulations (in particular the Act on international criminal co-operation and the fight against the laundering of money or securities deriving from international delinquency - the LCPI - and its implementing regulation - the RLCPI), resulting in concrete improvements to the AML/CFT preventive system; (2) changes to criminal law concerning the offences of laundering and terrorism financing; (3) adoption of new legislation governing the Andorran financial system; (4) adoption of new legislation governing legal persons and foundations; (5) an active commitment at the international level through the ratification of the relevant international conventions in AML/CFT matters and of bilateral agreements on the exchange of tax information; (6) reinforced tasks and responsibilities for the Andorran FIU so as to consolidate its pivotal role within the Andorran AML/CFT system; (7) the establishment of a Standing Committee on Money Laundering and Terrorism Financing.

- The changes made to Andorra's legislation and regulations, and more generally the AML/CFT system, are largely based on the provisions of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and seek to implement the recommendations made in the previous evaluation round and to improve implementation of the FATF Requirements.

- The authorities, with whom the issue was raised, consider that the AML/CFT risks identified, on the basis of an analysis of the results of judicial proceedings, primarily concern the use of the financial system to launder the proceeds of offences perpetrated abroad and that the risk arising from domestic crime is low. The most frequent predicate offence of laundering is still drug trafficking, followed by fraud and corruption. The terrorist financing risk is considered to be low, although the authorities are aware of the exposure arising from the geographical location of Andorra and the proximity of regional terrorist movements, combined with the potential attractiveness of the Andorran financial services centre. A global, in-depth analysis of money laundering and terrorism financing risks at national level should be carried out so as to identify the existing risks and weaknesses and sectors potentially at risk and to be in a position to take the appropriate steps.

- The new offences of money laundering and terrorism financing are partially compliant with the FATF standards. The system permitting the freezing, seizure or confiscation of the proceeds of crime is solidly based in law, with some minor deficiencies, and the growing number and scale of confiscations indicates a growing awareness of the financial aspects. Despite the increase in the number of laundering convictions, there are still some problems of effectiveness, as shown by the significant difference between the numbers of prosecutions and convictions. No prosecution has been brought for terrorism financing.

- To date Andorra has not adopted a full statutory basis for freezing assets linked to terrorism in accordance with the United Nations Security Council resolutions.

- A number of positive developments have been noted regarding the legislative framework and the action taken by the Andorran FIU, including as regards its new role regarding terrorism financing aspects, its broader responsibilities and the efforts made to be more active vis-à-vis the private sector. However, the human and technical resources at its disposal are insufficient, and this seriously affects the performance of its tasks.

- Overall, the AML/CFT prevention system has been reinforced, in particular regarding requirements for: customer due diligence, politically exposed persons, correspondent banking relationships, measures relating to new technology, professional confidentiality, record keeping, the obligation to report suspicions concerning terrorism financing, wire transfers, internal control and shell banks. The new legislation introduces rules allowing a risk-based approach and concerning reliance on third parties and business generators. Nonetheless, there are still a number of deficiencies and the implementation of supervision of the effective application of the AML/CFT machinery by financial institutions and designated non-financial businesses and professions (DNFBPs) raises real concerns, even if no sanctions have been imposed.

- The international co-operation system and practice appear sound and effective, although there are some deficiencies regarding the exchange of information and co-operation with foreign supervisory authorities in matters of insurance (non-banking entities) and DNFBPs. Andorra is able to offer a broad range of judicial assistance measures and the authorities' attitude is flexible and constructive.

Legal system and related institutional measures

1. Although Andorra has modified the money laundering offence (Act No. 15/2008 of 3 October 2008), the new article 409 of the Criminal Code only partly meets the criteria laid down in international conventions. While the laundering offence is fairly broad, it does not cover simply concealing, disguising, possessing or using criminal assets. Although these deficiencies are relatively insignificant, the fact that the predicate offences are unduly limited to serious offences punishable by at least six months' imprisonment (with certain specific exceptions) means that laundering the proceeds of certain categories of designated offences is not in itself an offence, which has a direct impact on the effectiveness of the system, as does the immunity of self-laundering, above all in the transfrontier context. Overall, there were 79 laundering prosecutions between 2006 and 2010, whereas there have only been final convictions in 10 cases, with two acquittals. Four cases involved foreign judgments that were enforced in Andorra, while in six cases the investigation and prosecution were initiated by the Andorran prosecution authorities.

2. Andorra ratified the International Convention for the Suppression of the Financing of Terrorism (CFT) on 12 June 2008 and also ratified the nine conventions listed in the annex to the convention. The terrorism financing offence established by the new articles 366*bis* and *ter* of the Criminal Code represents a significant progress. However, it suffers from a number of technical deficiencies. Firstly, Andorran law introduced an additional restriction by requiring that terrorist

acts should be intended to subvert the constitutional system or pose a serious threat to public order and security by means of intimidation and terror. The concept of a terrorist act under Article 2(1) a) of the United Nations Convention is not as restrictive. As a result, the mere fact of financing (and nothing more) an act constituting an offence under one of the treaties appended to the CFT (Article 2.1 a of the CFT) is not covered. In addition, the definition of terrorist acts in Article 362 of the Criminal Code does not include the notion of intimidating a population, or compelling a government or an international organisation to do or to abstain from doing any act. The immunity of self-financing is also a potential impediment to comprehensive and effective efforts to combat terrorism financing. The combined measures under articles 71 and 366 ter of the Criminal Code with regard to terrorism have the same effects as those that go hand in hand with the criminal liability of legal persons in terms of consequences and penalties, but cannot be deemed to represent the formal introduction of this principle. Some investigations have been launched into suspected terrorism financing as a result of suspicious transaction reports or following international notifications, which shows that the authorities are not inactive in this field, but they did not lead to prosecutions.

3. The seizure and confiscation system covers a broad range of measures. In the event of a conviction, provision is made for the confiscation of all instruments, proceeds, direct or indirect advantages and the equivalent value of proceeds. However, there is a problem associated with the confiscation of laundered money in the event of a prosecution for autonomous laundering, since Article 70 of the Criminal Code does not authorise the confiscation of the subject matter of the offence (unlike Article 366ter in connection with terrorism financing). It is also regrettable that confiscation of an equivalent value applies to neither the instruments nor the subject matter of the offence, which could have negative repercussions on the effectiveness of the confiscation system. The FIU has successfully used its powers to order freezing on numerous occasions. Since 2008 the competent authorities have carried out fairly significant seizures/confiscations in laundering cases, although this should be tempered by the fact that in four cases out of nine this concerned the execution of foreign confiscation decisions.

4. Andorra has not set up a specific system and procedures allowing the freezing of the funds or other assets of terrorists, those who finance terrorism and terrorist organisations targeted by the Sanctions Committee under S/RES/1267(1999) or by other authorities (S/RES/1373(2001)). There are no regulations on the immediate and automatic freezing of such suspected funds, at the initiative of those holding them, or appropriate administrative preventive measures. The procedure applied in the country is essentially based on the criminal system, starting with temporary freezing by the FIU, followed by the intervention of the prosecution authorities or the investigating judge, which can only result in either the discontinuation of proceedings for lack of evidence or, ideally, a criminal prosecution (which is unlikely). Yet, according to the resolutions, suspected assets should remain frozen until there has been a "delisting" decision. There are still no effective publicly-known procedures for examining requests for delisting by the persons concerned or for authorising access to funds or assets that have been frozen so as to meet basic expenses or pay certain types of fees, expenses or service charges. The effectiveness of guidance to financial institutions and other persons or entities that may be holding funds or other assets has not been established.

5. Following the passing of the LCPI, the responsibilities of the Financial Intelligence Unit, now the UIF (formerly named UPB), were redefined in the light of the new provisions of the LCPI and its implementing regulation. The FIU is an "independent body whose aim is to promote and co-ordinate measures for the prevention of money laundering and terrorism" and whose budget is funded by the State. The 15 examination, decision-making and proposal functions which are clearly assigned to the FIU include "collecting, gathering and analysing reports from parties under obligation, as well as all written and verbal communications received, to evaluate the facts". The FIU is now authorised to issue technical communiqués that are mandatory, recommendations enabling the parties under obligation to better fulfil their obligations and the necessary information about the procedures to be followed when making a suspicious transaction report. Improvements

have also been noted in the contents of the FIU's annual reports, which now include more detailed information on activities, statistics, typologies and trends. The report sets out a number of reservations concerning the activities of the FIU, in particular its work to analyse suspicious transaction reports and the methodology applied, and raises the need for the FIU to increase its guidance role and to undertake awareness-raising activities in respect of parties under obligation, in particular regarding the reporting requirement. The need to review the entire status of the FIU is also reiterated, in particular as regards certain aspects of its administrative autonomy, notably the arrangements for the appointment and dismissal of the FIU Director and the appointment/secondment of its staff. A positive finding is that, on average, a majority of the cases opened by the FIU result in notification to the law-enforcement agencies and are accompanied by preparatory or investigation measures, which is a step forward compared with the situation at the time of the 3rd round evaluation.

6. Despite the 3rd round recommendations, the Principality of Andorra has still not put in place any measures to detect the physical cross-border transportation of currency in connection with money laundering or terrorism financing, as required by Special Recommendation IX. This raises real concerns regarding the ability of the authorities to detect and prevent the unlawful physical cross-border transportation of currency and bearer negotiable instruments, and their ability to co-operate at an international level with their foreign counterparts. The customs authorities' involvement in AML/CFT matters is consequently still very limited.

Preventive Measures - Financial Institutions

7. The principal sources of AML/CFT obligations are the Act on international criminal co-operation and the fight against the laundering of money (LCPI) of 11 December 2008 and the Regulations for the LCPI of 13 May 2009. These two pieces of legislation, which reformed the previous legislation in a number of respects, were the subject of amendments that entered into force after the on-site visit, more precisely on 25 May 2011 for the RLCPI and 18 June 2011 for the LCPI.[2] The other additional legislation mostly corresponds to technical communiqués (TC) from the FIU, the issuance of which is expressly permitted by the LCPI or the RLCPI and which are binding.

8. The amendments to the LCPI and the RLCPI and the clarifications given by the technical communiqués have made it possible to remedy a number of shortcomings identified in the 3rd round evaluation report. This applies to the exemption from professional confidentiality in cases of terrorism financing, to a number of customer due diligence measures (in particular regarding the obligation to adopt ongoing due diligence and the risk-based approach to classification), to the issue of politically exposed persons, to cross-border corresponding banking relationships, to reliance on third parties carrying out due diligence measures, to the obligation to pay particular attention to transactions with high-risk countries, to application to branches and subsidiaries, to the requirement that financial institutions must not enter into or pursue relations with shell banks and to the obligations relating to wire transfers.

9. The LCPI and the RLCPI have now introduced a risk-based approach regarding the application of customer due diligence measures. There is a real need to conduct a global study of the money laundering and terrorist financing risks specific to Andorra so as to ensure that the risk-based approach adopted is truly consistent with the risks identified.

[2] In accordance with the procedural and methodological rules, the evaluation team took into account the laws, regulations and other AML/CFT measures that were in force and effective at the time of the visit to Andorra and the period immediately following it (not more than two months), which solely covered the provisions of the RLCPI. The information on amendments to the LCPI as revised in June 2011 was mentioned in the report but could not be taken into account in the ratings.

10. Anonymous accounts and passbooks are prohibited. There is no express prohibition on keeping accounts in fictitious names, although the LCPI requirements should guarantee that financial institutions do not keep such accounts.

11. The customer due diligence requirements incumbent on Andorran financial institutions have been significantly supplemented and reinforced by the LCPI and its implementing regulation, and many of them have also been based on EU Directive 2005/60/EC. However, the simplified due diligence measures go well beyond those envisaged by the FATF in R.5. The following obligations were introduced or defined more clearly by the amendments made to the RLCPI after the visit and were too recent to be considered fully effective:

    - the regulations concerning the use of numbered accounts;
    - the regulations requiring financial institutions to apply due diligence measures to customers regardless of any exceptions or thresholds where there is a suspicion of money laundering or terrorist financing or where there are doubts about the veracity or adequacy of previously obtained customer identification data;
    - the regulations requiring financial institutions to obtain corroboration of the information obtained (notably concerning the business activity) from reliable, independent sources;
    - the broadening of the identification measures provided for by the law and regulations to customers who are trusts or legal arrangements;
    - the requirement to obtain information concerning the names of senior management (for legal persons) or administrators (for trusts) and the provisions governing their powers to commit the legal person or legal arrangement.

12. The definition of a beneficial owner is incomplete and should in particular cover natural persons who constitute the brains behind a legal person and the settlor and beneficiaries of a trust.

13. The LCPI and the RLCPI now contain specific obligations relating to politically exposed persons. The LCPI defines politically exposed persons as "individuals who carry out or have carried out prominent public functions, as well as their immediate family members and persons known to be close associates", and its provisions are supplemented by the RLCPI definitions of the terms "prominent public functions", "immediate family members" and "persons known to be close associates". The due diligence measures relating to politically exposed persons say nothing about their possible application to beneficial owners.[3]

14. The LCPI introduces specific measures implementing the requirements of R.7, but with some technical deficiencies regarding financial institutions' obligations to ascertain that the AML/CFT controls implemented by the respondent financial institution are adequate and effective and that the respondent institution is able to provide relevant customer identification data on request. To date, no Andorran financial institution has the role of banking correspondent for a foreign institution.

15. The risk of money laundering through the use of new technologies is still insufficiently monitored.

16. The LCPI introduces new rules concerning reliance on third parties and business generators, which are largely compliant with the requirements of R.9. However, they should be reviewed so that delegation of transactions monitoring to a third party is not authorised and to ensure that financial institutions are required to obtain immediately the necessary information concerning elements of the customer due diligence process.

[3] See the amendments to Act 4/2011 (Article 49 quater 1 c).

17. The secrecy laws applicable to financial institutions do not seem to inhibit implementation of the FATF Recommendations.

18. The new provisions on retention of documents and information fully cover the requirements of Recommendation 10. However, the authorities should introduce measures to ensure, through targeted controls, that parties under obligation are effectively complying with the obligations to retain and update documents and information.

19. The Andorran legislation has clarified financial institutions' obligations regarding the monitoring of transactions and business relationships with legal persons and financial institutions in countries which do not or insufficiently apply the FATF Recommendations. This could be reinforced through instructions to parties under obligation concerning the detection of unusual or suspect transactions, which seems to be based almost entirely on the software used by financial intermediaries. In addition, for numbered accounts, the information and documents relating to these accounts were retained by financial institutions in hard copy form or in another database with restricted access for security reasons. This can in principle make it more difficult to perform a full analysis of transactions carried out on these accounts and to compare them with other transactions so as to detect those that are suspect. Similarly, there is a need to clarify the criteria to be used in identifying countries necessitating monitoring of business relationships.

20. The amendments made to the reporting requirement, as compared with the previous requirement, have not extended the scope of suspicious transactions reporting to the proceeds of crime. In this connection, it should be recalled that the offence of money laundering is not fully compliant with the requirements of Recommendation 1 and Special Recommendation II, which has implications in terms of compliance with the requirements of Recommendation 13 and Special Recommendation IV. In addition, there are still uncertainties as to whether all situations of attempted transactions would be covered. In terms of effectiveness of the suspicious transaction reporting system, the statistics provided show a downward tendency in the number of reports received over the last three years, while the number in any case generally remains at a low level. Insurance companies, portfolio management companies and DNFBPs contribute little or not at all. Regarding the financing of terrorism, the parties under obligation seem in practice to have construed the obligation solely as requiring the reporting of transactions by listed persons, whereas the effectiveness of monitoring of listed persons is not guaranteed. Additional measures should be taken to ensure that all parties under obligation adequately comprehend the reporting requirement and implement it in an effective manner.

21. The provisions of the LCPI are such as to protect the professions concerned from any criminal or civil liability for breach of a confidentiality requirement and include a prohibition on warning those concerned that a STR or information relating to them is being reported. Deficiencies were nonetheless noted in practice, undermining the effectiveness of these provisions' implementation.

22. Andorra should give consideration to the feasibility and utility of a system whereby financial institutions would report all cash transactions above a certain amount.

23. Andorra also amended the rules on internal control and foreign branches. Additional efforts should be made to ensure that financial institutions establish appropriate internal procedures and implement the obligations introduced in the legislation in respect of the requirements of R.15, in particular concerning procedures for hiring staff and further training. To supplement the existing arrangements, the Andorran authorities should ask financial institutions to pay particular attention to their branches and subsidiaries located in countries that do not or insufficiently apply the FATF Recommendations. In its capacity as AML/CFT supervisory authority, the FIU should also adopt a proactive policy so as to establish direct co-operation and the exchange of information with the AML/CFT supervisory authorities in countries where Andorran financial institutions' branches and subsidiaries are located.

24. With regard to shell banks the legal provisions applicable are such that the requirements of FATF R.18 are fully observed.

25. The report notes with great concern the developments in respect of supervision of the effective application of the AML/CFT machinery. Andorra's system of supervision continues to suffer from a number of deficiencies already raised in the previous evaluation round, although some progress has been made in the standard-setting field. The on-site inspections carried out by the FIU in 2008 cover a high proportion of subjected entities in the financial sector. However, not a single on-site inspection has taken place since the AML/CFT law was amended, i.e. 2009 and 2010, and during that period, supervision was exerted exclusively by means of consultation of external audit results carried out in respect of subjected entities, as well as through meetings organised with the financial institutions' compliance officers to discuss issues raised in those audit reports.

26. As a consequence, important issues remain to be dealt with both from a general standpoint (inadequate supervision of insurance companies; foreign post offices offering banking and financial services without due authorisation) and from an operational standpoint (supervision is exercised virtually exclusively through reliance on external audit reports and meetings), in respect of which the Andorran authorities should amend the existing legislation and supervision policies and methodologies. Although the FIU has the necessary powers to control financial institutions, including through on-site inspections, and to implement sanctions, for lack of sufficient, appropriate resources assigned for this purpose these powers have not been fully utilised. It is essential that Andorra take all the necessary steps to ensure the effectiveness of the supervision measures and that sanctions for breaches of the AML/CFT requirements are effectively applied throughout the financial sector.

27. The range of sanctions applicable in AML/CFT matters should also be reviewed to ensure that they are proportionate to the seriousness of the acts being sanctioned and include the power of oversight authorities to withdraw, restrict or suspend the prior authorisation (or licence) held by a financial institution.

28. In Andorra there are no parties under obligation whose main or sole activity consists in providing a funds transfer service, but this function can be performed by banks as an ancillary activity to banking services. This type of service is proposed by the Spanish and French post offices, which are active in Andorra without having been licensed or registered by the Andorran authorities and which are subject to no form of prudential supervision, apart from that exercised by their country of origin. No competent authority has been designated and no specific structure for licensing or registering money or value transfer operators exists at present. The Andorran authorities should review these aspects, as already recommended, so as to settle the issue of the offer of funds transfer services by foreign post offices without any form of authorisation, which was already raised in the previous evaluation round.

Preventive measures: Designated non financial businesses and professions (DNFBPs)

29. The AML/CFT legislation expressly applies to all designated non financial businesses and professions listed in the FATF Methodology Glossary, apart from dealers in precious metals and dealers in precious stones when they carry out a transaction for which payment is made in cash, for an amount equal to or exceeding the applicable threshold. The AML/CFT legislation also explicitly mentions as reporting entities those authorised to deal in objects relating to the cultural heritage or of cultural value or to act as intermediaries in this field.

30. The measures to combat money laundering and terrorism financing laid down in the LCPI apply to the non-financial businesses and professions specified in article 45 of that law, who in the exercise of their profession or business activity undertake, control or advise on transactions involving funds

movements which could be used for money laundering or terrorism financing. In particular this covers:

a) professional external accountants, tax advisers, auditors, economists and business agents (*gestories)*
b) notaries, lawyers and members of other independent legal professions when they are involved in the planning or execution of transactions on behalf of their clients in the framework of the following activities:
   - buying and selling real property or business entities
   - the handling of the money, deeds, or other assets of their clients
   - the opening or management of bank accounts, savings accounts or securities accounts
   - the organisation of the contributions necessary for the creation, operation or management of companies
   - creation, operation or management of companies, contractual fiduciary arrangements (*fideicomisos*) or similar structures; or when acting for their customers in financial or real estate transactions;
c) sellers of high value goods, such as precious stones and metals, when payment is made in cash, for an amount equal to or exceeding € 30 000[4], or the equivalent in any other currency
d) suppliers of services to companies or contractual fiduciary arrangements not referred to in any other paragraph of this article
e) gaming establishments
f) real estate agents carrying out activities related to the purchase and sale of property.

31. Members of the professions referred to in paragraphs a) and b) are not bound by the obligations laid down in the LCPI with regard to information they receive or obtain from one of their clients in the course of ascertaining the legal position of the client or performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings. These exemptions from the obligations regarding identification of customers and verification of their identity are not provided for in the FATF Recommendations and go beyond what is required (i.e. where they prepare or carry out the activities explicitly provided for under criterion 12.1.d).

32. Lastly, the Andorran authorities have envisaged the possibility of applying Recommendations 5, 6, 8-11, 13-15, 17 and 21 to other non-financial businesses and the Andorran list of DNFBPs is accordingly broader than that of the FATF. Under the LCPI sellers of high value goods are subject to AML/CFT requirements, drawing on article 2.1 e) of Directive 2005/60/EC.

33. Sellers of high value goods are subject to the LCPI obligations regarding identification of customers and verification of their identity solely when they carry out transactions with their customers for an amount equal to or exceeding € 30 000, which is significantly higher than the amount stipulated by the FATF in its recommendations (€ 15 000).

34. The LCPI also applies to all natural or legal persons whose business activities may channel or facilitate a money laundering operation or terrorism financing.

35. No study or assessment to evaluate the risk of laundering linked to each profession covered by R.12 has been performed in Andorra. The authorities (and professionals themselves) consider that these activities involve a very low risk. The only game of chance not banned in Andorra is bingo, which is covered by a law of 1996 whereby government authorisation is required for opening a

[4] Act 4/2011 on amendments to the LCPI, which entered into force on 23 June 2011, amended article 45 of the LCPI by lowering to 15,000 Euros the threshold of transactions for which dealers in precious goods are subjected to the LCPI.

bingo hall. In view of the value of the winnings, the risk of money laundering can be regarded as low in this sector.

36. DNFBPs are not required to implement specific due diligence measures concerning customers who are politically exposed persons, the use of new technologies and the risks associated with relationships which do not require the customer's physical presence.

37. Moreover, as regards the legal framework applicable to DNFBPs, concerning the implementation of obligations under Recommendations 5, 9 to 11 and 17, which are applicable to DNFBPs in the circumstances covered in R.12, and Recommendations 14, 15, 21 and 17 in the context of suspicious transaction reporting (R.16), the deficiencies set out above in respect of financial institutions also apply in the case of DNFBPs.

38. The authority responsible for monitoring compliance with AML/CFT requirements by DNFBPs in Andorra is the FIU. In this connection, as mentioned above, it must be underlined that, although the FIU has a fairly broad range of powers and functions in this area, it still does not have sufficient resources to perform its role, especially taking into account the extent of its tasks compared with the number of staff.

39. In 2009 and 2010 there were no inspections of DNFBPs aimed at verifying the proper application of the due diligence measures in AML/CFT matters. It was also noted that, in practice, certain DNFBPs did not full comply with their obligations regarding identification of customers and verification of their identity, that the commitment and level of interest of DNFBPs regarding money laundering and terrorism financing issues is still very low and that they make a very small contribution in terms of suspicious transaction reporting. On account of this finding, together with the deficiencies in the exercise of regular supervision by the Andorran authorities, it cannot be concluded that the due diligence requirements imposed on Andorran DNFBPs are fully effective.

Legal persons and arrangements and non-profit organisations

40. The legal and regulatory framework applicable to legal persons in Andorra has been considerably amended since the previous evaluation. Although progress has been noted in terms of improvements to the system of registration of legal persons, a number of problems subsist such as the issue of name-lenders or the non-conversion of bearer shares following the expiry of the time-limit laid down in the legislation. The system of sanctions does not seem sufficiently dissuasive to guarantee the effective implementation of the legal and regulatory requirements, including as regards the updating of information recorded in the Companies Register. It should be ensured that the competent authorities can obtain information on the beneficial ownership and control of legal persons in a timely fashion by introducing obligations so that updated information is reported without delay and duly registered and dissuasive sanctions become applicable and are applied where appropriate.

41. Although, in view of the particularities of NPOs operating in Andorra, the risk of misuse of this sector for terrorism financing can be regarded as low, this analysis is not based on an objective assessment of the situation. There have been no changes in the regulation, operation or supervision of associations since the 3rd round evaluation. At the time of the previous evaluation, although they existed in Andorra, foundations were not regulated. The situation has changed following the adoption of the Foundations Act No. 11/2008,[5] which governs various aspects of their functioning. This law applies to Andorran private foundations which are registered in Andorra and to public foundations. The LCPI also specified that associations, foundations and other non-profit organisations are required to retain for five years the identification data concerning persons to whom funds are paid and the documents mentioned in section 28 of the Associations Act (register

[5] Act passed on 12 June and published in the Official Gazette on 16 July 2008.

of members, book of minutes, inventory of assets and accounting registers relating to their activities).

42. A formal risk assessment study should be carried out, in particular in view of the relatively relaxed regime applicable to associations and the limited oversight exercised regarding them. No awareness-raising measures have been taken in respect of NPOs regarding the risks of their being misused for terrorist purposes and the protective measures available. The authorities should also review the suitability of the legal framework relating to non-profit organisations to ensure that it meets financial transparency requirements, ranging beyond the specific measures provided for where an organisation is in receipt of public subsidies, and requirements concerning the updating of identification data in the event of any change in the founders or persons managing the activities of NPOs, including identification of the main managers, governing board members or directors. Effective monitoring of NPOs' compliance with their legal obligations should be established, as should appropriate penalties to sanction non-compliance with these requirements.

National and international co-operation

43. A decree of 13 February 2008 established a Standing Committee on Money Laundering and Terrorism Financing. Its role is to (1) analyse the money laundering situation in Andorra, providing available information in the form of statistics or findings resulting from the exercise of its tasks; (2) participate in the assessment of measures and action taken in the AML/CFT field; (3) provide legal advice concerning proposed legislation; (4) assist the FIU in connection with its international activities; (5) provide advice on drafting reports to be submitted to international bodies. The establishment of the Standing Committee is an important step and should in the long run permit effective co-ordination between all the competent authorities if this body is effectively used as a forum for dialogue, co-operation and policy co-ordination and for regular analysis of the AML/CFT situation in Andorra and of measures taken, with a view to proposing reforms where necessary. The effectiveness of operational co-operation regarding the application of interim measures needs to be improved. Co-operation arrangements between the FIU and the INAF do not seem to be sufficiently utilised so as to ensure a satisfactory degree of co-operation, and such arrangements have not been put in place with the customs authorities.

44. Andorra has been a party to the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 since 1999. Since the 3rd round evaluation Andorra has ratified the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism and has launched the ratification procedure in respect of the 2000 United Nations Convention on Transnational Organised Crime (Palermo Convention). There are nonetheless a number of deficiencies in implementing these conventions, the bulk of which are technical in nature (for example the offences of laundering and terrorism financing). The measures adopted to implement the UN Security Council resolutions on the prevention and suppression of terrorist financing (S/RES/1267(1999) and subsequent resolutions (S/RES/1373(2001)) leave something to be desired.

45. The system and practice regarding international judicial co-operation appear to be sound and effective. Andorra is able to offer a broad range of judicial assistance measures and the authorities' attitude is flexible and constructive. The limits of the laundering offence established by article 409 of the Criminal Code, as regards the predicate offences, do not in practice impede the execution of requests made by letters rogatory, even in the case of coercive measures. The time taken to execute international letters rogatory naturally varies, with an average of six months, which could be improved. There are nonetheless still a number of reservations as a result of the deficiencies noted regarding confiscation of the subject matter and establishment of the offences of laundering and terrorism financing so as to avoid situations where the principle of dual criminality causes problems.

46. International co-operation at the level of the police and the FIU does not seem to pose any specific problems. The situation differs, however, concerning co-operation with foreign supervisory authorities as regards the exchange of AML/CFT information since, at the date of the on-site visit, no co-operation activities had taken place. It is considered that any exchange of information held by the FIU as supervisory body should be made via the co-operation arrangements with the finance sector supervisor (INAF) for requests concerning institutions subject to the INAF's prudential supervision. Although the law does not provide expressly that the FIU may ask the INAF to submit a request to a foreign oversight authority on its behalf, the authorities consider that such a request would be possible in accordance with article 23 paragraph 2 of the RLCPI. Andorra should nonetheless review the applicable legislative and regulatory framework to ensure that the existing arrangements are sufficiently clear and precise and, if need be, to supplement them so that they permit the Andorran supervisory authorities rapidly to provide the broadest possible assistance to foreign supervisory authorities not just as regards the exchange of information on financial sector institutions, subject to the INAF's prudential supervision, but also concerning the insurance sector and DNFBPs.

Resources and statistics

47. The human, financial and technical resources allocated to the authorities in AML/CFT matters are generally unsatisfactory, and there is particular cause for concern regarding resources allocated for AML/CFT supervision. Firstly, as regards the FIU, at the time of the on-site visit the premises and the measures taken did not provide appropriate protection for the information held by the FIU. As regards human resources, the fluctuations in staff and the posts that remain unfilled do not allow the FIU to carry out its functions in an optimal way. It has not been established that the customs services have sufficient operational independence and autonomy, and there are still questions about the adequacy of resources should the customs services be required to fully implement Special Recommendation IX. The means deployed for the supervision of financial institutions and DNFBPs are clearly insufficient. Staff training efforts are also inadequate and need to be reviewed.

48. The arrangements to review the overall effectiveness of Andorra's AML/CFT system are not considered to have fully attained their objective of enabling a regular review of the AML/CFT system's effectiveness. Overall, Andorra collects the necessary statistics on matters pertaining to the effectiveness and proper functioning of the system to combat money laundering and terrorism financing. In the absence of a detection system and corresponding measures, the Principality of Andorra does not have statistics on declarations made regarding the physical cross-border transportation of currency and bearer negotiable instruments, as required by R.32. Statistics on requests for mutual legal assistance were not available. The authorities should remedy these matters.

III. MUTUAL EVALUATION REPORT

1 GENERAL INFORMATION

1. This section updates the factual information set out in the 3rd round mutual evaluation report concerning Andorra, its economy, its constitutional, administrative and judicial systems, its anti-corruption measures, the general situation regarding money laundering and the financing of terrorism, developments in the financial sector and regarding DNFPBs, the legislation and measures applicable to legal persons and arrangements, and so on.[6]

1.1 General information on Andorra

2. The Principality of Andorra covers 468 km^2 and is the largest of the small European states. It is situated between Spain and France with which it shares borders of respectively 63.7 and 56.6 kilometres. In 2010 Andorra had an estimated population of 85 015; 38.8% of inhabitants were Andorran, 31.4% Spanish, 15.4% Portuguese, 6% French and the remainder of various nationalities.

3. The Euro is now the official currency of Andorra by virtue of a monetary agreement with the European Union concluded in 2011.[7] Previously, Spanish and French banknotes and coins were de facto legal tender in Andorra, but were replaced by the Euro banknotes and coins as from 1 January 2002.

4. The European Union and Andorra have an industrial customs union on the basis of an exchange of letters, which was signed on 28 June 1990 and entered into force on 1 July 1991, whereby a number of products can be imported duty free and certain tobacco products manufactured in the EU and imported to Andorra are subject to a preferential regime. Andorra is treated as an EU member state for trade in manufactured products and a third state for trade in agricultural products. A co-operation agreement of 2005 covers a wide range of fields such as the environment, communications, information, culture, transport, regional and cross-border co-operation and social matters. An agreement on the introduction of measures equivalent to those included in Council Directive 2003/48/EC regarding taxation of income from savings in the form of interest payments was signed on 15 November 2004 and also came into force in 2005.

Economy

5. Since 2006 the Andorran economy has been undergoing a slowdown, which has led the authorities to review the underlying economic model, essentially based on tourism (skiing and shopping), the financial sector and, to a lesser extent, the construction and property sectors. Andorra also suffered the impact of the international financial crisis which began in 2008, although in the third and fourth quarters of 2009 general signs of an economic recovery could be noted. All sectors of the economy experienced a significant decline in their activity levels, in particular due to the lower number of tourists[8] – above all from neighbouring countries, especially Spain – also reflected in a

[6] Readers are requested to refer also to the information set out in the relevant section of the 3rd round evaluation report on Andorra (ref. MONEYVAL(2007)14, adopted in September 2007, based on information gathered during the on-site visit from 17 to 21 October 2005).

[7] Agreement concluded on 30 June 2011 (text available at the following address: http://ec.europa.eu/economy_finance/euro/world/outside_euro_area/documents/2011-07-06_agreement_fr.pdf). It should be noted that, under this agreement, Andorra is committed to take appropriate measures to transpose the European Union legislation and rules mentioned in the agreement, including legislation on banking and finance, in particular with regard to the activities and supervision of the institutions concerned, and on the prevention of money laundering, fraud, etc.

[8] According to the Andorra Tourism Observatory's data, nearly 9 million people visit the country each year, mainly originating from France and Spain, and 20% of them stay there at least one night. The figures of the Ministry of the

decline in purchasing power and a general decrease in construction activity, which had in recent years made a significant contribution to Andorra's gross domestic product (GDP).

6. In 2010 Andorran GDP stood at about € 2 636 million, or 1.9% less than the 2009 figure of € 2 686 million. The retailing, finance and tourism sectors are the main pillars of Andorra's domestic economy, accounting for respectively 18%, 16% and 7.9% of GDP in 2010. Signs of a more moderate decline in the majority of activity sectors could also be noted in 2010, apart from in the construction industry, which was harder hit by the crisis. Nonetheless, per capita income in Andorra is higher than the European average, with a GDP of € 31 006 per head in 2010.[9]

Political, constitutional, administrative and judicial systems and hierarchy of law

7. No major change was reported compared with the information on Andorra's political, administrative, constitutional and judicial systems set out in the 3rd round report.

8. The judicial authorities comprise the *Tribunal de Battles*, the *Tribunal de Corts* and the High Court of Justice. Cases are heard at first instance by the *Battlia* of Andorra, either as a one-man court or in collegiate form (the *Tribunal de Battles).* The *Tribunal de Corts* is competent for trying serious offences at first instance and hears appeals against decisions of the *Tribunal de Battles* concerning more minor offences or breaches of criminal law, and also against all decisions taken at the investigation stage. The High Court of Justice is the higher level authority, comprising three divisions (criminal, civil and administrative) and is competent to hear appeals against all judicial decisions taken at first instance. The Constitutional Court is the supreme constitutional body, competent for interpreting the Constitution.

Measures relating to transparency, ethics and the fight against corruption

9. Andorra signed the Criminal Law Convention on Corruption (CETS 174) on 6 May 2008, and it entered into force with regard to the Principality as from 1 September 2008. Reservations were entered concerning the provisions on offences of active and passive bribery in the private sector (Articles 7 and 8) and trading in influence (Article 12). Andorra is not yet a state party to the Civil Law Convention on Corruption (CETS 173), although it signed this convention in 2001. Andorra has not yet signed or ratified neither the Additional Protocol to the Criminal Law Convention on Corruption nor the United Nations Convention against Corruption.

10. Since the 3rd round evaluation, the legislative and institutional framework in matters of preventing and fighting corruption has undergone a number of major changes. Act No. 15/2008 of 3 October 2008 to amend the Criminal Code Act No. 9/2005 of 21 February 2005 modified a number of provisions on corruption and the applicable penalties. The government adopted a decree, on 16 January 2008, establishing the anti-corruption unit (UPLC) and an Internet site. In 2010, a code of conduct for customs officials was adopted by a decree of 7 July 2010 and, following an opinion dated 21 April 2010, a code of conduct and professional ethics for public officials was also published. At the time of the on-site visit, no judicial decisions have been pronounced under the provisions on bribery and on trading in influence.

11. As a member of the Group of States against Corruption (GRECO), Andorra has undergone a number of evaluations. The first and second round compliance report was adopted on 19 February 2009 and an addendum thereto on 1 April 2011. Third round reports on incriminations and

Economy and Tourism show that, following a steady decline since 2007, the number of private cars entering the country increased slightly in 2010, with a total of around 4 100 000 vehicles.

[9] Detailed statistics on the Principality of Andorra are published by the Government (see http://www.estadistica.ad/serveiestudis/publicacions/Publicacions/Andorra%20en%20Xifres_fr.pdf).

transparency of party funding were also adopted on 27 May 2011.[10] GRECO concluded that "Andorra is legally equipped to respond to a certain extent to the requirements of the Criminal Law Convention on Corruption", but there are still deficiencies, including the restrictive nature of the bribery and trading in influence offences, solely concerned with advantages with a potential financial value, the level of the penalties applicable to these offences, the lack of an offence of bribery in the private sector, and so on.

12. Among other noteworthy developments, mention can also be made of the fact that Andorra has made significant efforts to adopt the OECD (Organisation for Economic Co-operation and Development) standards on exchange of information in tax matters. In 2009 it entered into a formal commitment to apply the OECD standards and passed new legislation relating to the exchange of tax information upon prior request. In February 2010 the OECD removed Andorra from its list of unco-operative tax havens, following the signature of 17 bilateral tax information exchange agreements. At the end of 2010 Andorra had concluded agreements with Austria, Liechtenstein, Monaco, San Marino, France, Belgium, Argentina, the Netherlands, Portugal, Spain, Sweden, Iceland, Greenland, Norway, the Faroe Islands, Finland, Denmark and Germany, and negotiations were under way with another three states. Andorra has been a member of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes since its foundation on 17 September 2009 and, in that capacity, underwent a review in 2011.[11]

1.2 General situation regarding money laundering and the financing of terrorism

13. Andorra has not undertaken an active and detailed study of the risks of money laundering and terrorist financing, as recommended in the 3rd round report.

14. During the on-site visit, the people whom the evaluators met stated that the money laundering risks identified mainly concerned the use of the financial system for laundering the proceeds of offences committed abroad. Laundering of funds deriving from drug trafficking continues to be the principal problem, followed by fraud and corruption (including in planning matters). Cases of laundering relating to cases of procurement and extortion have also been detected. According to these authorities there is a low risk of laundering of the proceeds of domestic offences, since international criminal organisations are not operational in Andorra and are not seeking to penetrate the country. The country's small size and limited road network, which is well monitored by the police and customs authorities, are considered to have an obvious impact on unlawful activities. The main risk is accordingly the possible use of the financial system to launder the proceeds of offences perpetrated abroad.

15. The information provided by the authorities is principally derived from an analysis of the results of the action they have taken to deal with cases of foreign origin, as set out below:

Year	Case number	Offence	Persons convicted	Sentence
2008	TC-003-2/96	Laundering the proceeds of drug trafficking or criminal conspiracy to launder the proceeds of offences	2 natural persons	Each person was sentenced to five years' prison plus a fine of € 300 000,

[10] See the GRECO website for these reports: Compliance report: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2%282008%297_Andorra_FR.pdf; Addendum: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2%282008%297_Add_Andorra_EN.pdf; Third round report on Andorra: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282010%2911_Andorra_One_FR.pdf and http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282010%2911_Andorra_Two_FR.pdf

[11] For further information, see: http://www.oecd.org/document/30/0,3746,en_2649_34897_48568094_1_1_1_1,00.html

		perpetrated abroad		permanent expulsion and confiscation of the funds utilised
	CRI-144/99, 297/02,265/05	Laundering the proceeds of drug trafficking and money laundering	4 natural persons	Confiscation of the funds and seizure of property and assets
2009	TC-051-4/02	Laundering the proceeds of drug trafficking or criminal conspiracy to commit offences or launder the proceeds of offences perpetrated abroad	5 natural persons	Five to eight years' Prison and fines of between € 300 000 and 500 000, expulsion from Andorra for 20 years and confiscation of the funds.
2010	TC- 075-5/06	Laundering the proceeds of drug trafficking or criminal conspiracy to commit offences or launder the proceeds of offences perpetrated abroad	3 natural persons	1) Two persons were acquitted 2) The third person was sentenced to 3 years' prison, with one year unsuspended, a fine of € 300 000 and confiscation of the funds
	TC-122-3/06	Laundering the proceeds of drug trafficking or criminal conspiracy to commit offences or launder the proceeds of offences perpetrated abroad	2 natural persons	1) One person was acquitted. 2) The second person was sentenced to 5 years' prison, with one year unsuspended, a fine of € 40 000, expulsion for ten years and confiscation of the funds.
	CRI-236-1/09	Laundering of the proceeds of criminal conspiracy to perpetrate an offence or fraud against the United States and fraud using electronic, radio or television devices	1 natural person	Confiscation of the funds and seizure of the natural person's property and assets
	CRI-300-2/08	Laundering the proceeds of drug trafficking and unlawful possession of firearms	2 natural persons	Confiscation of the two persons' immoveable property
	CRI-425-2/08	Laundering the proceeds of drug trafficking, membership of a criminal organisation, money laundering and unlawful possession of firearms	11 natural persons	Confiscation of the funds and seizure of the natural persons' property and assets

16. There has also been no significant change in the money laundering methods detected. The financial intelligence unit's activity reports for 2008 and 2009 include examples of the typology of methods used based on a number of cases detected in Andorra. In the majority of cases the technique utilised involves cash transactions or receipt of international funds transfers with a view to the subsequent re-transfer of funds to other national or international accounts, generally via wire transfers.

17. The authorities consider that there is a low terrorist financing risk, although they are aware of the exposure arising from the geographical location of Andorra and the proximity of regional terrorist movements, combined with the potential attractiveness of the Andorran financial services centre. At the time of the on-site visit, no terrorist financing case had been identified and all the investigations carried out (10 since 2005, including 3 as a result of reporting by banks and 7 as a result of requests for international co-operation) had led to no further action.

1.3 Overview of the financial sector and designated non-financial businesses and professions (DNFBPs)

Financial sector

18. The Andorran financial sector continues to be a key field of economic activity since it makes a significant contribution (roughly 16%) to Andorra's GDP. Insurance companies, other investment institutions, mutual fund management companies and specialised non-banking credit institutions also operate in Andorra.

Financial sector total assets	**31/12/2009**		**31/12/2010**	
Banks (consolidated figure)	€ 13 387 424 000	99.89%	€ 13 142 728 000	99.91%
Specialised non-banking credit institutions	€ 9 145 000	0.07%	€ 6 063 000	0.05%
Investment companies	€ 5 458 000	0.04%	€ 5 820 000	0.04%
TOTAL	**€ 13 402 027 000**		**€ 13 154 611 000**	

19. In 2010 Andorra's financial system included a total of 167 establishments. At the time of the visit, there were 5 banking groups, 1 specialised credit institution, 8 mutual fund management companies and 4 investment companies. The table below shows how the financial system developed between 2008 and 2010 and the number of authorised establishments:

	2008	**2009**	**2010**
Banks	**5 groups**	**5 groups**	**5 groups**
With no foreign shareholding	4 groups	4 groups	4
With foreign shareholding	1group	1group	1
Specialised non-banking credit institutions	**1**	**1**	**1**
Investment institutions	**12 (2 inactive)**	**12 (2 inactive)**	**4**
Financial investment companies	-		1
Financial investment agencies	-		1
Portfolio management companies	4 (1 inactive)	4 (1 inactive)	2
Mutual fund management companies	8	8	8
Banking	5	5	5
Non-banking	3 (1 inactive)	3 (1 inactive)	3 (1 inactive)
Risk capital companies	0	0	**0**
Other institutions	**0**	**0**	**0**

20. The Andorran banking sector, comprising 5 banking groups[12] (including a total of 56 banking agencies) employs about 1 700 persons (approximately 80% of the total number of financial sector jobs). In 2010 the number of employees was 7.05% higher than in 2009, mainly as a result of the international expansion policy implemented by Andorran banks. [13]

[12] The 5 groups bring together 6 banks: Andorra Bank Agricol Reig SA, Banc Internacional d'Andorra SA, Banca Mora (these last two banks work together), Banca Privada d'Andorra SA, Credit Andorra Group and BancSabadell d'Andorra, SA.

[13] Source: Andorra and its financial system 2010, ABA (Association of Andorran Banks). This report mentions that 5 of the 6 banking groups are in the process of international expansion, principally in Europe (Switzerland, Luxembourg,

21. Since 2008, Andorra has adopted new legislation governing the financial system. Several pieces of legislation published during the reference period are:

    - Act No. 24/2008 of 30 October 2008 governing the legal regime of specialised non-banking credit institutions.

    - Act No. 13/2010 of 13 May 2010 governing the legal regime of financial investment institutions and mutual fund management companies. This law determines the purpose of financial investment institutions and establishes the categories of investments and additional services they are authorised to provide. It also gives a classification of financial investment institutions according to the nature of their activities and specifies the conditions of access to and operation of this activity as well as the legal rules applicable to mutual fund management companies.

    - Act No. 14/2010 of 13 May 2010 governing the legal regime of banks and the basic administrative regime of entities operating in the financial system. This law repealed the previous law on the basic administrative regime of financial institutions, dated 30 June 1998, and establishes principles governing the various entities operating within the Andorran financial system. It also establishes the basis for international co-operation in matters of supervision (consolidated global supervision and other forms of supervision), providing INAF (the Andorran national financial institute) with a legal framework that enables it to conclude agreements with the supervisory bodies of third countries.

    - These Acts Nos. 13/2010 and 14/2010 are intended to adapt Andorra's legislation to recent European developments, in particular the provisions of the Markets in Financial Instruments Directive (MiFID) on matters of relevance to service providers, such as organisational structure, corporate governance, risk management and customer typology, among others. All institutions carrying on financial activities in Andorra require an authorisation, as provided for in section 4, paragraph 5 of Act No. 12/2010. Under Article 246 of the Andorran Criminal Code (Illegal banking and financial activities) the penalty for carrying on these activities without an authorisation is one to four years' imprisonment and a fine of up to €150 000.

    - Act No. 35/2010 of 03 June 2010 governing the regime for authorising the creation of new operational entities in the Andorran financial system. The purpose of this law is to lay down the rules governing authorisation of the creation of new operational entities in the Andorran financial system. Under its provisions foreign investors are permitted to hold up to 100% of the capital of Andorran financial institutions, which opens up the country's financial system to a significant extent.

    - Act No.1/2011 of 2 February 2011 concerning the creation of a deposits guarantee system for banks. Formerly, the legislation governing deposit guarantee reserves and other operational requirements contained measures to guarantee the Andorran banking system's solvability and stability but without establishing a direct guarantee that unavailable deposits would be reimbursed to their owners. The guarantee system now in place is an ex post scheme guaranteeing a maximum of € 100 000 per depositor and € 100 000 per investor, for each establishment.
    -

22. Financial institutions are the establishments composing the financial system, as set out in Act No. 14/2010 of 13 May 2010 governing the legal regime of banks and the basic administrative regime of entities operating in the financial system, the second additional provision of which

Spain), North and Latin America (Mexico, Miami, Chile, Uruguay, Panama) and Asia (Hong Kong) through takeovers and asset management, investment company, financial advice, insurance and other activities..

amends section 1 of the Act governing the activities of the different elements of the financial system dated 19 December 1996.

> *"**Chapter one. Section1 (amended).***
>
> *The Andorran financial system comprises:*
>
> *- the operational entities of the financial system: - banks, specialised non-banking credit institutions, financial investment institutions and mutual fund management companies,*
>
> *- professional associations in the financial sector,*
>
> *- the supervising authority of the Andorran financial system."*

23. For banks, the Act of 19 December 1996 governing the activities of the different elements of the financial system (chapter 2, section 2) remains applicable. This section provides:

> *"Banks*
>
> *a. Banks shall be understood to include undertakings that receive deposits and other forms of repayable funds from the public and grant loans, of any kind, for their own account.*
>
> *b. Banks may also undertake the following activities:*
>
> *- investment and related guarantees*
> *- payment operations*
> *- issuing and managing payment facilities, such as credit cards, travellers' cheques and letters of credit*
> *- operating on their own or their customers' behalf in the foreign exchange market or the markets for securities, monetary and financial instruments, futures and options*
> *- subscription to and assistance with securities market issues*
> *- administration and holding of securities*
> *- asset management*
> *- financial consultancy*
> *- commercial information services*
> *- hire of strong boxes."*

24. Specialised non-banking credit institutions: these undertakings' activities were modified with the adoption of Act No. 24/2008 of 30 October 2008 governing the legal regime of specialised non-banking credit institutions, which updated section 3 of the Financial System Act of 27 November 1993, as formerly applicable. Under section 1 specialised non-banking credit institutions are entities which have an exclusive corporate purpose consisting of one or several of the following activities:

- granting loans and credits;
- factoring;
- leasing;
- issuing and management of credit cards;
- granting of sureties and other guarantees.

25. Financial investment institutions: Act No. 13/2010 of 13 May 2010 governing the legal regime of financial investment institutions and mutual fund management companies amended section 4 of

the Financial System Act of 27 November 1993. As a result the following entities qualify as financial investment institutions:

- financial investment companies
- financial investment agencies
- portfolio management companies
- financial consultancies.

26. Mutual fund management companies: Act No. 13/2010 of 13 May 2010 governing the legal regime of financial investment institutions and mutual fund management companies repealed section 5 of the Financial System Act of 27 November 1993, which referred to financial institutions offering other financial services, a category no longer included in the financial system's current configuration. Mutual fund management companies are governed by the above-mentioned Act and by Act No. 14/2010 of 13 May 2010 governing the legal regime of banks and the basic administrative regime of entities operating in the financial system, which concerns the administrative regime of all financial system establishments.

27. With regard to other financial activities, since Andorra has no securities exchange, financial entities offer intermediation services in respect of securities issued abroad. Manual exchange operations are not regarded as a financial activity. The authorities informed the evaluators that Andorra has no entities whose sole business is to provide this service, which is supplied only by banks.

28. It should also be recalled that, as noted during the previous evaluation round, insurance companies do not qualify as "financial institutions" under Andorran law, although some are indirectly part of the financial sector since they are controlled by banks. Insurance companies authorised to operate in the life insurance branch are expressly included among the financial parties under obligation, within the meaning of the LCPI, and the authorities stated that the majority of Andorran insurance companies operating in that branch are wholly owned by banks. Insurance companies are consequently subject to finance ministry supervision, encompassing prior authorisation and external audit controls, and in AML/CFT matters to the supervision of the FIU.

29. The following table sets out the principal figures for the Andorran insurance sector in 2010.

Insurance sector

In € million	
Year	**2010**
Total assets	**3558**
Andorran banking insurance companies	3 401
Andorran non-banking insurance companies	149
Foreign insurance companies	8
Number of companies	
Total Andorran insurance companies	15
Total branches of foreign insurance companies	14
Life - Andorran companies	
Number of companies	11
- gross insurance premiums	953
- net insurance premiums	926
Life - non-Andorran companies	
Number of companies	6
- gross insurance premiums	5.5

- net insurance premiums	5.4
Non-Life - Andorran companies	
Number of companies	8
- gross insurance premiums	25
- net insurance premiums	21
Non-Life - Non-Andorran companies	
Number of companies	14
- gross insurance premiums	18
- net insurance premiums	17
Note: Some companies are active in the life and non-life sectors.	

30. The following table lists the activities of financial institutions (based on the FATF definition of a financial institution) and the corresponding supervisory authority.

Financial institutions		
Type of activity	**Supervisory authority**	**Institution**
1. Receiving deposits and other repayable funds from the public	Prudential: INAF AML/CFT: FIU	BANKS
2. Lending	Prudential: INAF AML/CFT: FIU	BANKS - SPECIALISED NON-BANKING CREDIT INSTITUTIONS
3. Leasing	Prudential: INAF AML/CFT: FIU	BANKS - SPECIALISED NON-BANKING CREDIT INSTITUTIONS
4. Transferring funds or securities	Prudential: INAF AML/CFT: FIU	BANKS FRENCH AND SPANISH POST SERVICES - FUNDS TRANSFERS ONLY (FIU)
5. Issuing and managing payment facilities, such as credit and debit cards, travellers' cheques, bank transfers and letters of exchange, electronic purses	Prudential: INAF AML/CFT: FIU	BANKS - SPECIALISED NON-BANKING CREDIT INSTITUTIONS
6. Issuing guarantees and subscribing commitments	Prudential: INAF AML/CFT: FIU	BANKS
7. Trading a) Money market instruments (cheques, banknotes, certificates of deposit, derivatives; etc.) b) Forex; c) Currency, interest and index instruments d) Securities e) Commodity futures	Prudential: INAF AML/CFT: FIU	BANKS, FINANCIAL INVESTMENT INSTITUTIONS AND MUTUAL FUND MANAGEMENT COMPANIES
8. Participating in securities market issues and related financial services	Prudential: INAF AML/CFT: FIU	BANKS
9. Individual and group asset	Prudential: INAF	BANKS, FINANCIAL

management	AML/CFT: FIU	INVESTMENT INSTITUTIONS AND MUTUAL FUND MANAGEMENT COMPANIES
10. Holding and administration of securities, cash or liquid assets on behalf of third parties	Prudential: INAF AML/CFT: FIU INAF	BANKS, FINANCIAL INVESTMENT INSTITUTIONS AND MUTUAL FUND MANAGEMENT COMPANIES
11. Other operations concerning the investment, administration or management of funds or money on behalf of third parties	Prudential: INAF AML/CFT: FIU	BANKS, FINANCIAL INVESTMENT INSTITUTIONS AND MUTUAL FUND MANAGEMENT COMPANIES
12. Subscribing and placing life insurance policies and other investment products in connection with an insurance policy	Prudential: Ministry of Economy and Finance AML/CFT: FIU	INSURANCE COMPANIES
13. Manual exchange	Prudential: INAF AML/CFT: FIU	BANKS

Designated non-financial businesses and professions (DNFBPs)

31. Apart from the information set out below, the authorities have reported no other major change since 2007 in the general information concerning non-financial businesses and professions and the general framework within which they operate.

32. Concerning designated non-financial businesses and professions (DNFBPs) subject to the AML/CFT preventive rules, section 45 of the LCPI now provides:

"Section 45

The obligations defined in this law are incumbent upon financial parties under obligation and other natural and legal persons who, in the exercise of their professions or business activity, undertake, control or advise on transactions involving cash or securities movements which could be used for money laundering or terrorism financing and in particular:

a) professional external accountants, tax advisers, auditors, economists and business agents (gestories);

b) *notaries, lawyers and members of other independent legal professions when they are involved in the planning or execution of transactions for their customers in the framework of the following activities:*

- *the purchase and sale of real property or business entities*
- *the handling of the money, deeds, or other assets of their clients*
- *the opening or management of bank accounts, savings accounts or securities*
- *the organisation of the contributions necessary for the incorporation, operation or management of companies*
- *creation, operation or management of companies, contractual fiduciary arrangements (fideicomisos) or similar structures; or when acting for their customers in financial or real estate transactions;*

c) sellers of high value goods, such as precious stones and metals, when payment is made in cash, for an amount equal to, or exceeding €30 000, or the equivalent in any other currency

*d) suppliers of services to companies, contractual fiduciary arrangements (*fideicomisos*) or any other legal structure not referred to in any other section of this article;*

e) gambling establishments

f) real estate agents carrying out activities related to the purchase and sale of property;

Notwithstanding the foregoing, the financial parties under obligation referred to in a) and b) of this section shall not be bound by the obligations established in this Law with regard to information they receive or obtain from one of their clients in the course of ascertaining the legal position of the client or performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings."

33. Sellers of high value goods, such as precious stones or metals, are accordingly bound by the LCPI solely when they perform cash transactions for an amount exceeding €30 000. This is a backward step compared with the former situation, which was in compliance with the amount of €15 000 provided for in FATF Recommendation 12.[14]

34. As regards accountants, tax advisers, auditors, economists and managers, whose activities in Andorra equate with those of providers of services to companies and trusts, they are not bound by the LCPI "with regard to information they receive or obtain from one of their clients in the course of ascertaining the legal position of the client or performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings."
35. The table below shows (in part) the number of non-financial businesses and professionals in Andorra by type of activity (as at November 2010):

Type of activity	Number of entities registered
1. Casinos (including Internet casinos)	0
2. Real estate agents	246
3. Dealers in precious metals	29
4. Dealers in precious stones	29
5. Lawyers, notaries, other independent legal professions and accountants - this concerns members of the professions whether self-employed or a partner or employee within a firm. These are not professionals employed by other types of businesses or working for a public body, who may already be subject to AML measures.	Notaries: 4 Lawyers: 149 Other independent legal professions and accountants: Not available
6. Fiduciaries or company service providers; these are persons or firms which do not come under any other category covered by these recommendations.	Not available

1.4 Overview of commercial laws and measures governing legal persons and arrangements

[14] The amount beyond which dealers in high value goods are bound by the obligations of the LCPI was reduced to €15 000 following the amendment of section 45 of the LCPI, which entered into force on 23 June 2011.

36. The legal and regulatory framework applicable to legal persons in Andorra has been considerably amended since the previous evaluation. A new Companies Act was adopted in 2007 (Act No. 20/2007 of 18 October 2007 on public limited companies and limited liability companies) and a Foreign Investments Act in 2008 (Act No. 2/2008), enabling a gradual opening up of the Andorran economy to foreign capital.

37. The Business Accounting Act (Act No. 30/2007 of 20 September 2007) entered into force in January 2009 and its provisions were supplemented in the General Chart of Accounts adopted by decree on 23 July 2008. A decree of 26 March 2008 also amended the legislation on the commercial register, providing inter alia for the reporting of changes in the share ownership of companies or in their governing bodies.

38. Under section 1.5 of Act No. 2/2008 of 8 April 2008 on foreign investments, foreign investments in Andorra are subject to prior clearance by the AML/CFT authorities. In this connection, on 7 April 2009, the FIU concluded an action protocol with the Foreign Investments Register, on the basis of which the FIU issues a binding report on acceptance of any foreign investor after having checked for a criminal record and verified the other information on the investor contained in its databases. The evaluators were informed that a negative opinion was issued regarding any foreign investment arranged by means of foreign investment vehicles holding bearer shares or securities, except where the management structure and beneficial owner could be clearly identified.

39. Regarding the legislation applicable to associations, no major change has taken place since the 3rd round evaluation visit. They continue to be governed by the Associations Act of 29 December 2000 and the Regulations on the Register of Associations of 1 August 2011 (for further information see section 1.4 of the 3rd round report).

40. During the reference period the registered associations sector included the following bodies:

Associations								
Year	**General purpose**	**Sports associations**				**Foreign associations**	**Total**	**Disbanded**
		Federations	Clubs	Groups	Sections			
2008	18	1	3	1	1	1	25	-
2009	26	1	6	-	-	-	33	-
2010	28	-	7	1	-	-	36	1

41. With regard to foundations, on 12 June 2008 the General Council passed a Foundations Act, No. 11/2008.

42. Other developments since 2007 include:

- The first additional provision of the Act on international criminal co-operation and the fight against the laundering of money or securities deriving from international delinquency and against the financing of terrorism of 11 December 2008, applicable to associations and other non-profit organisations, relating to the obligation to retain for five years identification data concerning the identity of persons to whom funds are paid and the documents mentioned in section 28 of the Associations Act (register of members, book of minutes, inventory of assets and accounting registers relating to the association's activities).
- Article 4 of the implementing regulations of the LCPI establishes measures concerning the identification of legal entities and knowledge of the control structures of mutual societies, clubs and non-profit associations.
- The adoption, since 2007, of a Master Plan for Development Co-operation governing the annual call for applications for public grants to civil society organisations in

Andorra and other entities proposing international development co-operation projects and schemes.

43. At the time of the on-site visit 25 foundations were registered, including 4 public sector and 21 private sector. The number of new foundations registered each year is very low (2 in 2009, 1 in 2010.

1.5 Overview of the strategy to prevent money laundering and terrorist financing

a) AML/CFT strategy and priorities

44. In 2007 the Andorran Government tasked the Andorran Financial Intelligence Unit (FIU) with devising a new AML/CFT strategy. This strategy was officially adopted by the Government in December 2007 in the form of an action plan and provides for a global and integrated system on three levels:

- Implementation of MONEYVAL recommendations through amendments to the existing legislation and regulations, including the Criminal Code (incrimination of terrorism financing, for example) and the AML/CFT regulations (reinforcing CDD requirements, review of the supervisory system, implementation of EU standards and the FATF Recommendations).

- Giving the Andorran FIU reinforced responsibilities (concerning supervision, regulation, investigation and national and international co-operation), thereby consolidating its pivotal role within the Andorran AML/CFT system.

- Participation by the public and private sectors in Andorra's AML/CFT efforts, through the implementation of a number of training and awareness-raising measures such as meetings with business associations, the establishment of a working group with the Andorran Banking Association and the creation of a Standing Committee consisting of the FIU and other authorities competent for co-operation and co-ordination of AML/CFT policies and activities, thereby promoting appropriate feedback and direct communication between the bodies bound by the AML/CFT obligations, on one hand, and the supervisor, on the other hand.

45. The visit led to the finding that, in this field, the Andorran authorities had taken a number of tangible measures to implement this action plan. As from 2008 the AML/CFT legislation and regulations were amended (in particular the Act on international criminal co-operation and the fight against the laundering of money or securities deriving from international delinquency - the LCPI - and its implementing regulations - the RLCPI), as was Andorran criminal law, technical communiqués were issued concerning a number of bodies subject to the requirements, relevant international conventions were ratified and a number of institutional developments, including in matters of co-ordination, took place.

b) The AML/CFT institutions

46. The AML/CFT institutions are described in detail in the 3rd round mutual evaluation report. The following paragraphs solely concern developments that have taken place since that report.

<u>The FIU</u>

47. There have been a number of developments concerning the functions and responsibilities of the Financial Intelligence Unit (hereafter the FIU), which was set up in 2000 (and which was designated by the acronym UPB until 21 April 2009). Under the LCPI, the designation Financial Intelligence Unit (FIU) replaced the former designation Unit for the Prevention of Money Laundering (UPB). This new designation, in force since 21 April 2009, reflects the change in the

unit's legally defined tasks as the entity responsible for promoting and co-ordinating the AML/CFT efforts.

48. It should first be pointed out that the FIU has a new responsibility to combat the financing of terrorism. Its tasks concerning the definition of national AML/CFT policies have been reinforced, since it is authorised to submit draft legislation and regulations to parliament, and it has been made clear that its communiqués are legally binding.

49. The FIU's organisation has been reviewed, with the appointment of a new director on 19 February 2010, who for the first time is a former member of the prosecution service since he served as deputy prosecutor starting in 1994. Staffing changes have also taken place, with the recruitment of a second person in the operations department, a former member of the police's anti-money laundering squad. The FIU therefore now has a total of five staff members.

50. In its capacity as AML/CFT supervisor, the FIU is authorised to deal with all issues relating to AML/CFT requirements (whether financial or non-financial in nature). The FIU accordingly enjoys sole jurisdiction and has a full range of powers in this field, encompassing on-site inspections, supervision of external audits and, in accordance with the new legislative measures, sanctions for failure to comply with the requirements. In addition, the FIU is responsible for supervising bodies subject to the requirements imposed by INAF in its role as supervisor of the Andorran financial system. As the AML/CFT supervisor, the FIU also exercises supervisory powers in respect of the life insurance sector.

51. In this connection, mention should also be made of the fact that, under Act No. 2/2008, the FIU exercises certain responsibilities relating to the supervision of foreign investments, as referred to above.

The Andorran National Institute of Finance (INAF)

52. The Andorran National Institute of Finance (hereinafter the INAF) was established in 1989 and is responsible for supervising and regulating the Andorran financial sector with the exception of insurance companies. Under Act No. 14/2003 the INAF remains responsible for supervising and monitoring "establishments joining the financial system with a view to ensuring compliance with the regulations applicable to them" (which therefore includes the AML/CFT regulations). Indeed, although the legislation has clarified the FIU's overall jurisdiction in these matters, the two institutions still share responsibility for certain aspects in practice. Attention should nonetheless be drawn to the developments regarding co-operation between the INAF and the FIU following the amendments introduced by the LCPI and its implementing regulations. Inter alia, the INAF must now inform the FIU of all AML/CFT related findings resulting from the annual audits and on-site or desk-based reviews it conducts in connection with its prudential supervisory duties.

Standing Committee on Money Laundering and Terrorism Financing

53. A Standing Committee on Money Laundering and Terrorism Financing was established in February 2008. It is composed of permanent members, representing the Ministry of Foreign Affairs, the Ministry of Justice and the Interior and the Ministry of Finance and the Economy, and of non-permanent members, representing the INAF, the judiciary, the prosecution service, the police and the customs authorities. Each body is represented by an appointed titular member and a substitute. The Standing Committee is chaired by the Director of the FIU. The Standing Committee's remit and functioning are described in section 6.1 of this report.

The police

54. As regards the police, the criminal police department was reorganised in 2007, leading to the creation of "Criminal Investigations Unit 2", in which various groups with complementary tasks

work together so as to deal with money laundering offences in greater depth and in a more uniform manner. The unit comprises Groups 1 and 2 dealing with organised crime and laundering - technological offences and means - and Group 3 dealing with international co-operation. This reorganisation resulted in a significant increase in the number of police officers directly investigating on money laundering cases. The department's own staff of six police officers receives back-up for certain investigations from four officials of Unit 2, who have the knowledge required to dispense internal training, a role fulfilled by the investigators themselves.

Customs

55. Since the last evaluation, the customs service has appointed an AML/CFT officer, who is now a non-permanent member of the Standing Committee on Money Laundering and Terrorism Financing. The authorities also drew attention to an amendment of the Customs Code, approved on 18 November 2010, which entered into force as from 1 January 2011.

c) The approach to risk

56. The Andorran authorities have so far not carried out an exhaustive assessment of the money laundering and terrorism financing risks specific to the country so as to identify inter alia sectors and operations potentially at risk.

57. The principle of introducing a risk-based approach is nonetheless generally reflected in Andorra's AML/CFT legislation through the provisions of the LCPI and its implementing regulations on applying customer due diligence measures. Section 49 of the LCPI provides that the degree of application of customer due diligence measures can be determined according to the risk and the type of customer, product or transaction involved. Undertakings must be able to show that the scope of the measures they are taking is appropriate to the risk of money laundering, terrorism financing or corruption.

d) *Progress since the last MONEYVAL mutual evaluation*

58. Since the 3rd round mutual evaluation, Andorra has taken a number of measures to remedy the deficiencies identified earlier and to improve implementation of the FATF Requirements, notably through the following legislative initiatives (listed in chronological order):

- The INAF's mandatory communiqués Nos. 163/2005, 18/EFCE, 34/EFI-01, and 20/EFI-GP of 23 February 2006, concerning rules of ethics and conduct of financial institutions operating in Andorra, including the international standards in AML/CFT matters to be complied with by financial institutions;

- The INAF's mandatory communiqué No. 186/08 of 12 November 2008, providing that omnibus accounts may solely be kept by financial institutions and requiring the application of due diligence measures in organising the holding and management of funds or securities belonging to third parties;

- Accession, on 22 March 2007, to the International. Convention for the Suppression of Counterfeiting Currency and the Protocol thereto, adopted in Geneva on 20 April 1929;

- ratification, on 18 October 2007, of the Criminal Law Convention on Corruption, adopted in Strasbourg on 27 January 1999;

- ratification, on 12 June 2008, of the International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999;

- Act No. 15/2008 of 3 October 2008, amending the Criminal Code of 21 February 205, which introduces provisions on the offence of money laundering and terrorism financing (published in the Official Gazette on 27 October 2008);

- Act No. 16/2008 of 3 October 2008, amending the Code of Criminal Procedure of 10 December 1998, (published in the Official Gazette on 27 October 2008);

- the legislative decree of 17 December 2008 publishing the consolidated version of the Criminal Code, as amended by Act No. 15/2008 of 3 October 2008 (hereafter designated "the amended Criminal Code");

- the legislative decree of 17 December 2008 publishing the consolidated version of the Code of Criminal Procedure, as amended by Act No. 16/2008 of 3 October 2008;

- Act 28/2008 of 11 December 2008 amending the Act on international criminal co-operation and the fight against the laundering of money or securities deriving from international delinquency of 29 December 2000. This Act entered into force on 21 April 2009. On 9 September 2009, the Andorran Government adopted the consolidated version of the "Act on international criminal co-operation and the fight against the laundering of money or securities deriving from international delinquency and against the financing of terrorism ", which was published in the Official Gazette on 21 September 2009 and is currently in force (hereafter designated the LCPI);[15]

- the Regulation implementing the Act on International Criminal Co-operation and the Fight against the Laundering of Money and Securities Deriving from International Delinquency and against the financing of terrorism, which was approved by decree on 13 May 2009 and is currently in force (hereafter designated the RLCPI). Following the promulgation of Act No. 28/2008 the implementing regulation was also amended. The implementing regulation of the LCPI repealed the earlier implementing regulation of the Act on international criminal co-operation and the fight against the laundering of money or securities deriving from international delinquency, dated 31 July 2002. The regulation was further amended by a decree of 18 May 2011, published in the Official Gazette on 25 May 2011 and entering into force the same day.

59. Among the noteworthy advances, mention can be made of the legislative and regulatory changes introduced by the LCPI and the RLCPI, which improved the AML/CFT preventive system in a number of respects, particularly with regard to requirements in the following matters: customer due diligence, politically exposed persons, correspondent banking relationships, measures relating to new technology, professional confidentiality, record keeping, the obligation to report suspicions concerning terrorism financing, wire transfers, internal control, shell banks. The new legislation introduces rules allowing a risk-based approach and concerning reliance on third parties and business generators.

60. Improvements have also been noted in the implementation of the requirements relating to NPOs, following the adoption of a new law on foundations in 2008, and the corresponding regulations in 2009.

61. Another positive measure is the changes made to the Criminal Code and Code of Criminal Procedure concerning the offences of laundering and terrorism financing, and Andorra has made

[15] After the on-site visit the LCPI was amended by Act No. 4/2011, which was published in the Official Gazette on 22 June 2011 and came into force the next day, i.e. 23 June 2011. This law contains a number of amendments to the LCPI, as indicated in footnotes to this Report.

not insignificant progress in AML matters, resulting in a number of convictions for laundering following prosecutions brought at national level and in effective implementation of mutual legal assistance.

62. The third round evaluation report however also brought to light a large number of deficiencies. Despite the changes introduced, many of these deficiencies remain in both standard-setting and institutional terms and, above all, it has not been possible to establish the full effectiveness of the implementation of many of the new measures. These are analysed in detail in this report.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Legislation and regulations

2.1 Offence of money laundering (R.1 & R.2)

2.1.1 Description and Analysis

Recommendation 1 (rated PC in the third round evaluation report)

Summary of reasons for the 2007 compliance rating

63. The third round report rated Andorra partly compliant with R. 1. It concluded that even though the Andorran authorities interpreted Article 409 of the Criminal Code broadly, the offence did not include all the necessary physical elements: more predicate offences had been added but the list still failed to meet international requirements and self-laundering was not covered. With regard to effectiveness, it was noted that the provisions on laundering were used in practice, sometimes successfully, but that the results in absolute terms were still modest and above all linked to drug trafficking in its international dimension, given the size of the country. The assessors also stated that the still recent extension of the list of underlying predicate offences should make it possible to take on a wider range of cases and also deal with ones of purely national origin.

General – legal framework

64. Act 15/2008 of 3 October 2008 amending the Criminal Code of 21 February 2005 altered the provisions on money laundering, particularly Article 409 of the Criminal Code on money or securities laundering.

Offence of money laundering on the basis of the Vienna and Palermo conventions (C.1.1)

65. The amended Article 409 of the Criminal Code reads as follows:

Money or securities laundering

1. Persons who acquire or transfer money, assets or securities or commit, actively or by omission, an act to conceal their origin or to conceal either them or their equivalent value deriving from any serious offence punishable by a minimum term of imprisonment of at least six months, or any other offence relating to prostitution, extortion or dishonest receipt of money by a public official, bribery or trading in influence, or drug trafficking, being aware of their origin and without having been convicted as the perpetrator or accomplice, shall be liable to five years' imprisonment and a fine of up to three times their value.

Attempts to commit an offence, conspiracy and incitement are offences.

2. Persons who, through negligence, commit the acts described in the previous paragraph shall be liable to up to one year's imprisonment.

66. Paragraph 1 of the article therefore covers the acts of acquisition and transfer and any other act committed intentionally to conceal the origin of criminal proceeds or the proceeds themselves, which corresponds to article 3(b)(i) of the Vienna Convention and article 6.1.a)(i) of the Palermo Convention. The notion of "an act to conceal their origin" could cover an act of conversion. However, even though the wording is sufficiently broad to include any act of concealment, including the physical concealment of the object, the intention to conceal is a condition of the offence that has to be established for that offence to have taken place. Yet according to the

Conventions [(article 3(b)(ii), resp. article 6(a)(ii)], acts of concealment or disguise in themselves, without specific intention, must also be treated as laundering offences.

67. Nor are the simple acquisition, possession or use of criminal proceeds (article 6 (b)(i) Palermo Convention) offences either under Article 409 of the Criminal Code. However, some of the acts are covered by the provisions on handling stolen goods:

Article 216 CP
Persons who, with intention to profit and in the knowledge of the commission of an offence against property in which they have not taken part, either as perpetrators or accomplices, acquire or transfer to a third party the proceeds, shall be liable to up to two years' imprisonment. The penalty applicable to the handler shall never exceed that which the law prescribes for the perpetrators of the offence.

Article 406 CP
A handler of stolen goods is someone who, being aware of the commission of an offence in which he or she has not taken part as perpetrator or accomplice, intervenes after its commission:
By hiding, altering or using the proceeds of the offence, its effects or its instruments.
By helping, without intending to profit, the perpetrators or accomplices to profit from the proceeds of the offence.
By helping the participants in the offence to evade the investigations of the authorities or their officials or to hide or avoid capture, if the offence is one against the life of persons, or of genocide or terrorism.

68. Although handling covers the act of acquisition by a third party, this is not the case with possession or use, since handling is an immediate offence that is constituted at the moment of receipt or acquisition. The range of acts of possession and use covered by the conventions is therefore considerably broader than those covered by the offence of handling, which is limited to the offences against property.

69. As for the mental element, in each of articles 409, 216 or 406 of the Criminal Code, there must first be knowledge or awareness of the criminal origin of the proceeds, as required by the conventions. However, the notion of "helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action", which appears in the wording of Article 6 of the Convention, would be covered by the acts of concealment or simulation, where the intention to help another person is irrelevant so long as there is intention to conceal. The difference between articles 406 and 409 is that the former covers actions after the commission of the offence.

70. The judicial authorities' argument that the complicity provisions of Article 23 of the Criminal Code[16] would cover this circumstance is untenable: this article is concerned with the criminal conduct itself, with no reference to any intention as an ingredient of the offence of laundering. Besides, there is no reason for this divergence between handling and laundering with regard to the intentional aspect.

When proving that property is the proceeds of crime it should not be necessary that a person be convicted of a predicate offence (C.1.2)

71. Article 409 of the Criminal Code defines the object of the laundering (*corpus delicti*) as "*money, assets or securities … or their equivalent value*". Even though these terms are not formally defined in the Code, the wording is sufficiently broad to cover any pecuniary benefit arising from

[16] Art. 23 CP: An accomplice is someone who, without being included in the provisions of Article 21 (*that is the perpetrator him or herself)* co-operates knowingly in the commission of the offence with actions prior to or at the same time as the offence itself.

the predicate offence as intended by the conventions, including interest and other profits. The term "or their equivalent" covers other indirect proceeds, such as replacement assets. This interpretation has been confirmed by the courts[17].

It is not necessary for a person to be convicted of a predicate offence to be able to prove that an asset constitutes the proceed of an offence (C.1.2.1)

72. Neither the legislation nor the case-law requires any prior conviction of the perpetrator of the predicate offence. It nevertheless has to be established that the money or securities are of criminal origin, and in particular that they come from an offence specified in Article 409 of the Criminal Code, that is a major offence punishable by at least six months' imprisonment or any other offence of prostitution, extortion or dishonest receipt of money by a public official, bribery or trading in influence, or drug trafficking.

73. It is therefore first necessary to identify and prove the predicate offence before a conviction for laundering is possible. The courts accept, however, that this proof may be direct or indirect.

The predicate offences of money laundering must cover all serious, offences (C.1.3) - Definition of predicate offences using a threshold method (C.1.4)

74. The offence of laundering under Article 409 is not therefore general in scope but is limited according to the predicate offences. Andorra has adopted an approach that combines a list of offences and the threshold method. Apart from certain forms of offence with no minimum penalty - prostitution, extortion or dishonest receipt of money by a public official, bribery or trading in influence and drug trafficking – only "serious" offences punishable by at least six months' imprisonment can be considered predicate offences.

75. Under Article 35 of the Criminal Code, serious offences are ones punishable by up to twenty-five years' imprisonment. Since Article 409 also requires a minimum sentence of six months several serious offences do not qualify as predicate offences.

76. *Designated categories of offence defined by the FATF*. These designated categories are criminalised in Andorran law as follows:

FATF designated categories of offence	**Offence in the country's legislation**
Participation in an organised criminal group and racketeering	Article 360 CP for the leader. Not for the members
Terrorism, including terrorist financing	Article 362-367 CP
Trafficking in human beings and migrant smuggling; sexual exploitation, including sexual exploitation of children	Procuring (article 152 CP). Slavery (article 134 CP). Sexual exploitation of minors (article 154 ff CP). Trafficking in immigrants, only with aggravating circumstances (253 ff CP). Otherwise the offence does not qualify because of the lower limit of the sentence (article 252 CP).
Illicit trafficking in narcotic drugs and psychotropic substances	Articles 282 ff CP.
Illicit arms trafficking	Articles 264 ff CP.
Illicit trafficking in stolen and other goods	Article 409 (handling)

[17] High Court of Justice, criminal division, no 12/10, trial no TC-122-3/06, Judgment no 26-10

Corruption and bribery	Part XXI "Offences against the public service", chapter IV "Bribery and trading in influence", articles 380 to 385 CP.
Fraud	Part XI, CH III Fraud, articles 208 – 215 CP
Counterfeiting currency	Articles 431 ff CP.
Counterfeiting and piracy of products	Offences against intellectual and industrial property (articles 229 and 230 CP), only if there are aggravating circumstances.
Environmental crime	Environmental offences (article 289 CP), only if there are aggravating circumstances.
Murder, grievous bodily injury	Article 102 CP. Articles 115 ff CP.
Kidnapping, illegal restraint and hostage-taking	Article 135 CP.
Robbery or theft	Article 202 CP.
Smuggling	No
Extortion	Article 207 CP.
Forgery	No, except in the case of counterfeit money or identity cards. (Article 431 CP).
Piracy	Article 455 CP
Insider trading and market manipulation	No

Predicate offences for money laundering should extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically (C.1.5)

77. It is expressly stated that laundering can take place, even if the predicate offence was committed outside Andorran jurisdiction (article 412 CP)[18]. However, a real problem arises from the dual criminality principle in the event of laundering in Andorra of the proceeds of a foreign offence that does not qualify as a predicate offence under Article 409 (because of the lower limit of the sentence or because it is not an offence under Andorran law, such as stock market offences), or when the predicate offence is unknown or unidentified. In such cases, the laundering is not an offence in Andorra and could remain unpunished.

The offence of money laundering should apply to persons who commit the predicate offence (C.1.6)

78. Article 409 of the Criminal Code introduces a significant restriction to the offence of laundering by stipulating that the perpetrator of the offence cannot be convicted as the perpetrator of or accomplice to the predicate offence, thus excluding self-laundering (even when committed by a third party accomplice) from the scope of this article.

79. The courts have stated that the immunity of self-laundering depends firstly on a prior conviction and is restricted to "money or securities emanating from the offence for which he or she has been convicted as perpetrator or accomplice", and that it is for the defence to prove that these are the same money or securities. Even with this restrictive interpretation, the assessors consider that the exclusion of self-laundering is by no means a negligible factor, particularly in the transfrontier context.

[18] Art. 412 CP: *The three preceding articles are applicable even if the predicate offence was committed abroad, so long as this offence is also a criminal offence in Andorran law.*

80. The authorities maintain that the self-laundering exception is based on the proportionality principle and the fundamental principle of *non bis in idem*, in that the commission of the predicate offence and of the laundering are based on the same criminal intent and that the same conduct cannot be punished twice. The *non bis in idem* principle is certainly fundamental and universally accepted, but its application to laundering is erroneous. It is based on the adage that "the thief cannot be the receiver", which implies that those committing a predicate offence acquire the proceeds at the same time, with no other action being necessary. However, what applies to handling stolen goods does not apply to laundering.

81. The exclusion of laundering on the basis of the *non bis in idem* principle effectively denies the autonomous and specific character of laundering, which is essentially different from handling both in nature and effect. Whereas handling is a static and immediate action, laundering is a dynamic and continuing phenomenon involving different stages and techniques. From the standpoint of the perpetrator it necessitates actions that are quite distinct from those of the predicate offence.

82. The absence of an offence of self-laundering poses no real problems in terms of effectiveness when both the predicate offence and the laundering come under Andorran jurisdiction, since it is sufficient to prosecute the original offence to secure a conviction and the confiscation of the proceeds. However, when the original offence has been committed abroad and the laundering takes place in Andorra, the Andorran courts have no jurisdiction if the launderer has been convicted for the predicate offence. This can pose a threat to the anti-money laundering effort, particularly as Andorra typically serves as a depositary for money from abroad.

Related offences (C.1.7)

83. Attempts to commit an offence, conspiracy and incitement are specifically covered by Article 409. All other forms of co-operation with – and facilitation of – the offence are punishable as a form of complicity under Article 23 of the Criminal Code.

Additional element (C.1.8)

84. The dual criminality principle implicit in Article 412 of the Code requires the laundering actions to be offences in both countries. The fact that the actions taken abroad constitute an offence is therefore a necessary condition for a laundering prosecution in Andorra.

Recommendation 32 (statistics relating to recommendation 1)

85. The following statistics show the results of investigations, prosecutions and convictions for laundering since 2006:

Year	Investigations*		Prosecutions		Convictions (first instance)				Convictions (second instance)	
					Final		On appeal		Final	
	Cases	Persons	Cases	Persons under investigation	Cases	Persons	Cases	Persons	Cases	Persons
2006	Figure unknown	313	21	65	0	0	0	0	0	0
2007	85	213	13	39	0	0	0	0	0	0
2008	82	101	17	91	3[19]	11	0	0	0	0

[19] Judgment of the Court of *Corts* of 24.09.2008, Ref. TC-003-2/96; Judgment of the Court of *Corts* of 29.09.2008 Ref. TC-070-2/97; Judgment of the Court of *Corts* of 26.09.2008. Ref. CRI-144/99 + CRI-297/02 + CRI-265/05

2009	66	221	16	211	0	0	1[20]	5	0	0
2010	84	90	12	86	4[21]	14	2[22]	5-3 (acquittals)= 2	3[23]	8 (including 1 revocation of prior acquittal)
Total			**79**		**7**	**25**	**3**	**7**	**3**	**8**

*NB: the number of investigations in this table includes the investigations, in a broad sense, undertaken by the FIU, the police and resulting from international cooperation requests.

Additional information (C.32.3.b)

86. There are no rules making it obligatory to collect statistics on convictions. Nevertheless, the Andorran courts have the relevant data processing capacity (*Lotus Notes*) to collect such information.

Implementation and assessment of effectiveness

87. The figures on investigations show clearly that the competent authorities are making a significant effort to deal with laundering, with the majority of inquiries being initiated by the FIU. However, there are significant disparities between the numbers of investigations and prosecutions, and between the number of prosecutions and convictions. While the first disparity is not unusual, it is indicative of the challenges that investigators face in gathering evidence, particularly from abroad. It may also be asked whether the immunity of self-laundering does not already act as a hindrance at this stage. The Andorran authorities maintain that in practice there have not so far been any cases of discontinued proceedings or acquittals on grounds of self-laundering.

88. The difference between the numbers of prosecutions and convictions is more worrying. Overall, there were 79 laundering prosecutions between 2006 and 2010, whereas there have only been final convictions in 10 cases, with two acquittals. Again, this has to be qualified since four cases involved foreign judgments that were enforced in Andorra, while in only six cases were the investigation and prosecution initiated by the Andorran prosecution authorities. According to the competent authorities, these modest results are the result of lack of resources and manpower, and the length of criminal proceedings.

2.1.2 Recommendations and Comments

89. The by no means negligible progress made by Andorra since the last evaluation and the efforts of the competent authorities to combat laundering must be acknowledged. This progress is reflected firstly in a number of convictions resulting from domestic proceedings (4 between 2008 and 2010), which indicates a trend towards taking these matters seriously. Nevertheless, the prosecution authorities must take a more proactive approach by initiating more prosecutions.

90. The fact that the predicate offences are unduly limited to serious offences punishable by at least six months' imprisonment (with certain specific exceptions) means that laundering the proceeds of certain categories of designated offences is not in itself an offence, which has a direct impact on the effectiveness of the system. Similarly, the immunity of self-laundering cannot be justified by the *ne bis in idem* principle, and is counter-productive when the initial offence is committed abroad.

[20] Judgment of the Court of *Corts* of 20.11.2009, Ref. TC-051-4/02

[21] Judgment of the Court of *Corts* of 19.11.2010 Ref. TC 028-4/09; Judgment of the Court of *Corts* of 26.02.2010 Ref. CRI-236-1/09; Judgment of the Court of *Corts* of 12.04.2010 Ref. CRI-300-2/08; Judgment of the Court of *Corts* of 13.09.2010 Ref. CRI 435-2/08;

[22] Judgment of the Court of *Corts* of 07.05.2010, Ref. TC-075-5/06; Judgment of the Court of *Corts* of 26.02.2010. Ref. TC-122-3/06

[23] Judgment of the High Court of Justice of 18.11.2010 Ref. TC-075-5/06; Judgment of the High Court of Justice of 29.11.2010 Ref. TC-122-3/06; Judgment of the High Court of Justice of 14.10.2010 Ref. TC-051-4/02

91. While the definition of the offence of laundering is fairly broad, it does not completely match the standards set by the conventions, in that Article 409 of the Criminal Code, even when taken in conjunction with Article 261 (handling), does not cover the simple concealment or disguising of proceeds, or the possession or use of assets of criminal origin.

Recommendation 1

92. It is therefore recommended that:

- Article 409 of the Criminal Code be modified and supplemented to cover all aspects of laundering referred to in the conventions, particularly by making it an offence simply to conceal, disguise, possess and use criminal assets.
- The list of predicate offences be extended to cover at least all the designated categories of offences, by adding the missing offences - participation in an organised criminal group and racketeering, smuggling, migrant smuggling without aggravating circumstances, counterfeiting and piracy of products without aggravating circumstances, environmental crime without aggravating circumstances, forgery other than counterfeit money or identity cards, fraud, other than aggravated fraud, and insider trading and market manipulation – and by reducing the minimum sentence for any predicate offence, or simply by adopting an "all offences" approach.
- The immunity of self-laundering be abolished.

Recommendation 32

93. This recommendation is fully complied with.

2.1.3 Compliance with Recommendations 1 & 32

	Rating	Summary of reasons for the rating
R.1	**PC**	• Non-compliance of the offence of laundering with the conventions with regard to concealing, disguising, possessing and using assets of criminal origin • List of predicate offences does not cover all the designated categories of offences (see the previous table) • Immunity of self-financing • Effectiveness: (1) weak proactive approach; (2) modest results with regard to prosecuting the offence, particularly in view of the disparities between the numbers of prosecutions and convictions; (3) resources and manpower allocated to the courts and prosecution authorities not judged sufficient.

2.2 Criminalising the financing of terrorism (RS.II)

2.2.1 Description and Analysis

Special Recommendation II (rated PC in the third round evaluation report)

Summary of reasons for the 2007 compliance rating

94. The third round report rated Andorra partly compliant with SR II. Firstly, terrorism financing was not an autonomous offence under Andorran law. Although the offence under Article 366 of the Criminal Code on acts of collaboration with a terrorist group covered the various forms of support

– and thus financial support – to terrorist groups, it suffered from certain deficiencies. Moreover, the offence did not cover the financing of terrorism more generally outside this context (terrorist acts, isolated terrorists). Various aspects were not mentioned explicitly, certain provisions did not apply (attempt, conspiracy and the criminal liability of legal persons) and there was no explicit provision for the confiscation of assets or funds in connection with terrorism financing.

General – legal framework

95. On 12 June 2008, Andorra ratified the International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999, and it came into force on 21 November 2008. As a consequence a new offence of financing terrorism was added to the Criminal Code by Act 15/2008 of 3 October 2008, more specifically articles 366 bis (offence) and 366 ter (accessory penalties).

The financing of terrorism as a criminal offence in accordance with Article 2 of the Convention on the Financing of Terrorism (C.II.1)

96. The offence of financing terrorism in Article 366 bis of the Criminal Code, is defined as follows:

> *1. Persons who, without performing the actions specified in Article 365[24] and who are not the perpetrators or accomplices of terrorist acts, whether completed or attempted, commit acts of financing terrorism shall be liable to two to five years' imprisonment.*
> *Attempts and conspiracy are offences.*
>
> *2. For the purposes of this article, financing shall be deemed to include any action which, whatever the means, direct or indirect, unlawfully and intentionally provide or collect funds with a view to using them or knowing that they will be used, totally or in part, in the Principality or abroad:*
> *- by a terrorist group or a terrorist.*
> *- to commit one or more terrorist acts.*
> *- to commit one of the actions specified in articles 466 and 467[25] on any protected person[26], in order to intimidate a population, in the event of armed conflict, or to compel a government or an international organisation to do or to abstain from doing any act.*
>
> *3. For the purposes of this article, funds shall be taken to mean: financial assets and assets of any type, material or immaterial, acquired by any means, lawful or unlawful, moveable or immoveable, and legal documents, securities or instruments of any kind, including electronic or digital, certifying a right of ownership or of interest in them, especially but not exclusively, bank deposits and credits, traveller's cheques, bank cheques, payment orders, shares, securities, debentures and bonds, and bills of exchange and letters of credit.*
>
> *4. A sentence of three to eight years' imprisonment shall be imposed when this results in one of the following circumstances:*
> *a) When the financing is conducted by an organised group.*
> *b) When the subject behaves in a regular fashion.*
> *Attempts and conspiracy are offences.*

[24] Art. 365 CP: "Anyone participating as an active member in a terrorist group shall be liable to three to eight years' imprisonment, irrespective of responsibility for the terrorist acts committed."
[25] Arts. 466 & 467 CP cover war crimes.
[26] Heads of state and diplomats (see Art. 454 CP)**.** The notion of protected person in Article 450 of the Criminal Code: "*person internationally protected by an international treaty"* applies not only to heads of state and diplomats but also to any person protected by international treaty and, in particular, the civilian population, prisoners and refugees, to whom articles 466 and 467 CP make explicit reference.

97. Article 362 of the Criminal Code defines terrorist acts and terrorist groups:

> *1. Terrorist acts, whether individual or as part of an organised group, are intended to subvert the constitutional system or pose a serious threat to public order and security by means of intimidation and terror and comprise the following offences:*
>
> - *Deliberate assaults on the life and physical integrity of persons.*
> - *Unlawful detention, holding persons against their will, threats and pressure.*
> - *Robberies, extortion, causing injury or damage, arson and computer offences defined in this Code.*
> - *Storing weapons and ammunition or possessing or storing explosive, inflammable, incendiary or asphyxiating substances or materials, or their components, and their manufacture, trafficking, transport or supply of any sort.*
>
> *2. A terrorist group is constituted by a grouping of armed and organised persons for the purposes of carrying out terrorist acts.*

98. Compliance with Article 2 CFT: Andorra has ratified the 9 conventions appended to the CFT setting out the nature of terrorist acts in the context of terrorism financing. However, the definition of the offence of terrorism financing is not totally consistent with Article 2. Firstly, the mere fact of financing (and nothing more) an act constituting an offence under one of the treaties appended to the CFT is not covered, as laid down in Article 2.1.a CFT, which requires no other condition than intending that these funds should be used or knowing that they will be used to commit such acts.

99. Moreover, with regard to the generic offence of terrorism financing provided for in Article 2.1.b) CFT, the definition of terrorist acts in Article 362 of the Criminal Code does not include the general notion of intimidating a population, or compelling a government or an international organisation to do or to abstain from doing any act. Such an intention is only referred to in the specific context of acts against protected persons.

100. The principle of the immunity of self-financing (…*without performing the actions specified in Article 365 and who are not the perpetrators or accomplices of terrorists acts* ...) is open to the same criticisms as self-laundering. Firstly, the CFT does not provide for the possibility of such an exception, as is the case with laundering. If this legal position is based on the *non bis in idem* principle the logic is erroneous, since it is detrimental to the principle of the autonomy of the offence, above all the fact that the offence of financing exists, even if no terrorist acts are carried out. Moreover, the offence does not just cover the act of supplying financial resources but also the mere collection of such financial means and nothing more. Although in practice, there is no problem when the offender comes under Andorran jurisdiction as financier and executor of terrorist acts, this is not the case in extraterritorial situations.

101. Otherwise, the offence of terrorism financing in Andorra conforms to international standards:

- All financing (except self-financing) of terrorist acts, a terrorist organisation or individual terrorists is covered by Article 366 bis 2 of the Criminal Code, with no other condition than the intention to see the funds used or knowing that they will be used by the organisation or individual to commit such acts;
- The definition of "funds" in Article 366 bis 3 reflects in non-exhaustive fashion that of Article 1.1 of the Convention;
- Although not explicitly provided for, the scope of the criminal provision does not require the funds to have been actually used to commit or attempt to commit these acts, or to be linked to specific acts (see also a. above);

- Attempts are expressly covered by Article 366 bis 1;
- Complicity, organisation and contributions are offences under Articles 20, 21 and 23 of the Criminal Code.

Terrorist financing offences should be predicate offences for money laundering (C.II.2)

102. Since terrorism financing offences are punishable under Article 366 bis of the Criminal Code to a minimum term of two years' imprisonment they clearly serve as predicate offences to the offence of money laundering under Article 409.

Terrorist financing offences should apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur (C.II.3)

103. The application of Article 366 bis does not require the terrorist acts to have been committed in Andorra or the terrorist groups or terrorists to be present in the country so long as the financing actions themselves come under Andorran jurisdiction.

Application of criteria 2.2 to 2.5 of Recommendation 2 to the offence of terrorism financing (C.II.4)

104. The Criminal Code does not state explicitly that in the case of terrorism financing proof of intention can be adduced from objective circumstances. However, in accordance with the general principles of Andorran criminal law, the element of intention is assessed without appeal by the court hearing the case, in the light of the circumstances of the case and the material elements of the offence.

Criminal liability of legal persons (C.2.3 and C.2.4).

105. Andorran law no longer recognises the criminal liability of legal persons, which existed until 2005. Article 71 of the Criminal Code[27] on the consequences for legal persons in the event of a conviction was amended by Act 15/2008 and authorises the courts to impose fines on companies, associations or foundations, among other things in the case of terrorism and terrorism financing offences.

[27] Article 71 (Other consequences):
1. The court may reasonably order, when handing down its conviction and sentence or in other cases provided for in the Code of Criminal Procedure, the following measures:
a) Dissolution of the company, association or foundation.
b) Suspension of the activities of the company, association or foundation for a maximum period of six years.
c) Temporary or permanent closure of the undertaking, its premises or its establishments.
d) A fine, payable by the company, association or foundation in the event of the commission of offences against the social or economic systems, and of bribery, trading in influence, terrorism, terrorism financing and the laundering of money or securities, of up to € 300 000 or four times the advantage obtained or sought from the commission of the offence, if this is greater. The court shall determine the extent of the fine in the light of the seriousness of the offence, the assets of the company, association or foundation and the impact on suppliers and the rights of employees.
e) Judicial administration of the undertaking or company.
f) Publication of the judgment, the costs of publication to be met by the convicted person.
g) Loss of the right of the individual or legal person to enter into contracts with the public authorities.
2. The adoption of the measures in paragraphs a), b) and c) requires the intervention as a party to the proceedings, with the same rights as those granted by the law to the person with civil responsibility, of the legal representative of the legal person or of the person appointed by its competent bodies, from the outset of the case or the start of the investigation.

106. Article 71 as amended provides for specific sanctions for legal persons or companies and the conviction of their representatives or managers in the event of the commission of an offence. In particular, the courts can order:

- the dissolution of the company;
- its temporary or permanent closure;
- suspension of its activities;
- judicial administration of the company; and,
- a ban on the company's entering into contracts with any public authority.

107. In addition, the last modification to the Criminal Code also introduced a totally new sanction applicable to legal persons that, in a certain way, play a significant part in the commission of an offence: a financial penalty of up to a. € 300 000, or b. four times the proceeds of the offence obtained or which it has sought to obtain. The inclusion of the intention to obtain the proceeds of the offence as a basis for determining the level of the fine is particularly significant as it introduces the aspect of attempt on the part of the perpetrator (rather than the advantage actually obtained) as a key factor for determining the extent of the sanction to be imposed on the legal person.

108. Similarly, the Criminal Code makes the relevant court responsible for imposing these sanctions on legal persons, with a view to reaching a reasonable and well-founded decision. It is therefore likely that a case-law will emerge, as a basis or grounds for ordering these sanctions, that the offence has been committed for the benefit of a legal person by an individual occupying a senior management position in it. In such cases, fines may be imposed, on the basis of the aforementioned criteria, of up to four times the proceeds of the offence obtained or sought.

109. Moreover, Article 336*ter* of the Criminal Code provides for ancillary and obligatory sanctions when an individual or legal person is convicted of terrorism, and terrorism financing, offences, including confiscation of the proceeds of the offence or of funds intended to finance terrorism within the meaning of Article 70 of the Criminal Code. However, this cannot be deemed to represent the formal introduction of this principle into Andorran criminal law since it still clashes with Article 24, which establishes the general rule of personal criminal liability and remains unchanged.

110. The joint measures provided for in Articles 71 and 366ter of the Criminal Code in the context of terrorism have the same effects as those that deal with criminal responsibility of corporations in terms of consequences and punitive measures. However, this cannot be considered as formally introducing this principle in the Andorran criminal justice system, which has to account for Article 24 of the Criminal Code affirming the general rule of personal criminal responsibility and which has remained unchanged.

111. The criteria of criminal law policy used by Andorra to establish the legal liability of legal persons in Article 71 of the Criminal Code are those set out in Article 10 of the Palermo Convention, which permits their introduction into criminal, civil and administrative law, coupled with a sanctions system that is effective, proportionate and dissuasive.

Natural and legal persons should be subject to effective, proportionate and dissuasive criminal sanctions (C.2.5).

112. Terrorism financing is punishable by two to five years' imprisonment (Article 366 bis 1). The sentence is increased to three to five years in the aggravating circumstances of an organised group or regular occurrences. Certain ancillary measures in Article 71, described earlier, are also applicable to individuals. Overall, the sanctions may be considered adequate and effective and so, in case of application, be proportionate and dissuasive as required by the Recommendation.

Recommendation 32 statistics (in relation to SR II)

113. There are no rules making it obligatory to collect statistics on convictions. Nevertheless, the Andorran courts have the relevant data processing capacity (*Lotus Notes*) to collect such information.

114. The following statistics have been supplied by the authorities:

Year	Investigations		Prosecutions		Final convictions	
	Cases	Persons	Cases	Persons	Judgments	Persons convicted
2006	3	8	-	-	-	-
2007	2	3	-	-	-	-
2008	1	3	-	-	-	-
2009	1	10	-	-	-	-
2010	-	-	-	-	-	-

Implementation and effectiveness

115. Ten investigations have been launched since 2005 into suspected terrorism financing. Three arose from reports from banks and seven from international co-operation. Even though there have been no prosecutions for terrorism financing the number of investigations shows that the police have not been inactive in the field of CFT. The prosecution service and the police are well aware that the small size of the country does not exempt them from this problem, particularly in view of Andorra's geographical proximity to regional terrorist activities and the opportunities it provides as a financial centre.

2.2.2 Recommendations and Comments

Special Recommendation II

116. The new articles 366*bis* and *ter* of the Criminal Code represent significant progress towards combating terrorism financing. Moreover, the ratification of the 9 so-called terrorist conventions is evidence of Andorra's determination to comply with the relevant international standards. However, the wording of the offence has certain deficiencies in that Article 366 bis fails to establish an offence of simply financing an act that constitutes an offence under one of the treaties appended to the CFT and that the generic definition of terrorist acts in Article 362 of the Criminal Code does not include the general notion of intimidating a population, or compelling a government or an international organisation to do or to abstain from doing any act.

117. Basically, Article 366 bis of the Criminal Code does not follow the logic of the offence provided for in the CFT. On the other hand, these deficiencies are more of a technical nature and seem unlikely to have a negative influence on the outcome of any prosecutions. Nevertheless, the immunity of self-financing is a potential impediment to comprehensive and effective efforts to combat terrorism financing.

118. The law does not introduce formal criminal liability for legal persons. The new articles 71 and 366 ter are an *ad hoc* solution in the context of terrorism and terrorism financing legislation, but do not affect the general principle of individual criminal liability in Article 24 of the Criminal Code.

119. It is therefore recommended that:

- the offence of financing terrorism be modified to include the financing of unlawful acts specified as such in the treaties appended to the CFT;
- the general definition of terrorist acts be supplemented by the notion of intimidating a population, or compelling a government or an international organisation to do or to abstain from doing any act;
- the immunity of self-financing of an individual be abolished;
- criminal liability be introduced for legal persons, at least in the context of CFT;
- Article 24 of the Criminal Code be repealed, so that criminal liability can be formally extended to legal persons.

Recommendation 32

120. The recommendation is fully complied with.

2.2.3 Compliance with Special Recommendation II

	Compliance rating	Summary of reasons for the rating
RS.II	**PC**	• No offence as such of financing offences provided for in the CFT treaties • Generic definition of terrorist acts not consistent with that of the CFT • Immunity of self-financing of an individual • No formal criminal liability of legal persons in connection with terrorism financing

2.3 Confiscation, freezing and seizure of the proceeds of crime (R.3)

2.3.1 Description and Analysis

Recommendation 3 (rated LC in the third round evaluation report)

Summary of reasons for the 2007 compliance rating

121. Andorra was rated largely compliant under Recommendation 3 in the third round report. The reasons for the rating included a) the inconsistency noted by the assessors in the wording of articles 70 and 411 of the Criminal Code concerning the obligatory nature of confiscation, b) the impossibility of confiscating equivalent assets, c) the need to clarify the rules on provisional measures for the purposes of confiscation and the applicability of measures specified in criterion 3.6, d) the need to extend the application of provisional measures and confiscation beyond material assets and bank accounts to include all forms of assets, including shareholdings in companies, other financial arrangements and less tangible forms of assets. The report noted however that the available measures did seem to be fairly extensively applied, with positive effect (positive effectiveness criterion).

General – legislative framework

122. Since Andorra abides by the continental legal tradition, confiscation can, in principle, only be applied once a conviction has been secured. The following provisions of the Criminal Code form the main legal basis for confiscation: articles 70 (confiscation), 366ter (confiscation: terrorism offences) and 116 (interim measures). However, there is an exception in Article 129 of the Code of Criminal Procedure in the event of the death of an accused or discontinuation of the proceedings.

Confiscation of laundered and other assets (C.3.1)

Laundering

123. The general arrangements for confiscation, applicable to the offence of laundering, are laid down in Article 70 of the Criminal Code:

> *"Article 70 Seizure of instrumentalities, effects and profits*
>
> *When the accused is found guilty and in other cases specified in the Code of Criminal Procedure, the court must order the seizure of instrumentalities used to commit the offence, its proceeds and any profits deriving from them, and any subsequent conversion of those proceeds.*
>
> *If the proceeds cannot be localised, or cannot be repatriated from abroad, the Court can order the seizure of the equivalent of these proceeds.*
>
> *Assets belonging to third parties who are not criminally liable and who acquired them lawfully may not be seized.*
>
> *The court may decide not to order seizure or to order it only partially if the profits or the instrumentalities derive from lawful commerce and are out of proportion to the nature and seriousness of the offence, or when there are other reasons to justify this."*

124. Firstly, it should be noted that the term "seizure" in this article must be understood to mean confiscation, since it is clearly a decision on the final destination of criminal assets.

125. The article therefore covers the compulsory confiscation of:
- the instruments used,
- instruments intended for use,
- the direct and indirect proceeds of an offence, and
- the equivalent value of these proceeds.

126. The article makes no reference to the confiscation of laundered assets themselves as the subject matter of the offence of laundering. According to those spoken to, these assets may be confiscated as the proceeds of the predicate offence or as an instrument of laundering.

127. A problem thus arises in the case of a conviction for laundering in the absence of a prosecution concerning the predicate offence, since Article 70 limits equivalent confiscation to the proceeds of an offence. If the laundered assets are considered to be instruments used to commit the autonomous offence of laundering, there is no legal basis for confiscation of the equivalent value.

Terrorism

128. In the context of terrorism financing, Article 366ter of the Criminal Code creates an additional and specific basis for confiscation, over and above the general rules in Article 70:

> *"Additional consequences.*
> *In connection with the offences specified in this chapter, in addition to the penalties provided for the court shall order one of more of the following measures:*
> *a) Seizure of the proceeds of the offence or the funds used for financing the offence within the meaning*

of Article 70.
b) Dissolution of the organisation or permanent closure of its premises or establishments open to the public.
c) Suspension of the organisation's activities or closure of its premises or establishments open to the public for a period of up to five years.
d) Prohibition from carrying out the activities, commercial operations or transactions that were used to facilitate or conceal the offence, for a period of up to five years.
e) Any other appropriate measures concerning individuals or legal persons specified in Article 71."

129. It should be noted that in this case, apart from the proceeds of the offence, explicit reference is made to the subject matter of the financing offence, in particular the funds themselves. On the other hand, the addition of the words "within the meaning of Article 70" lacks clarity and is even illogical in view of the impossibility of confiscating the subject matter of the offence on the basis of Article 70.

130. Article 70, paragraph 1 covers all direct and indirect proceeds, including "profits deriving from them, and any subsequent conversion of those proceeds", and thus all the advantages arising from the proceeds and the assets that replaced them. Where these assets are located is irrelevant: the only limitation on confiscation under Article 70.3 is legal possession by a *bona fide* third party

Assets concerned (C.3.1.1)

131. Article 70 covers all direct and indirect proceeds, including "profits deriving from them, and any subsequent conversion of those proceeds", and thus all the advantages arising from the proceeds and the assets that replaced them. Where these assets are located is irrelevant: the only limitation on confiscation under Article 70.3 is legal possession by a *bona fide* third party.

Interim measures (C.3.2)

132. Seizure and sequestration are the subject of Article 116 of the Criminal Code:

"In addition to the need to provide for possible civil liability, the court may order, in a reasoned decision, during the preparatory stages and investigation of the case, the seizure and sequestration of all funds offering sufficient objective evidence to suggest that they are the direct or indirect proceeds of the offence, with a view to ensuring the effectiveness of the seizure and equivalent seizure provisions in Article 70. It may also order the seizure and sequestration of the assets and entitlements of a non-liable third party unless this third party has acquired them lawfully in accordance with articles 119 and 120.
[..]
In connection with money or security laundering or the predicate offences from which it originated, the investigating judge, on the basis of the corresponding judicial decision, may decide not to order the seizure or sequestration of such third parties' assets and entitlements or defer the seizure or sequestration, and authorise any operation concerning or the transfer or assignment of any asset that could have been the subject of a subsequent seizure, in order to identify the persons involved or to secure necessary evidence, on condition that the interests of the investigation are in proportion to any risks that the operation, transfer or assignment, or the failure to carry out the seizure or sequestration, may pose."

133. The judicial authorities can therefore order any interim measures to preserve evidence or for preventive purposes to ensure the effective implementation of any confiscation decisions under articles 70 and 366ter of the Criminal Code, including equivalent values. In practice, all assets are seized. Before the judicial stage, the police are empowered to immobilise assets likely to be seized and confiscated for the purposes of seeking evidence, in accordance with Article 26.1.b of the

Code of Criminal Procedure[28]. Finally, the FIU can play a not inconsiderable part in this regard with its powers to order the freezing of assets in connection with declarations of suspicion (see below 2.5)

Applications to freeze or seize property subject to confiscation to be made ex-parte or without prior notice (C.3.3)

134. The seizure measures under Article 116 of the Code of Criminal Procedure do not require both parties to be represented and can be ordered unilaterally to achieve maximum effect.

Protection for the rights of bona fide third parties (C.3.5)

135. As provided for expressly in Article 79 of the Criminal Code, assets belong to *bona fide* third parties that have been lawfully acquired are excluded from any confiscation measures. Third parties who claim to have acted in good faith may submit relevant evidence in accordance with Article 120 of the Code of Criminal Procedure.

Authority to take steps to prevent or void actions, whether contractual or otherwise (C.3.6)

136. The criminal court has authority to continue proceedings in response to actions or contracts that would impede seizure or confiscation orders and that have been initiated or concluded in bad faith. If it lifts the measure, it must justify the decision. Confiscation measures are based on Article 70 of the Criminal Code, which excludes from its scope "*assets belonging to third parties who are not criminally liable and who acquired them lawfully"*. It must therefore be concluded that the confiscation of assets acquired by third parties in bad faith is lawful.

Additional elements (C.3.7)

137. The confiscation of assets belonging to criminal organisations (or unlawful associations – articles 359-361 of the Criminal Code) would be possible in so far as they were instruments used to commit the offence.

138. Confiscation is always based on a criminal conviction.

139. According to the authorities, reversal of the burden of proof concerning lawful origin is accepted by the case-law in the context of confiscation proceedings.

Recommendation 32 (statistics relating to R.3 – seizures and confiscations)

140. There have been no prosecutions, and therefore no measures of confiscation, in connection with terrorism financing. In connection with money laundering and the proceeds of crime, the authorities have provided the following statistics for the years 2006 – 2010:

Year	Proceeds frozen by the FIU		Seizures		Proceeds confiscated	
	Cases	Nature of assets	Cases	Nature of assets	Final judgments	Nature of assets – final total

[28] Art. 26 CPP: *"1. To assemble the necessary evidence, police officers must, as far as necessary […] b) Retain all the documents and objects related to the offence, in particular the weapons and instruments used in its commission or intended for that purpose and anything that appears to have been a proceed of the offence or likely to constitute evidence …"*

2006			5	2 735 047.99 EUR	-	-
2007	1	1 692 857.58 EUR	7	7 184 971.63 EUR	-	-
2008			2	10 493 350.91 EUR	3[29]	1 apartment 1 100 947.64 EUR 61 369.49 pounds sterling
2009			5	4 835 519.66 EUR 1 apartment + *938 294.59 EUR and 2 apartments (Ref TC-051-4/02[30])*		
2010	8	7 648 030.66 EUR	2	2 520 436.48 EUR 3 179 142.24 USD	7[31 & 32]	2 apartments 31.75% of an apartment 2 parking places 1 cellar 1 bank safe (629 558.61 EUR) 1 447.03 USD 16 933 614.55 EUR + 938 294.59 EUR and 2 apartments (Ref TC-051-4/02)

Implementation and effectiveness

141. Andorra has already carried out a fairly significant number of seizures and confiscations in laundering cases since 2008 (9 cases), which represents definite progress over previous years. However, the figures need to be qualified: in four cases, the seizure and confiscation were not the result of Andorran investigations and prosecutions, since they involved the execution of foreign judgments.

2.3.2 Recommendations and comments

Recommendation 3

142. The seizure and confiscation system is solidly based in law. In the event of a conviction, the confiscation of all instruments, proceeds, direct or indirect advantages and the equivalent value of proceeds is obligatory. The potential impediments to confiscation caused by the death of the

[29] **1**- Judgment handed down by the Court of *Corts* 24.09.2008. Ref. TC-003-2/96.;
2-Judgment handed down by the Court of *Corts* 26.09.2008. Ref. CRI-144/99 + CRI-297/02 + CRI-265/05 – foreign judgment executed in Andorra.
3-Judgment handed down by the Court of *Corts* 29.09.2008. Ref. TC-070-2/97.

[30] Judgment handed down by the Court of *Corts* 20.11.2009 and in appeal in 2010. Ref. TC-051-4/02

[31] Judgment handed down by the Court of *Corts* 20.11.2009 and in appeal in 2010. Ref. TC-051-4/02

[32] **1** - Judgment handed down by the Court of *Corts* 07.05.2010. Ref. TC-075-5/06 and confirmed on appeal by the High Court of Justice, 18.11.2010. Proceeds confiscated: 241 66 EUR and 1 447.03 USD./ **2**- Judgment handed down by the Court of *Corts* 26.02.2010. Ref. TC-122-3/06. Proceeds confiscated: 57.24 EUR. Appeal to the High Court of Justice. Judgment handed down by the High Court of Justice 29.11.2010. Proceeds confiscated: 31.75% of an apartment and bank accounts./; **3**- Judgment handed down by the Court of *Corts* 26.02.2010. Ref. CRI-236-1/09. Foreign judgment executed in Andorra. Proceeds confiscated: 629 558.61 EUR (bank safe); **4**- Judgment handed down by the Court of *Corts* 12.04.2010. Ref. CRI-300-2/08. Foreign judgment executed in Andorra. Proceeds confiscated: 1 apartment and 1 parking place; **5** - Judgment handed down by the Court of *Corts* 13.09.2010. Ref. CRI-425-0/08. Foreign judgment executed in Andorra. Proceeds confiscated: 1 apartment, 1 parking place, 1 cellar and 16 013 468.86 EUR./; **6**- Judgment handed down by the High Court of Justice 19.11.2010. Ref. TC- 028-4/09. Foreign judgment executed in Andorra. Proceeds confiscated: 290 288.18 EUR.; **7**- Judgment handed down by the High Court of Justice, 14.10.2010. Ref. TC-051-4/02. Proceeds confiscated: 938 294.59 EUR and 2 apartments.

accused or other obstacles to prosecution have been adequately resolved. However, there is a problem associated with the confiscation of laundered money in the event of a prosecution for autonomous laundering, since Article 70 of the Criminal Code does not authorise the confiscation of the subject matter of the offence (unlike Article 366ter in connection with terrorism financing). Even though case-law and legal theory accept the hypothesis of laundered money as the instrument used to commit the laundering, confiscation by equivalence does not apply to instruments, nor to the subject matter of the offence, thereby leaving a legal void that may have a negative impact on the effectiveness and comprehensiveness of the confiscation arrangements that will need to be rectified.

143. The number and scale of the confiscations are encouraging, and indicate a growing awareness of the financial aspects. However, it has to be said that the results of domestic investigations and prosecutions are still modest. As already stated in the context of Recommendation 1, the prosecution authorities should make greater efforts to take the initiative to increase effectiveness.

Recommendation 32

144. Record keeping has improved compared with the third round situation. The authorities are now able to supply detailed statistics on the number of cases and the size of the assets frozen, seized and confiscated in cases concerning money laundering, terrorism financing and the proceeds of crime, as the aforementioned figures show.

2.3.3 Compliance with Recommendation 3

	Compliance rating	Summary of reasons for the compliance rating
R.3	**LC**	• No legal basis for the confiscation of funds as the subject matter of the offence in autonomous laundering cases • Effectiveness: modest results of own initiative confiscations

2.4 Freezing of funds used for terrorism financing (SR.III)

2.4.1 Description and Analysis

Special recommendation III (rated PC in the third round report)

Summary of reasons for the 2007 compliance rating

145. Andorra was rated partly compliant with SR III in the third round report. The report found that the Principality had no specific legal provisions to implement international sanctions, although the country had taken certain steps to apply these sanctions, which the assessors had judged to be fairly cursory and limited. In particular, the country had no clearly specified body, nor specific and detailed regulations on such matters as the listing and delisting of persons, the conditions for unfreezing assets or information to the public, there had been no wider awareness raising efforts (apart from the banking sector) and there was no legal basis for the preventive system in the form of an extension of the LCPI to terrorist financing.

General

146. There are no specific preventive arrangements in Andorra governing the freezing of terrorist assets, whether or not listed. The system is based purely on the Andorran FIU's authority to freeze assets and the judicial authorities' powers of seizure.

147. The financial intelligence unit has issued a series of technical communiqués:

Communiqué	Content
Technical communiqué, 27 April 2006	Application of Resolution 1267 of the United Nations Security Council: list of natural and legal persons concerning the freezing of funds and the cessation of commercial relations
Technical communiqué, 25 October 2006	Application of Resolution 1267 of the United Nations Security Council: list of natural and legal persons concerning the freezing of funds and the cessation of commercial relations
Technical communiqué, 23 February 2007	Application of Resolution 1267 of the United Nations Security Council: list of natural and legal persons concerning the freezing of funds and the cessation of commercial relations
Technical communiqué, 26 February 2007	Application of Resolution 1737 of the United Nations Security Council: list of natural and legal persons concerning the freezing of funds and the cessation of commercial relations
CT-4/2009, of 20.07.2009	Application of Resolutions 1718 and 1874 of the United Nations Security Council: strengthened measures against North Korea
CT-05/2009, of 03.12.2009	Application of Resolution 1572 (2004) of the United Nations Security Council: list of natural and legal persons of Sudan concerning the freezing of funds and the cessation of commercial relations
CT-08/2009, of 31.12.2009	Application of Resolution 1591 (2005) of the United Nations Security Council: list of natural and legal persons of Sudan concerning the freezing of funds and the cessation of commercial relations
CT-09/2009, of 31.12.2009	Application of Resolution 1533 (2004) of the United Nations Security Council: list of natural and legal persons of the Democratic Republic of Congo concerning the freezing of funds and the cessation of commercial relations
CT-01/2010, of 08.03.2010	Application of Resolution 1267 of the United Nations Security Council: list of natural and legal persons concerning the freezing of funds and the cessation of commercial relations
CT-04/2010 of 16.08.2010	Application of Resolution 1929 of the United Nations Security Council: list of natural and legal persons of Iran concerning the freezing of funds and the cessation of commercial relations

Implementation of Resolution S/RES/1267(1999) and subsequent resolutions (C.III.1 and C.III.4) Freezing of funds and other assets (C.III.4)

148. Andorra's implementation of its obligations under S/RES/1267(1999) and subsequent resolutions is based purely on existing administrative (freezing) and criminal (seizure) procedures. Financial institutions and other related bodies do not automatically freeze accounts based on the S/RES/1267(1999) lists, but where necessary they are deemed to be required to make a declaration of suspicion. Once such a declaration has been made, under section 47 of the anti-money laundering act the FIU can then order the temporary freezing of assets for up to five days. This can then be changed into judicial seizure under Article 116 of the Code of Criminal Procedure.

149. None of this legislation contains a definition of "funds" compatible with international criteria.

Implementation of Resolution S/RES/1373(2001) (C.III.2 and C.III.4)

150. As in the case of S/RES/1267(1999), Andorra has no legislation to implement Resolution S/RES/1373(2001). There is no statutory basis for drawing up its own lists of persons and bodies whose funds and other assets must be frozen or for freezing such assets.

Examining other countries' freezing arrangements and implementing them (C.III.3)

151. Andorra has no specific procedure for examining and giving effect to other countries' freezing arrangements under S/RES/1373(2001). Requests to freeze assets from other countries must be dealt with under the normal criminal procedure rules, particularly following a formal request for international mutual assistance.

Effective guidance to the financial sector (C.III.5)

152. There are no formal arrangements for communicating lists. They are sent to financial institutions by the FIU. Given the size of the country and the close relations between the FIU and the financial sector this is normal practice for any such technical guidelines. They are also sent by hand for security reasons.

Clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other relevant assets (C.III.6)

153. Apart from the requirement to declare suspicions to the FIU, there have been no clear instructions to financial institutions or other undertakings or designated non-financial professions, or other persons or bodies likely to be concerned, on the freezing arrangements to be taken under the relevant United Nations resolutions.

Procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner (C.III.7)

154. Andorra has no effective procedures available to the public for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner.

Effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person (C.III.8)

155. Andorra does not have effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.

Access to funds or other assets that have been frozen pursuant to S/RES/1267(1999), in accordance with S/RES/1452(2002) (C.III.9)

156. Andorra has no procedures for authorising access to funds or other frozen assets pursuant to S/RES/1267(1999) that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.

Procedures to challenge a freezing measure and having it reviewed by a court (C.III.10)

157. Andorra has no procedures to enable individuals or bodies whose funds have been frozen to challenge such decisions in the courts.

Freezing, seizing and confiscation in other circumstances (C.III.11)

158. The freezing, seizure and confiscation measures described in section 2.3 in connection with money laundering also apply to terrorism financing and other terrorism offences.

Protecting third party rights (C.III.12)

159. The only reference to the situation and rights of *bona fide* third parties is in Article 70 of the Criminal Code, which only applies to criminal proceedings.

Appropriate measures to monitor effectively compliance with relevant legislation, rules or regulations governing the obligations under SR III (C.III.13)

160. Generally speaking, the supervisory and disciplinary authorities should establish arrangements for supervision the application of measures to freeze terrorist assets. However, aside from the general supervisory arrangements the authorities have not so far introduced any specific measures to monitor compliance with the relevant international obligations.

Additional elements (C.III.14 and C.III.15)

161. The preceding assessments show that the relevant Andorran authorities have not yet applied the best practices and appropriate procedures concerning access to funds, in accordance with S/RES/1373 and S/RES/1452.

Recommendation 32 (Statistics relating to Special Recommendation III)

162. The United Nations' and other lists have not yet led to the preventive freezing of terrorist assets. Nor have inquiries following suspected terrorism financing resulted in the application of freezing or seizure measures.

Implementation and effectiveness

163. Andorra has not established a specific system for freezing the assets of suspected terrorists listed by the UN (S/RES/1269(1999)) or other authorities (S/RES/1373(2001)), in accordance with relevant international standards. There are no regulations on the immediate and automatic freezing of such suspected assets, on the initiative of those holding the assets or appropriate administrative preventive measures. The procedure applied in the country is essentially based on the criminal system, starting with temporary freezing by the FIU, followed by the intervention of the prosecution authorities or the investigating judge, which can only result in the discontinuation of proceedings for lack of evidence or, ideally, a criminal prosecution (which is unlikely). Yet, according to the resolutions, suspected assets should remain frozen until there has been a "de-listing" decision.

2.4.2 Recommendations and Comments

164. In order to implement fully the requirements of SR.III, the Andorran authorities should:

- Establish legal arrangements to ensure the automatic freezing of funds controlled fully or jointly by listed persons or bodies, as well as funds derived from or generated by funds owned or

controlled by listed persons, the funds of bodies belonging to or controlled, directly or indirectly, by listed persons and the funds of persons or bodies acting on their behalf or under their instruction, in accordance with Resolution 1267;

- Establish domestic machinery for drawing up their own lists in accordance with Resolution 1373 and introduce procedures for deciding on lists presented by other states;

- Ensure that financial institutions and other persons or bodies that might hold terrorist funds are clearly informed of their obligations regarding preventive freezing in accordance with United Nations resolutions;

- Establish effective publicly-known procedures for examining requests for de-listing by the persons concerned and the unfreezing of the funds and other assets of de-listed persons and bodies;

- Establish effective publicly-known procedures for unblocking, as rapidly as possible, the funds and other assets or persons or bodies inadvertently affected by freezing arrangements, after verification that the person or body concerned is not a designated person;

- Establish appropriate procedures to enable persons or bodies whose funds or other assets have been frozen to challenge this measure in the courts;

- Introduce provisions to protect the rights of third parties acting in good faith, in accordance with Article 70 of the Criminal Code;

- Introduce a specific and effective system for monitoring compliance with United Nations resolutions.

2.4.3 Compliance with Special Recommendation III

	Compliance rating	Summary of reasons for the compliance rating
SR.III	**NC**	• No legal framework for the implementation of Resolutions 1267 and 1373 and following • No machinery for reviewing lists submitted by other states under Resolution 1373 • Failure to carry out obligations arising from Resolutions 1267, 1373 and following (instructions, removal from lists, unfreezing of funds, access to funds, third party rights, definition of funds, etc.)

Authorities

2.5 The Financial Intelligence Unit and its functions (R. 26)

2.5.1 Description and analysis

Recommendation 26 (rated PC in the 3rd round report)

Summary of reasons for the 2007 MER rating

165. The Principality of Andorra was rated partially compliant in the 3rd round report with regard to R. 26. Although the FIU situation was deemed to be satisfactory overall, a number of shortcomings had been observed, in particular with regard to its authority, its responsibilities in the field of terrorism financing and its resources. Consequently, the report made several recommendations concerning the FIU's annual report and the need for the latter to include a survey of laundering risks and the typology of the methods used, authorising FIU access to a number of databases, taking measures to strengthen the FIU's authority and reducing staff turnover, and making the FIU and its Director more independent of the government and the parties under obligation.

General

166. Since the last evaluation, the Andorran authorities have taken a number of measures, particularly institutional and legislative, to address the recommendations made. The FIU's activities are now regulated by the provisions of the 7th section (body for the prevention of money laundering and terrorism financing) of the Law on international criminal co-operation and the fight against the laundering of money or securities deriving from international crime and against the financing of terrorism (LCPI) of 29 December 2000, as amended by Law No. 28/2008 of 11 December 2008 and of the 3rd Chapter (Articles 20 and 21) and of the 4th Chapter (regarding national and international co-operation) of the LCPI implementing regulation.

National Centre for Receiving, Analysing and Disseminating Declarations of Suspicious Transaction Reports (C.26.1)

167. Following the passing of the LCPI, the responsibilities of the Financial Intelligence Unit, now the FIU (formerly the UPB) were redefined. Article 53.1 provides that the FIU is an "independent body whose aim is to promote and co-ordinate measures for the prevention of money laundering and terrorism" and whose budget is funded by the State.

168. The 15 examination, decision-making and proposal functions which are clearly assigned to the FIU by virtue of Article 53.2 include "collecting, gathering and analysing declarations from parties under obligation, as well as all written and verbal communications received, to evaluate the facts" (Article 53.2 e)) and "submitting to the public prosecutor's office, for the appropriate purposes, cases in which there are reasonable suspicions that a criminal offence has been committed (Article 53.2.j)). The FIU can receive communications to this effect from other national or international authorities or can initiate cases on its own initiative (cf. statistics related to R.13). The FIU files the remaining cases, retaining the files for a minimum of ten years.

169. Following a suspicious transaction report or receipt of external information, or further to its own investigations, and where there is evidence of an offence provided for in the Criminal Code, the FIU opens a file. In the light of the facts, a decision is taken as to whether further analysis should be carried out, the file should be transferred to the public prosecutor's office or no further action should be taken. The judge appointed to the FIU is the contact point between the latter and the public prosecution service. As such he or she is the channel through which files are officially transmitted to the prosecution service, which decides whether there is a case for action. The judge also has an advisory role to ensure that the file contains all the necessary elements, by checking the lawfulness of the procedure.

170. The following statistics taken from the 2010 annual FIU report provide details of the files dealt with by the FIU:

Status of cases			
	2008	**2009**	**2010 (as at the date of the report)**

Files transmitted to the public prosecution service	12	10	14
Closed	5	23	15
Being analysed	3	7	4

Guidance to the parties under obligation on the manner of reporting suspicious transactions (C.26.2)

171. The FIU is now authorised to issue technical communiqués that are of mandatory compliance (LCPI, Article 53.2a)), recommendations enabling the parties under obligation to better fulfil their obligations and the necessary information about the procedures to be followed in making a suspicious transaction report in accordance with the law (RLCPI, Article 20.1). Article 20 of the LCPI implementing regulation stipulates that the FIU shall provide the parties under the obligation to declare the necessary information with details of the procedure to be followed in order to make a declaration in conformity with the requirements of the law and to this end it approves a model report together with instructions for its use. The FIU did not draft any model report for the different categories of reporting parties.

172. The principle followed is that the declaration is made in writing, as required by the RLCPI. In urgent cases, the declaration may be made by any means available, but the written report must be forwarded within two working days at the latest (Article 11).

173. Article 12 of the RLCPI lists the information which must be provided in the declaration of suspicion:

> *"**Article 12 Content of the declaration of suspicion***
> *1. Under article 47 of the Law, the declaration of suspicion must be accompanied by at least the following information:*
> *(a) A list of and the identification of the natural persons or legal persons and true right-holders that participate in the transaction, and under what concept they are involved in the same transaction.*
> *(b) Detail of the operations, indicating the date, the objective, the currency, the amount, the form and place(s) of execution.*
> *(c) Copy of the documentation by virtue of which the client who requested the execution of the suspicious transaction has been identified, and if applicable, the true right-holder.*
> *(d) Copy of the documentation by means of which the client justifies the transaction.*
> *(e) Statement of all the circumstances of the suspicious transaction which the party under obligation has at his disposal.*
>
> *2. In the event that the party under obligation does not have any of the information described, this must be expressly stated.*

174. Until the FIU notifies the party under obligation that the case has been closed or transmitted to the judicial authorities, the said party remains under the obligation to provide the FIU with any new information, relative to the declaration, of which he or she has knowledge. Of course, even where notification that the case has been closed has been given, any new transaction which might involve a risk of laundering or financing of terrorism must also be notified to the FIU.

175. The authorities have said that advice is frequently provided through informal contacts with the various correspondents and during training seminars for the parties under obligation attended by members of the FIU.

176. Nonetheless, the exchanges with the parties under obligation and the statistics provided, which raise questions about the actual implementation of the disclosure requirement for the parties under obligation (see the conclusions below and the analysis under R.13 and SR.IV), lead the evaluation team to consider that additional effort should be exerted with regard to advice to all the parties under obligation. Rather than giving priority to informal discussions, it would perhaps be better to take steps to provide more systematic and consolidated advice, for example by means of instructions and guidelines, as provided for in the RLCPI for suspicious transactions reports, and in addition to target those parties under obligation who make only a small or no contribution to the declaration system.

Access, directly or indirectly, on a timely basis to financial, administrative and law enforcement information (C.26.3)

177. Article 53.2 of the LCPI does not alter the FIU's previous attributions regarding access to databases since it was already authorised to obtain all the necessary information for the performance of its tasks.

178. The FIU has direct access to the following public databases and registers: the STR database, the companies' register, the vehicle licensing register, the register of Andorran citizens, and the immigration register.

179. The FIU has indirect access to the following databases: Police, Interpol, financial information, general property register and the non-residents' property register. Access is requested in writing (by letter or fax) and the information is transmitted to the Director of the FIU. Communication with the police is by fax and e-mail, in both directions, via the three specially appointed police officers, who search the Andorran police databases (national files, Interpol) and where necessary contact their relevant foreign counterparts if additional information is required. The FIU may also request and obtain copies of criminal records from the judicial authorities (Article 53.2d LCPI).

180. The FIU also has indirect access to all the administrative information available to the Customs and Excise authorities, via contact persons designated by those departments.

181. The evaluation team was surprised to note that although the FIU has two police officers as members of its staff, it does not have direct access to police information via these two detached officers. A recommendation in this connection had previously been made, but does not appear to have been acted upon.

182. The authorities are of the opinion that the mechanisms in place to obtain information obtained in the databases to which they have indirect access are such as to ensure that the required information is received within a satisfactory time frame and that in practice, this indirect access has not raised any problems adversely affecting the analysis of the files being processed.

Authorisation to obtain additional information from reporting parties (C.26.4)

183. The FIU is authorised to directly ask the parties under obligation for additional information. Under the LCPI, the parties under obligation are required to provide the FIU with all the information it requests in the exercise of its duties (Article 49.1 b)). In accordance with Article 53.2b, the FIU may ask the parties under obligation for any information or document in order to verify that the law is being applied, and Article 12. 5 of the RLCPI also stipulates that the FIU may request any additional information which the party under obligation may possess, in the exercise of its duties. According to the information obtained by the evaluation team, the FIU does not face any obstacles in obtaining additional information from reporting parties where they possess such information.

Authorisation to disseminate financial information to domestic authorities for investigation or action when there are grounds to suspect money laundering or terrorism financing (C.26.5).

184. The LCPI authorises the FIU to transmit information to the following authorities:

- under Article 53.2 j) LCPI: to the Public Prosecutor's Office, "for the appropriate purposes, cases in which there are reasonable suspicions that a criminal offence has been committed"
- under Article 53.2 i) LCPI: to the competent administrative authority the investigation files in which facts have been uncovered that could constitute a serious or very serious administrative infringement, accompanied by a sanction proposal;
- under Article 53.2.l) LCPI: to the financial system disciplinary body (the INAF) information on all transfers of files, be they to the public prosecutor's office or to the Government, when financial system entities are involved. This information must include the name of the financial entity, a list of the facts observed and the accounts listed in the file.

185. The file transmitted to the public prosecutor's office contains a summary of the FIU's analysis of the suspicious transactions and the money flows concerned, the records of the investigations carried out and other information it has received. The number of files processed by the FIU and transmitted to the public prosecutor's office remained relatively stable during the reference period, whereas the number of cases closed fell significantly in 2009. In 2008, the FIU transmitted 12 files to the public prosecutor's office, 10 in 2009 and 14 in 2010 (as at the date of the annual report).

186. Article 23 of the RLCPI repeats these terms of reference and, in addition, sets out the framework regulating the co-operation between the FIU and the INAF, which may both sign co-operation agreements if such should prove necessary or simply desirable. In practice, the two institutions co-operate without the need for signed agreements.

> *"**Article 23. Co-operation with the Andorran National Institute of Finance (INAF)***
>
> *1. Under article 53(2)(l) of the Law, the FIU will inform the INAF, in its capacity as the organisation that has disciplinary power over the financial system, of all file transfers, whether to the public prosecutor's office, or to the government, when entities of the financial system are implicated. This information will include the name of the financial entity, a description of the facts observed and the accounts mentioned in the file.*
>
> *2. Thus, the FIU and the INAF co-operate through reciprocity in the exercise of their supervision and control functions, interchanging relevant information and experiences by written communications, periodic meetings to follow-up with the financial parties under obligation and their external auditors, and any other appropriate means to verify the effective fulfilment of the obligations imposed by the Andorran legal system.*
>
> *In particular, when in the exercise of their supervisory functions the INAF notes possible breaches of the obligations established by the legislation for the prevention of money laundering and the financing of terrorism, the FIU must be informed.*
>
> *3. The FIU and the INAF may sign collaboration agreements in order to define the co-operation procedures regulated by this article."*

Operational independence and autonomy (C.26.6)

187. Although the previous evaluation report observed that no particular problems in practice had been noted with regard to the independence and autonomy of the FIU, it nevertheless voiced a number of reservations and had recommended steps to further guarantee the independence of the Director and of the FIU vis-à-vis the government, including in appointment procedures.

188. The FIU's operational independence and autonomy are regulated by the LCPI (Articles 53-54) and the RLCPI (Articles 20 – Duties of the FIU and 21 – Management of the FIU). In pursuance of Article 53 of the LCPI, the FIU is an independent body.

189. The Director is appointed (and, where necessary, dismissed, although the law makes no reference to this) jointly by the Interior and Finance Ministers (Article 54 LCPI). There are no provisions on the length of the Director's term of office, on any formal criteria for the dismissal or the appeal procedures.

190. The Director is responsible for the administrative and technical management of the FIU and acts as the representative of the FIU before the parties under obligation, equivalent international organisations, and national and international organisations where his or her presence is required (Article 21 RLCPI). In the event of the temporary absence of the FIU Director, he or she delegates his or her authority to another member of the FIU, but not the judge. The authorities wished to draw attention to the changes regarding the appointment of the Director that had been introduced since the 3rd round. For the first time since the FIU was set up, the Director is a member of the national judicial service, the purpose being to strengthen the FIU's autonomy.

191. Neither the LCPI nor the RLCPI clarifies the recruitment procedure or the role of the FIU Director and refer only to the appointment procedure. Accordingly, FIU staff is appointed by the Finance Ministry (for those with responsibility in the financial field), the National Justice Committee (for the judge) and the Interior Ministry on a proposal from the Director of Police (for the members of the police service).

It was pointed out that, in practice, the Director suggests staff appointments to the Interior and Finance Ministers, or any changes he considers appropriate in this regard, and that the Director was directly involved in the recruitment procedure. Recruitment takes place in line with the Civil Service Act of 15 December 2000 for the financial experts and the Police Act in respect of the procedure for the detachment of police officers (Section 67). In both cases, the recruitment procedures involve a competitive examination with an objective selection process and competency criteria. Becoming a member of the FIU follows the administrative procedure set out in the law: first of all there is an internal recruitment procedure, with the publication of civil service orders specifying the qualifications and professional experience required. If this proves unsuccessful, then there is an external recruitment procedure. A technical panel is formed to set and mark the tests in order to short-list the candidates. This panel must include at least two members of the department concerned, appointed by the Director, and occupying a post for which the qualifications required are higher than that of the vacant post or the new post to be created, in order to ensure appropriate technical evaluation of the conditions required, and two representatives of the Civil Service State Secretariat. Once the procedure has been completed, in which the Director of the FIU is also involved, the latter has the final say in accepting or rejecting the person selected. The appointment procedure, as set out in the law, is then followed.

192. Aspects linked to the revocation of nominations of FIU staff by other concerned authorities are not explicitly provided for. In practice, there has been no such case. The authorities mentioned that, in the eventuality of a revocation, the Director of the FIU would intervene on the matter.

193. In case of an absence of nomination by one of the authorities concerned, the Director of the FIU would raise the issue of FIU resources before the Government, and, in case of a positive opinion, the process would be initiated and the nomination would take place as indicated above.

194. The FIU budget comes out of the state budget and complies with the financial rules in force. A budgetary proposal is made within the Finance Ministry before being submitted to the government for approval. Staff appropriations are included separately in the budgets of the Finance Ministry (for the financial experts), the Police (for the members of the police service) and the Justice Ministry (for the judge appointed to the FIU).

195. With regard to operational independence, the law does not provide for any consultation of or approval by another authority regarding the transmission of financial information to the public prosecutor. Where the case comprises reasonable suspicion that a criminal offence has been committed, the file is submitted to the public prosecution service. The members of the FIU meet to examine the files and the decision on whether or not to transmit the file is taken by the FIU Director, in the light of the proposals made by the member dealing with the file in question.

196. The FIU also reports on its activities to other authorities via its annual report which is disseminated to members of the government and other relevant departments.

197. Although the changes made in practice appear to be a step in the right direction, the evaluation team remains convinced that the status of the FIU has not been entirely revised. In the light of the recruitment and appointment procedures, there are still a number of reservations regarding certain aspects of the FIU's administrative autonomy, in particular the arrangements for the appointment and dismissal of the FIU Director and the possibility that another authority can object to or not act upon the formal appointment of staff, which could have a negative impact on the FIU's work. The lack of internal procedures regarding these aspects and the length of detachment/appointment of the different members of the FIU and their independence vis-à-vis the authorities from which they have been detached require further clarification. During the on-site visit, the evaluation team noted that some thought was beginning to be given as to how to ensure the independence of the FIU and its senior representative, which confirms that this is being discussed at national level. Following the visit, the authorities indicated that consideration was being given to amending Article 541 in the near future in order to specify the length of the Director's term of office.

Protection of information held by the FIU (C.26.7)

198. The members of the FIU and its administrative staff are bound by the duty of professional secrecy, within the terms provided for in Article 54.4 LCPI:

> *"(...) 4. The members of the FIU and its appointed administrative personnel* ***are bound by the duty of professional secrecy and may be found guilty of the offences set out in Article 226 of the Criminal Code****, both during and after their relations with the FIU."*

199. During the on-site visit, the evaluation team noted that the FIU premises and the surveillance and security measures taken did not provide appropriate protection for the information held by the FIU.[33] The information received from the parties under obligation, which arrive in hard-copy form, are copied and entered into the FIU database, using software that was installed in 2001 and not since updated, and in a safe. There were no restricted access areas to ensure greater protection for the data received and the archives.

[33] Following the approval of the FIU organisational chart by the government on 18 May 2011, the FIU moved to new premises in December 2011, and the authorities have indicated that these now have enhanced security measures.

200. Similarly, as mentioned elsewhere in this report, the LCPI (Article 47) provides that the identity of the individual having issued the declaration of suspicion be kept confidential in all administrative and legal procedures originating from or related to the declarations made. During the visit, several parties under obligation raised what they thought was a worrying problem, namely that the anonymity of the issuer of the declaration from the party under obligation had not been guaranteed, quoting the example of one case where the identity of the reporting party had been disclosed to the press. They also objected to the declarations of suspicion being included in the procedural documents in the files transmitted to the public prosecutor's office.[34]

Publication of periodic reports (C.26.8)

201. Article 53 of the LCPI provides that the FIU compiles statistics to evaluate the effectiveness of the measures taken to prevent money laundering and the financing of terrorism. Article 20 of the RLCPI further specifies that the statistics must be compiled and published annually and that they must include, as a minimum, detailed data on STRs and other declarations received, with a breakdown by type of party under obligation, the investigations carried out, the results of the cases reported, convictions, the amounts frozen and confiscated, requests for mutual legal assistance and other requests for international co-operation, and other activities carried out by the FIU. Accordingly, there is no explicit obligation for the FIU to publish periodic reports containing information on typologies and trends. Nonetheless, the FIU must, in pursuance of Article 49 quinquies, inform the parties under obligation about the current practices of perpetrators of money laundering and terrorism financing through training programmes or technical communiqués.

202. In practice, the FIU has been drafting annual reports since 2002, although it was only with effect from 2006 that these reports were made public. There have been improvements to the contents of the report, which now include more detailed information on the FIU's activities, statistics, typologies and trends.

203. It should, however, be noted that the FIU reports are transmitted in hard copy and via e-mail to the competent authorities, the banking sector and professional associations to be redistributed to their respective members (in the case of DNFBPs). The evaluation team noted that these were not available to a broader readership nor, for example, published on an official website (the FIU's own or the government's). The evaluation team also believes that the annual report should contain more detailed information on money laundering trends, based on cases which have been referred to the courts and on what has been observed. Some of the professionals the team met said that they would very much like to receive more information on typologies.

Membership of Egmont Group (C.26.9) and taking account of the Egmont Group "Statement of Purpose" and the "Principles for information exchange between financial intelligence units for money laundering and terrorism financing cases" (C.26.10)

204. The FIU has been a member of the Egmont Group since June 2002 and would appear to co-operate effectively with the other members of the Group. It regularly attends the Group's meetings, including the working groups. It is linked to the other Egmont Group FIUs via the Egmont Secure Web (ESW) link. Aspects relating to international co-operation, including in the context of the Egmont Group, are dealt with in Chapter 6 of this report.

205. In 2008, the FIU signed the letter relating to the Egmont Group statement and principles. As an active member, the FIU has said that it pays particular attention to the Statement of Purpose and the Principles, reflected in the amendments to the law concerning the roles and responsibilities of the FIU.

[34] Article 47 of the LCPI, as amended on 18 June 2011 now provides that the FIU report does not include the declarations of suspect transactions submitted by the parties under obligation, nor their identity or that of the staff or members of the FIU involved in the processing of the case.

Recommendation 30

Structure and Resources (c.30.1)

206. Article 54 of the LCPI defines the composition of the FIU as follows:

> *"A maximum of* ***three people of acknowledged standing in the financial sector*** *who are appointed by the Minister of Finance.*
> *A judge appointed by the National Justice Committee (Consell Superior de la Justicia).*
> *A maximum of three members of the Police Service appointed by the Minister of the Interior following a proposal from the Director of Police."*

207. At the time of the 3rd evaluation, the FIU had 5 members of staff and it was said that there were plans to strengthen the staff complement by recruiting 2 additional persons. During the 4th round evaluation report, in addition to the Director, the FIU had four members of staff, as follows:

- a director
- two members assigned to the operational police department, responsible for investigations and financial analyses
- one person in the legal department, responsible for administrative and legislative matters, secretariat, supervision of financial organisations and other professionals, and international co-operation.

208. The administrative support position, existing in the organisation chart, was only recently vacant at the time of the on-site visit. In addition, there is the judge, appointed to the FIU part-time (estimated at 5%) by the National Justice Committee, to monitor and transmit to the public prosecutor's office the FIU files.

209. The authorities have said that the FIU has the necessary resources and technical structure to discharge its duties. The evaluation team does not share this opinion. At the time of the on-site visit, the FIU comprised 4 people, but it was clear that during the evaluation reference period, there were long occasions when posts remained unfilled, along with a significant turnover. There is also a clear lack of specialist staff that can carry out the many duties assigned to the FIU by the LCPI, in particular, staff competent on financial aspects. It should also be pointed out that the FIU has an additional responsibility under the Investments Act to carry out detailed verifications before issuing an opinion and during the on-site visit, this responsibility had been assigned full-time to one of the FIU members.

210. Furthermore, the premises housing the FIU during the visit were not appropriate. This criticism was also made during the 3rd round on-site visit, but had not been acted upon. On 18 May 2011 the Andorran government approved a proposal submitted by the Director of the FIU referring to a new organisational chart, technical equipment and the provision of new premises, together with an increase in staff.

211. Consequently, the evaluation team is of the opinion that the resources allocated to the FIU, given the fluctuations it has experienced in previous years and the posts that have remained unfilled do not enable the FIU to carry out its functions in the optimum way.

212. The following table shows the FIU budget trends:

Year	**TOTAL Euros**
2006	397,194.07

2007	325,000.50
2008	212,262.38
2009	135,200.52
2010	*
2011	*

213. The decrease in the budget in the period 2008-2009 was explained by the fact that the figures no longer included staff salaries, which were incorporated into the budgets of the specific ministries (Interior, Police, Justice, etc.). On average, the ratio is 55% for staff expenditure and 45% for operational expenditure. As the general state budget for 2010 and 2011 had not been approved by parliament, the budget for the previous year was extended. Consequently, the FIU has been working on the basis of the 2009 budget.

Professional standards (c.30.2)

214. The professional standards are set out in Article 54 of the LCPI which stipulates that FIU members and its administrative staff are bound by the duty of confidentiality in an employment or professional context, a violation of which may incur criminal penalties. The members appointed by the Interior and Finance Ministries may not perform any other public or private activity. Article 22 of the RLCPI was supplemented on 18 May 2011 and now provides that any authority or civil servant who has access to the information and documentation available to or provided by the FIU in the exercise of his or her duties is subject to a total duty of confidentiality.

215. Members of the judicial authorities and police officers swear an oath to abide by the laws of the Principality of Andorra and uphold the duties inherent in their functions, including the duty of confidentiality and professional discretion.

Training (c.30.3)

216. There is no initial or in-service training plan. Between 2008 and 2010, members of the FIU attended various training courses focusing on the following: Andorran legislation on money laundering, professional confidentiality, corruption, economic crime and money laundering. The information provided on this matter is not sufficient to conclude that the members of the FIU have satisfactory training in terms of initial and in-service training.

Statistics (Recommendation 32)

217. Article 20.4 of the RLCPI requires the FIU to compile and publish annually sufficient statistics to assess the effectiveness of the prevention of money laundering and the financing of terrorism. These statistics include:

- the number of declarations of suspect transactions and annual trends, with a breakdown by type of reporting party;
- the number of files opened by the FIU, and annual trends, with a breakdown by source (party under obligation, FIU or international body or other national bodies)
- the status of FIU files per year in terms of the stage reached (investigations, closed, transmitted to the public prosecutor's office) with a breakdown by source;
- an analysis of the distribution of the underlying type of crime in the files;
- the number of people or companies investigated by the FIU, with a breakdown by category (natural and legal persons);
- the number of prosecutions and convictions for money laundering, including information on the number of cases and people involved, and the assets and amounts seized and confiscated;
- the number of requests for information received by the FIU from foreign counterparts, broken down by country;

- the amounts frozen by the FIU per year;
- the number of requests for judicial assistance received from abroad, including information on the date of reception, the date of fulfilment and the origin.

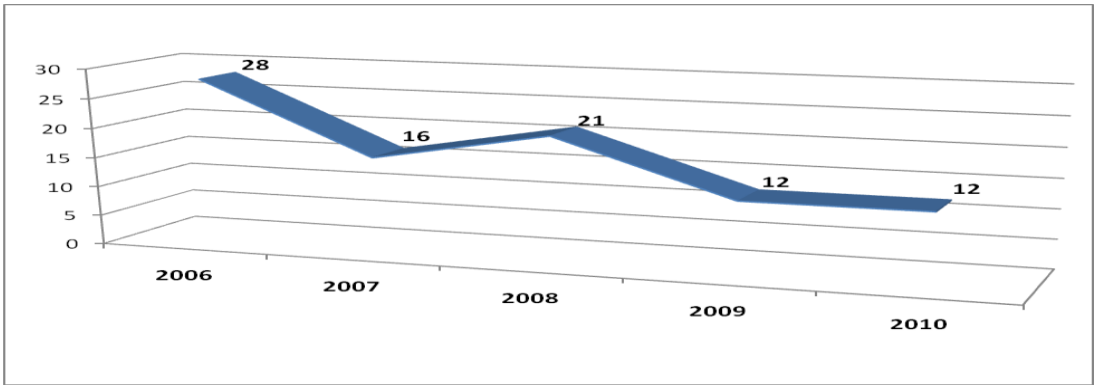
218. The FIU also keeps statistics on the number of requests for information sent to its foreign counterparts, although these do not appear to have been published in the annual report. It is also able to compile statistical data on information transmitted to other Andorran institutions.

Effectiveness/implementation of Recommendation 26 and assessment of overall compliance

219. As mentioned above, a number of factors lead the evaluation team to express some doubt as to the adequacy of the human and technical resources available to the FIU to successfully carry out the numerous tasks it has been assigned by the LCPI.

220. In particular, just one member of the FIU is responsible for the analysis work and in view of the IT resources available, the evaluation team has serious reservations about the FIU's ability to carry out an in-depth analysis of the information received. The FIU's analysis work is also closely linked to the information it receives. It has said that the quality of the declarations received from the parties under obligation has improved over the years. However, a number of factors, such as the low number of declarations received each year - compared with other states of a comparable size and financial sector - 2008: 25; 2009: 16; 2010: 21; 2011: 23 – the downward trend in declarations from the banking sector and the rising percentage of closed files, which may in itself be an indicator of poor or inadequate quality, raise questions as to the effectiveness of the analysis work. Moreover, the evaluation team was not entirely convinced by the explanations of the method applied in examining and analysing the information received.

221. Reservations were also expressed regarding the requirement for the FIU to provide guidelines for the parties under obligation, including on the manner of reporting, which seems to have been put into practice only in pursuance of the provisions of the LCPI and the RLCPI on the obligation to declare suspicions. This may have had an impact on the downward trend in STRs regarding money laundering received by the FIU from the banking sector, as shown in the chart below:



NB: This chart shows STRs from the banking sector (money laundering only).

222. The discussions held by the evaluation team with the parties under obligation clearly highlighted the need for the FIU to increase its guidance role and to undertake awareness-raising activities in the various sectors, in particular regarding the reporting obligation in the field of money laundering and terrorism financing.

223. Furthermore, it is clear that the FIU lacks analysts with detailed knowledge of the financial sector, since none of the three members stipulated in the LCPI had been appointed at the time of

the visit. There is also the need to ensure that there is an in-service training programme for staff with regular courses on investigations into money laundering and the financing of terrorism, particularly given the frequent changes in FIU staff.

224. Although the number of STRs received by the FIU is small, it is positive that following the cases opened by the FIU, on average a majority result in notification to the law-enforcement agencies and are accompanied by preparatory or investigation measures, which is a positive step forward compared with the situation in the last evaluation. This trend was also confirmed by the judicial authorities met in situ. At the time of the on-site visit, none seems to have resulted in a conviction[35].

225. With regard to the implementation of Recommendation 32, the evaluation team noted a number of discrepancies between the STR statistics received and those contained in the annual reports. Furthermore, given that the RLCPI explicitly states that the FIU shall publish annual statistics to assess the effectiveness of the prevention of money laundering and the financing of terrorism, it is essential to ensure that the annual report covers all relevant statistics, including, for example, a breakdown of STRs relating not only to money laundering, but also to the financing of terrorism or other underlying offence, and outgoing requests for international co-operation.

2.5.2 Recommendations and comments

Recommendation 26

226. The FIU should step up its awareness-raising and guidance activities with the parties under obligation, by drafting guidelines, recommendations and other guidance relating to the obligation to report suspicious financial transactions.

227. The FIU should take additional measures to ensure appropriate protection for the information and data that it holds.

228. The Andorran authorities should review the entire status of the FIU to ensure that it has sufficient independence and autonomy to successfully carry out its tasks, by means of clear and precise regulations such as to ensure that this institution is not subject to any undue influence or interference.[36]

Recommendation 30

229. To enable the FIU to fulfil its tasks appropriately, the Andorran authorities should take the necessary steps to ensure that it has adequate technical resources and qualified and sufficient staff, and ensure that the latter are given regular and relevant training in the field of anti-money laundering and combating the financing of terrorism.

230. With regard to the structure and members of the FIU, further clarification should be provided concerning the rules governing recruitment, appointment and dismissal.

Recommendation 32

[35] Several convictions were pronounced after the period of reference of the evaluation.
[36] See footnote above related to new office obtained in December 2011; the authorities indicated that these benefit from extra security measures.

231. The FIU should ensure that the annual statistics it compiles and publishes cover in a full and detailed way all the statistics which will make it possible to assess the effectiveness of ALM/CFT measures.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of reasons underlying the overall rating
R.26	**LC**	• Although the legislation contains general provisions on how to write STRs, the FIU has not elaborated standardised reporting forms for the various categories of subjected entities; • There remain a number of reservations regarding certain aspects concerning the administrative autonomy of the FIU, which is not sufficiently guaranteed by the rules in force (e.g. as regards the appointment of the director and staff, their dismissal, lack of internal rules including on the duration of secondment / appointment of staff from other institutions). • The current measures do not offer satisfactory protection of the data held by the FIU;[37] • Effectiveness: the way the FIU operates raises a number of questions - 1) the human, financial and technical resources allocated to the FIU and the numerous tasks it has been assigned do not enable it to carry out satisfactorily its main functions; 2) reservations are expressed regarding the FIU's analysis function and on the methodology applied.

2.6 Cross-border declaration and disclosure (SR.IX)

2.6.1 Description and Analysis

Special Recommendation IX (rated NC in the 3rd round evaluation report)

Summary of reasons for the 2007 MER rating

232. The Principality of Andorra was rated non-compliant in the 3rd round report in respect of SR.IX, as no measures had been taken to ensure implementation of this recommendation. Furthermore, it had been recommended that the authorities involve the customs service more clearly – in law and in practice – in the AML/CFT machinery.

Declaration system (C.IX.1) & in the event of a false declaration or failure to declare, the authority to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments (C.IX.2)

233. There have been no major changes to the situation as described in the 3rd round: to date there is still no mechanism for the declaration or control of cross-border transportation of currency or bearer negotiable instruments. Consequently, the descriptive elements in the 3rd round report remain relevant and are not repeated in this section. The Principality has still not implemented the vast majority of the essential criteria set out in Special Recommendation IX.

Ability to stop or restrain currency or negotiable instruments (C.IX.3) & conservation of information collected (C.IX.4)

[37] See footnote above related to new office obtained in December 2011; the authorities indicated that these benefit from extra security measures.

234. The authorities stated that in application of Law No. 5/2004 of 14 April 2004 on the Customs Code, officials of the customs services may detain goods or assets which they suspect are linked to an unlawful activity constituting a criminal offence, such as money laundering or the financing of terrorism. Article 7.6 is worded as follows:

> *"6.* ***In the event that customs officials discover****, in the exercise of their duties,* ***any unlawful activity relating to merchandise which could*** *prove dangerous to health or security, assets derived from international fraud or an unlawful market which could harm the legitimate interests of international trade and which could* ***constitute a criminal offence, they shall immediately report this to the police services and detain the individuals in question until the arrival of the police officers, unless such action represents a danger for themselves or others****."*

235. It was, however, confirmed during the visit that the physical checks carried out by customs officers focused exclusively on merchandise and not currency or bearer negotiable instruments. Accordingly, this provision, which refers to unlawful activities relating to merchandise cannot be seen as relevant in this context for enabling officers to stop or restrain currency or bearer negotiable instruments, as required by these criteria.

Notification of information to the FIU (C.IX.5)

236. The authorities consider that the customs services are parties under obligation in application of Articles 45 and 46 of the LCPI (including with regard to the obligation to declare any suspicions). Similarly, under Article 22 of the RLCPI on co-operation between the authorities and civil servants, any authority – including the customs services – which discovers facts that could constitute evidence or proof of money laundering or the financing of terrorism must report this to the FIU in writing and provide the FIU with the information it requests in the exercise of its duties.

237. During the on-site visit, it was stated that two declarations of suspicion had been made by the customs services to the FIU over a five-year period. It was, however, added that these STRs related exclusively to checks on merchandise (primarily transport of merchandise with no economic motive).

238. The customs services stated that the FIU had not requested nor did it have access to their databases.

Co-ordination between competent departments (C.IX.6)

239. The authorities stated that co-ordination at national level took place via periodic meetings held during the period 2009-2010 by the FIU with senior customs officials, who appointed an ALM/CFT officer who is also a (non-permanent) member of the Standing Committee on anti-money laundering and combating the financing of terrorism.

240. In view of the reservations expressed regarding implementation by the Andorran authorities of SR.IX, it cannot be concluded that there is actual co-ordination between departments for this purpose. Furthermore, the exchanges in situ gave rise to doubts as to an effective exchange between the police services (in their border control duties) and the customs services in the event of discovery of currency.

Co-operation and mutual assistance at international level (C.IX.7)

241. Several provisions of the Customs Union Agreement of 28 June 1990 relate to co-operation and mutual assistance between the Andorran customs services and those of EU member states. In addition, Andorra and the European Union have signed administrative assistance agreements in the customs field enabling the communication and exchange of information gathered following a customs operation. Consequently, if a customs operation had a connection with a money-laundering operation, there are co-operation and information exchange mechanisms available to the customs services. The corresponding notification would subsequently be transmitted to the FIU.

242. To date, the Andorran customs services do not appear to have exchanged information on the physical cross-border transportation of currency with their foreign counterparts. In view of their attributions, powers and the general framework for the application of legislation, and in the absence of a mechanism for the declaration and control of cross-border transportation of funds and other bearer negotiable instruments, it is difficult to conclude that they are able to co-operate satisfactorily at international level.

Sanctions in the event of false declaration (C.IX.8); Sanctions in the event of physical transport of currency or bearer negotiable instruments related to terrorist financing or money laundering (C.IX.9); Application of Recommendation 3 (C.IX.10) & Application of SR.III (C.IX.11); Unusual cross-border movement of gold, precious metals or precious stones(C.IX.12); Regulations governing the use of data (C.IX.13)

243. There have been no changes since the last evaluation and consequently these criteria remain unsatisfied.

Additional elements (C.IX.14 & C.IX.15)

244. There have been no changes since the last evaluation.

Recommendation 30

245. The authorities consider that the customs services have the necessary human resources to fulfil their current duties. With regard to technical resources, a new programme to cover the IT needs of the Ministry of Economy and Finance is currently being drawn up.

246. Hierarchically, the customs services come under the Ministry of Economy and Finance. During the visit, it was also stated that thought was currently being given to reforming the customs services, from the point of view of both organisation and responsibilities, and that in this process consideration would be given to improving their autonomy.

247. Staff of the Andorran customs services are bound by a duty of confidentiality and professional secrecy, as provided for in Article 4 of Law No. 5/2004 of 14 April 2004 on the Customs Code. National legislation also establishes incompatibility rules, set out in Section 61 of the Civil Service Act of 15 December 2000, which in general terms prohibits civil servants in the departments in question from carrying out professional activities which could be in conflict with the exercise of their public duties. In addition, the Decree of 7 July 2010 approved the Regulation on the Code of Conduct regarding the image, distinctions, rewards and recompenses of members of the customs services, which includes a series of recommendations and incompatibilities based on the recommendations of the World Customs Organisation in the field of ethics, set out in the Arusha Declaration of 7 July 1993, revised in June 2003.

248. It was also stated that the service had set up an ALM/CFT specialisation programme for a group of officers, responsible for training customs officers in order to ensure greater effectiveness in this field. This training should be revised and supplemented.

249. It cannot be firmly concluded from the information received that the customs services have sufficient operational independence and autonomy, and there are still questions about the adequacy of resources, especially where the customs services are required to fully implement the criteria set out in Special Recommendation IX.

Recommendation 32

250. The Customs services compile a series of statistics relating to the detention of merchandise (type of merchandise, quantity, value, means of transportation, offence, destruction, confiscation or criminal charges). Mention was also made of two declarations made to the FIU, as referred to above, relating to checks on merchandise. The evaluation team noted that such declarations were made following an informal consultation procedure with the FIU, to ascertain whether the facts contained in the declaration would enable the FIU to act. The information gathered by the team during the visit leave some doubt about the timeframe within which this kind of declaration would reach the FIU.

251. In the absence of a detection system and corresponding measures, the Principality of Andorra does not have statistics on the declarations made regarding the physical cross-border transportation of currency and bearer negotiable instruments, as required by R.32.

Effectiveness/implementation of Special Recommendation IX

252. It is surprising to note that the Principality of Andorra has still not taken the necessary steps to implement SR.IX, despite the recommendations to this effect in the previous evaluation report.

253. This lack of action raises serious questions for the evaluation team regarding the ability of the authorities to detect and prevent the unlawful physical cross-border transportation of currency and bearer negotiable instruments, and the ability to co-operate at international level with their foreign counterparts.

2.6.2 Recommendations and Comments

Special Recommendation IX

254. It is therefore strongly recommended that the Andorran authorities take, as a matter of urgency, the necessary measures to implement Special Recommendation IX in its entirety.

Recommendation 30

255. Following the adoption and implementation of these measures, it is also recommended that the authorities analyse the impact of the measures on the resources (human, financial, technical, training, etc.) of the competent departments and the staff responsible for implementing SR.IX on the ground, and to take any required remedial action in order to ensure that the competent authorities appointed are able to carry out their tasks fully and effectively, and in complete independence.

Recommendation 32

256. The competent authorities should introduce a system enabling them to keep annual statistics on declarations made regarding the cross-border transportation of currency and bearer negotiable instruments.

2.6.3 Compliance with Special Recommendation IX

	Rating	Summary of reasons (relating to section 2.6) for the overall rating
SR. IX	**NC**	• Andorra has still not implemented measures for the detection of cross-border transportation of cash and bearer securities, including a system of declaration or reporting, nor has it implemented the other criteria set out in SR.IX.

3 PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Legislation, regulations and other AML/CFT measures

257. The principal sources of AML/CFT obligations are the Act on international criminal co-operation and the fight against the laundering of money (LCPI) of 11 December 2008 and the implementing regulation of the LCPI of 13 May 2009. These two pieces of legislation, which reformed the previous legislation in a number of respects, were the subject of amendments that entered into force after the on-site visit, more precisely on 25 May 2011 for the RLCPI and 18 June 2011 for the LCPI.[38] The distribution of roles between these two texts is sometimes not always sufficiently clear, since, although the RLCPI should specify and clarify the principles and obligations laid down in the LCPI, in some cases the RLCPI establishes autonomous obligations not expressly set out in the LCPI.

258. The other additional legislation mostly corresponds to technical communiqués from the FIU, the issuance of which is expressly permitted by the LCPI or the RLCPI and which are binding. Andorran law leaves it to the FIU's technical communiqués to establish standards and describe in more detail the requirements imposed by the LCPI in a wide variety of fields (freezing the funds of designated parties, identifying transactions involving a low AML/CFT risk, indicating criteria to be followed for internal audits, listing countries at risk from the standpoints of money laundering and terrorist financing, and so on).

Customer due diligence and record-keeping

3.1 Risk of money laundering or terrorist financing

259. The LCPI and the RLCPI cover all activities and operations carried out within financial institutions and DNFBPs listed in the FATF Methodology Glossary.

260. These two pieces of legislation have introduced a risk-based approach regarding the application of customer due diligence measures. The LCPI provides for greater vigilance where the customer is not physically present, in cross-border correspondent banking relations and in respect of customers identified as politically exposed persons (PEPs). These three categories to be considered as posing a greater risk are based on the risk-based approach set out in Article 12 of EU Directive 2005/60 and are not the result of an assessment of risks specific to the Andorran financial system. The RLCPI also provides that enhanced due diligence measures must be applied in cases where a risk analysis reveals a higher risk of money laundering or terrorist financing and for commercial relationships and transactions relating to countries with a high risk of money laundering and financing of terrorism.

261. The circumstances in which simplified due diligence measures can be applied are also largely based on EU Directive 2005/60 (cf. C.5.8). Simplified due diligence can also be applied to products or transactions involving a low risk of money laundering or terrorist financing expressly covered by a technical communiqué from the FIU. To date, no technical communiqué along these lines has been published.

[38] In accordance with the procedural and methodological rules, the evaluation team took into account the laws, regulations and other AML/CFT measures that were in force and effective at the time of the visit to Andorra and the period immediately thereafter (not more than two months). Accordingly, since the on-site visit ended on 26 March 2011, for the purpose of the ratings given in this evaluation report, only the provisions of the RLCPI were taken into account by the evaluators. Information on amendments to the revised LCPI since that date is solely included in the footnotes.

262. There is a real need to conduct a global study of the money laundering and terrorist financing risks specific to Andorra so as to ensure that the risk-based approach adopted is truly consistent with the risks identified.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and analysis

Recommendation 5 (rated NC in the 3rd round evaluation report)

Reasons underlying the rating in the MER of 2007

263. Andorra was rated non-compliant in the 3rd round report concerning R.5 on account of the many deficiencies identified in transposing customer due diligence requirements.

General

264. The customer due diligence requirements incumbent on Andorran financial institutions have been significantly supplemented and reinforced by the LCPI and its implementing regulation, and many of them have also been based on EU Directive 2005/60/EC.[39]

Anonymous accounts and numbered accounts (C.5.1)

265. Article 49 of the LCPI clearly states that anonymous accounts and passbooks are prohibited.

266. Although, pursuant to the same article, parties under obligation must ascertain the identity of their customers and of beneficial owners by requiring them to present an official document, there is no express prohibition on keeping accounts in fictitious names. The Andorran authorities indicated that, although there is no express prohibition, the measures taken under article 49 of the LCPI would be such as to guarantee that financial institutions did not keep accounts in fictitious names.

267. Notwithstanding information that use of numbered accounts was particularly widespread in Andorra, at the time of the visit no legal or regulatory provision stipulated how such accounts should be managed and, in particular, that in these cases the customer identification documents must be accessible by the AML/CFT compliance officer, other appropriate members of staff and the competent authorities. It nonetheless emerged from the discussions with financial institutions that, in practice, these requirements were respected when using this type of account.

268. The Andorran authorities specified that a number was used instead of a customer's name solely for a bank's internal communication purposes, and all the oversight bodies, including the AML/CFT compliance officer and the internal and external auditors, had access to the register showing the number corresponding to each name. The authorities consider that the LCPI requirements apply without restriction to numbered accounts, that is to say that other contracting parties' identities are checked, financial rights holders are identified and the economic background to transactions is clarified, in exactly the same way as for non-numbered accounts. In other words, the Andorran authorities consider that all the due diligence requirements in force for non-numbered bank accounts also apply to numbered accounts.

[39] It should be noted that Andorra is no way required to transpose EU Directive 2005/60/EC. After the on-site visit, on 30 June 2011, an agreement was concluded with the European Union whereby Andorra undertook to transpose the European anti-money laundering standards into domestic law within a predetermined timeframe.

269. On 25 May 2011 a decree supplemented article 3 of the implementing regulation of the LCPI, which now specifies that, for numbered accounts, financial institutions are required to keep documents establishing their customers' true identities at the disposal of the internal oversight bodies, the FIU and other competent authorities. However, article 3 of the RLCPI, as amended, makes no explicit provision for such documents also to be accessible by other appropriate members of the financial institution's staff.

Situations in which due diligence measures must be applied (C.5.2)

270. Article 49 of the LCPI provides that parties under obligation must identify customers and their beneficial owners when establishing any business relationship. (criterion 5.2.a)

271. Article 49 bis of the LCPI confirms that parties under obligation are required to verify the identity of customers and, if necessary, their beneficial owners before carrying out any transaction or establishing any business relationship. However, the same article establishes exemptions from this requirement.

272. This applies, in particular, where an exemption is necessary so as not to pose obstacles to the performance of a transaction, provided that the risk of money laundering or terrorist financing is slight. The identification process must then be conducted as soon as possible thereafter.

273. Similarly, with regard to life insurance, the due diligence requirements may be carried out after a policy is contracted, provided this is done before any payout is made or before the beneficiary can exercise rights vested under the policy.

274. Lastly, a third exemption exists for the opening of bank accounts, provided no transaction is carried out until the identification requirements have been complied with.

275. These exemptions are not provided for in the FATF Recommendations.

276. Article 3 of the implementing regulation of the LCPI also provides for a derogation from the due diligence requirements for occasional customers of banking entities requesting the performance of transactions with a value equal to or less than €1250 (whether in one transaction or several transactions that appear related). This €1250 threshold is lower than that provided for in the FATF Recommendations (€15 000) (criterion 5.2.b).

277. Article 49 bis of the LCPI also provides that cross-border transfers for amounts of more than €1000 must include full details of the ordering party (name, account number, transaction identification number making it possible to trace the ordering party, the ordering party's address or date and place of birth or that party's account number or national ID number), which entails that the ordering party's identity be ascertained beforehand. This raises the question of the due diligence requirements in respect of cross-border transfers of amounts between €1000 and 1250, the limit beyond which customer identification is clearly obligatory (criterion 5.2.c).

278. The authorities clarified the difference between these two limits by reference to the current practice of financial institutions, which carry out transactions solely for regular customers who have opened accounts with them. The €1000 limit applies solely to transfers necessitating a source account and is accordingly not relevant to occasional customers, who are not offered the possibility of making such transfers. The €1250 limit applies to transactions carried out by occasional customers such as cashing cheques, exchange of foreign currency, making payments into customer accounts and so on.

279. The fact remains that this practice does not follow from a regulation and that a transfer of an amount between €1000 and 1250 could potentially be carried out by an occasional customer

without the prior identification requirements being applicable. [additional clarifications AND whether there is a binding rule on the existence of an account]

280. At the time of the visit there was no obligation to apply the due diligence requirements in the event of suspected money laundering or terrorist financing regardless of any exemptions or thresholds (criterion 5.2.d). Article 3 of the implementing regulation of the LCPI, as amended since 25 May 2011, now specifies that, where there is a suspicion of money laundering or terrorist financing, undertakings are required to ascertain and verify the customer's identity without any exemption or minimum threshold, as determined elsewhere, being applicable.

281. Similarly, there is no specific requirement where the undertaking has doubts about the veracity or the adequacy of previously obtained customer identification data (criterion 5.2.e). Article 3 of the RLCPI, as amended, now specifies that undertakings are required to ascertain and verify customers' identities where doubts arise about the veracity of the documents, data or any other information previously obtained with a view to ascertaining or verifying that customer's identity.

Required due diligence measures (C.5.3 and C.5.4)

282. Article 49 of the LCPI provides in particular that parties under obligation must ascertain the identity of customers and their beneficial owners via presentation of an official document when establishing any business relationship.

283. These measures concern both natural and legal persons.

284. The manner in which the verification of these identification measures is to be performed is set out in article 6 of the implementing regulation of the LCPI. At the time of the on-site visit, article 6.1 provided inter alia that financial institutions should take measure to verify the identity of customers and beneficial owners and their professional or business activities on the basis of procedures taking into account the levels of risk and by obtaining information from the customer **or** a third party. For high-risk customers article 6.3 makes its obligatory to verify additional information (such as checking their permanent address through an information agency, seeking references from other parties or verification of their occupation). Apart from for high-risk customers, there is no requirement to corroborate the information obtained (in particular regarding the business activity) with other reliable, independent sources.

285. With regard to customers who are legal persons, in drafting article 6.4 the authorities drew on the examples of information given in the General Guide to Account Opening and Customer Identification issued by the Basel Committee's Working Group on Cross-Border Banking. This article stipulates that to verify information the financial institution must use at least one of the five methods provided for in the regulation[40] or another equivalent method. Although the first four methods seem to comply, corroboration by means of contacts with the undertaking by telephone, ordinary post or electronic mail can scarcely be considered to constitute a reliable, independent source, where it is the sole method utilised.

[40] Article 6.4 of the RLCPI provides: "In the case of legal persons, parties under obligation must verify the information by, at least, one of the following methods or another equivalent method:
a) Obtain a copy of the last annual accounts.
b) Information obtained from public registries.
c) Information obtained from an information agency or a prestigious public accounting firm.
d) References provided by other parties under obligation which are subject to the Andorran legislation or that of another country that imposes equivalent requirements to those of the Andorran legislation on money laundering and the financing of terrorism.
e) Contacts with the legal person- by telephone, ordinary post or electronic mail."

286. Article 6 of the RLCPI, as amended on 25 May 2011, now provides that financial institutions must take appropriate measures to verify the identity of customers that are legal persons and their professional or business activities by means of documents and data obtained from reliable, independent sources, in accordance with the requirements of criterion 5.3. For customers who are legal persons, the requirements of criterion 5.3 concerning verification by means of reliable, independent source documents or data are unfortunately not met in full, since the wording of the new article 6, paragraph 6 is identical to the former wording of article 6.4.

287. For customers who are legal persons, article 49 of the LCPI provides inter alia that the body under obligation must require:

- "An authentic document accrediting its name, legal form, registered office and corporate purpose.
- Justification of the identity of the individual who, according to the documentation presented, has powers to represent the entity and of the powers granted."

288. This obligation is clarified by article 4 of the implementing regulation of the LCPI on the identification of legal entities and the understanding of control structures, which specifies inter alia that:

- "1. The parties under obligation identify legal persons and their beneficial owners, in the terms foreseen in article 49 of the Act, adopting adequate measures to understand the shareholding structure and control. 2. For legal persons in the process of incorporation, the natural person or persons applying for the incorporation must be identified. Operations other than payments and charges deriving from the incorporation of the entity are not permitted until the legal person has been legally incorporated and the documents foreseen in the previous paragraph have been received.
- 3. In the case of mutual societies, associations, co-operatives and retirement funds, the individuals who exercise control or have significant influence over the assets of the organisation must be identified.
- 4. As regards charitable organisations, clubs and non-profit associations, the adoption of the necessary measures to identify and verify the identity of at least two agents or responsible principals, and the identity of the entity. Responsible principals are considered to be persons who exercise control or a significant influence over the assets of the organisation, such as the members of a management body or committee, the chairman, members of the board, and the treasurer."

289. At the time of the visit, these measures provided for under the legislation and regulations solely concerned customers who are legal persons. There was no provision concerning trusts and legal arrangements. Article 6, paragraph 4 of the RLCPI as amended on 25 May 2011 now expressly covers legal persons, other legal entities, contractual fiduciary arrangements and other fiduciary structures.

290. Nor was there any requirement to obtain information concerning the names of senior management (for legal persons) or administrators (for trusts) and the provisions governing their powers to commit the legal person or legal arrangement.

291. Article 6, paragraph 4 of the RLCPI, as amended on 25 May 2011, now requires that, for legal persons, other legal entities, contractual fiduciary arrangements and other fiduciary structures, firstly, a verification shall be made of the representative's authorisation to act and the latter's identity shall be ascertained and verified and, secondly, the names of trustees (in the case of contractual fiduciary arrangements and other fiduciary structures), directors (for companies) and the legal provisions governing the link between the entity represented and the acts performed by the authorised representative shall be verified. Legal persons who exercise effective control over these entities by any other means must also be identified.

Identification and verification of the identity of the beneficial owner (C.5.5, C.5.5.1 and C.5.5.2)

292. Article 49 of the LCPI provides in particular that "parties under obligation must ascertain the identity of customers and their beneficial owners via presentation of an official document when establishing any business relationship."

293. This provision is supplemented by article 49 bis of the LCPI providing "parties under obligation must diligently verify the identity of customers and, if necessary, their beneficial owners before establishing any business relationship or carrying out a transaction." Following the on-site visit, the amendment of article 6 of the implementing regulation of the LCPI added that, in all cases, financial institutions must determine whether a customer is acting on behalf of a third party and, where that is the case, obtain sufficient information to ascertain the third party's identity.

294. Article 41 of the LCPI defines the concept of true right-holder or beneficial owner. This is "the natural persons or individuals who ultimately control the customer and/or individual on whose behalf a transaction or activity is conducted."

295. It is also stipulated that "the right-holder includes, at least:
- In the case of legal persons in the form of a company, the individual or individuals who ultimately control the legal person through direct or indirect ownership or control of a sufficient percentage of its shares or voting rights. For these purposes a percentage of over 25% will be considered sufficient.
- In the case of other legal entities, contractual fiduciary arrangements and other fiduciary structures which administer and distribute funds, the individual or individuals who control over 25% of the funds or the voting rights."[41]

296. Although there was indeed an obligation to identify the true right-holder, it must be said that, at the time of the visit, verification of identity did not entail use of relevant information or data obtained from a reliable source, such that the undertaking would obtain sufficient knowledge of the identity of the beneficial owner. Article 6.1 of the RLCPI as amended on 25 May 2011 introduces a requirement for parties under obligation to identify the beneficial owner and take reasonable measures so as to verify identity by means of documents or data obtained from reliable, independent sources.

[41] It should be noted that Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011, defined the concept of true right-holder or beneficial owner as follows:
"Article 1. Amendment of article 41
1. *Article 41 g) of the Act on International Criminal Co-operation and the Fight against the Laundering of Money and Securities Deriving from International Delinquency shall be amended as follows:*
"g) True right-holder or beneficial owner: individual or individuals who ultimately control the customer and/or individual on whose behalf the transaction or activity is being conducted. The beneficial owner includes at least:
- In the case of legal persons in the form of a company:
** the individual or individuals who ultimately control the legal person through direct or indirect ownership or control of a sufficient percentage of its shares or voting rights. For these purposes a percentage of over 25% will be considered sufficient.*
** the individual or individuals who effectively manage it by any other means,.*
with the exception of companies listed on regulated stock exchanges of countries that impose reporting requirements consistent with international standards, who are deemed beneficial owners.
- In the case of other legal entities, contractual fiduciary arrangements and other fiduciary structures which administer and distribute funds:
** where the future beneficiaries have been designated, the individual or individuals benefiting from over 25% of the funds;*
** where the future beneficiaries have not been designated, the category of persons for whose benefit the entity or legal arrangement was established or on whose behalf it principally acts;*
** the individual or individuals who effectively manage the entity or legal arrangement by any other means."*

297. The Andorran authorities consider that, pursuant to article 49 of the LCPI, bodies under obligation must know the identity of their customers and beneficial owners and the identity of persons acting on behalf of legal persons, which consequently includes situations where a person acts on behalf of a third party.

298. While this interpretation does not follow directly from the wording of this article, it should be noted that, at the time of the visit, articles 3 and 6 of the implementing regulation of the LCPI clearly concerned the identification of the "true owner" of the relationship. These articles were amended on 25 May 2011 and now expressly refer to the beneficial owner.

299. With regard to omnibus accounts, it should first be said that article 8 of the implementing regulation of the LCPI provides that the financial party under obligation shall not be obliged to verify the beneficial owner where an omnibus account is opened for a financial entity subject to Andorran law or a credit or financial entity established or subject to supervision in an OECD country which imposes requirements equivalent to those of Andorran law.

300. It is nonetheless specified that where the funds are distributed to sub-accounts which may be attributed to each beneficial owner separately, all the beneficial owners of the account must be identified.

301. Although the issue of omnibus accounts seems to be properly addressed by authorising this type of account solely for the benefit of financial undertakings subject to AML/CFT requirements, the question of lawyers' professional accounts nonetheless remains to be clarified, since lawyers may receive funds on behalf of their clients (in particular in civil law proceedings) without a financial undertaking being able clearly to identify the real beneficial owner of the transaction.

302. As already mentioned, article 4 of the implementing regulation of the LCPI deals with the identification of legal entities and the understanding of control structures and stipulates that parties under obligation must identify customers that are legal persons and their beneficial owners by adopting appropriate measures to understand their shareholding structure and control.

303. The concept of beneficial owner is itself defined in point g) of article 41 of the LCPI (see above).[42]

304. Simplified due diligence measures that do not require identification of the beneficial owner are established under article 8 of the implementing regulation of the LCPI in particular for transactions carried out by a company listed on a regulated stock exchange of a country which imposes requirements equivalent to those of the Andorran legislation on money laundering and the financing of terrorism.

305. It should be noted that, at the time of the visit, article 4 of the regulation solely concerned legal persons and said nothing about legal arrangements. The amendment of article 6 of the RLCPI on 25 May 2011 remedied this shortcoming since it covers "other legal entities, contractual fiduciary arrangements and other fiduciary structures."

306. The definition of the beneficial owner of a legal person in article 41 of the LCPI seems incomplete. In particular it does not concern natural persons who constitute the brains behind or

[42] See the above footnote.

the management of a company.[43] At the same time, the definition of the beneficial owner of a trust does not concern the settlor or the beneficiaries.[44]

Information on the purpose and intended nature of the business relationship (C.5.6)

307. Article 49 d) of the LCPI provides in particular that parties under obligation shall be required to obtain information on the purpose of the business relationship with the customer.

308. This provision is supplemented by point 1 of article 5 of the implementing regulation of the LCPI, which also stipulates that parties under obligation must obtain information on the purpose of the business relationship.

309. The existing provisions indeed require that information be obtained on the purpose of the business relationship with the customer, but do not cover the intended nature of this relationship.

Due diligence on the business relationship (C.5.7, C.5.7.1 and C.5.7.2)

310. Article 49 of the LCPI stipulates that the data collected must be updated so that the customer can be correctly identified when establishing the business relationship or carrying out a transaction susceptible of involving money laundering or terrorism financing.

311. Point 2 of article 5 of the implementing regulation of the LCPI provides that parties under obligation must continue to monitor transactions and the business relationship with their customers, to ensure they are consistent with the activities as declared by those customers. It is also stipulated that this continued monitoring must include transactions carried out, with the purpose of ensuring that they are consistent with the knowledge the party under obligation has of the customer, its business, its risk profile and, where necessary, the source of the funds.

312. The subsequent points of the same article provide that, where, on account of the quantity or the conditions of execution, a requested transaction does not correspond to the normal activity or usual operational pattern of the customer, parties under obligation shall request whatever document they consider necessary to justify the transaction.

313. Parties under obligation must request this documentation in the following situations:
- When the customer carries out a transaction for a very significant amount in comparison with normal transactions.
- When there is a substantial change in the normal functioning of the account.
  or
- In other situations where the financial party under obligation considers it necessary, taking account of a risk analysis of the transaction.

314. It should be pointed out that article 50 of the LCPI provides that compliance with the obligations referred to in article 49 (which in particular include transactions supervision) can be delegated to third parties. This possibility of delegating responsibility for transactions supervision is not compliant with the FATF Recommendations.

Enhanced due diligence measures (C.5.8)

[43] See the above footnote. Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011, amended g) of article 41 of the LCPI by introducing an express reference to the mastermind of the legal person or, by any other means, effectively runs it.

[44] See the above footnote. Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011, amended g) of article 41 of the LCPI by introducing an express reference to the beneficial owner of other legal entities, contractual fiduciary arrangements and other fiduciary structures that administer and distribute funds.

315. The conditions in which enhanced due diligence measures must be applied are set out in article 49 quater of the LCPI, which is largely based on the provisions of article 13 of the Third EU Directive. Parties under obligation must, in accordance with a risk analysis, apply enhanced due diligence measures in situations which, by their nature, can involve a higher risk of money laundering or terrorist financing, and at least in the following situations:
- when the customer was not physically present for identification
- in correspondent banking relationships with respondent foreign entities (cf. Recommendation 7)
- in relation to transactions or business relationships with politically exposed persons who reside abroad (cf. Recommendation 6).

316. Although the parties under obligation are required to apply enhanced due diligence measures to customers considered as high risk, the cases in which customers are regarded as such appear limited. They could, for example, be extended to companies having nominee shareholders. Article 3 of the RLCPI, as amended, prohibits financial institutions from having a business relationship with natural or legal persons who own shares in bearer form where it proves impossible to determine the underlying ownership and control structure.

Reduced or simplified due diligence measures (C.5.9)

317. Article 49ter of the LCPI provides for a number of situations in which simplified due diligence measures may be applied.

318. For instance, where the customer is a financial party bound by the LCPI or a credit or financial entity established in an OECD country that imposes requirements equivalent to those laid down in Andorra and is subject to supervision, none of the due diligence measures laid down in article 49 of the LCPI is compulsory.

319. The same applies in the following cases, provided for in paragraph 2 of article 49 ter:
- Life assurance policies with annual premiums not exceeding €1000 or a single premium not exceeding €2500.
- Insurance policies for pension plans provided they do not include a surrender clause and they cannot be used as collateral for a loan.
- Pensions and similar plans which include the payment of retirement benefits to employees, where the contributions are made by way of deductions from salary and the plan rules do not permit the assignment of the participation in the plan.
- Electronic money when the maximum amount stored is not more than €150, if the device is not rechargeable, or the total amount available in any calendar year is limited to €2500, except when the bearer requests the reimbursement of a sum of €1000 or more during the same year.
- Other products or transactions involving a low risk of money laundering or terrorism financing in accordance with the FIU's technical communiqués.

320. Article 8 of the RLCPI specifies that financial entities are also not obliged to apply the due diligence measures provided for in article 49 of the LCPI in the case of opening of global or omnibus accounts on behalf of diverse beneficial owners where the account is opened on behalf of a financial party subject to the LCPI or another credit or financial entity established or subject to supervision in an OECD country that imposes conditions equivalent to those of Andorran law.

321. In addition, article 8 of the RLCPI stipulates that transactions can be considered to represent a low risk of money laundering or financing of terrorism where they are carried out:
a) by companies listed on a regulated stock exchange of a jurisdiction which imposes requirements equivalent to those of the Andorran legislation on money laundering and the financing of terrorism;

b) by Andorran or foreign companies under regulatory control that mandatorily requires the identification and verification of their beneficial owners, located in Andorra or in a jurisdiction which imposes requirements equivalent to those of the Andorran legislation on money laundering and the financing of terrorism;
c) by institutions, bodies and other entities that form part of the Andorran public administration, which are acting in their own name.

322. The evaluators were informed that, so far, the FIU has issued no technical communiqué identifying other products or transactions as representing a low risk of money laundering or terrorist financing.

323. It should first be noted that, albeit broadly based on the Third EU Directive, the simplified due diligence measures provided for in article 49ter of the LCPI go well beyond the measures envisaged by the FATF (namely a simplification of measures to verify the identity of customers) since, in the cases covered by the legislation, none of the due diligence measures provided for in article 49 is applicable, particularly concerning transactions monitoring. The Andorran authorities consider that article 49ter implicitly entails an obligation to collect information such as to prove that the customer fulfils the exemption criteria under this article.

324. Moreover, according to article 8 paragraph 3 b) of the RLCPI, the Andorran legislation provides for the possibility, under a technical communiqué from the FIU, of applying simplified due diligence measures to "Andorran or foreign companies under regulatory control that mandatorily requires the identification and verification of their beneficial owners, located in Andorra or in a jurisdiction which imposes requirements equivalent to those of the Andorran legislation on money laundering and the financing of terrorism". During the discussions with the financial institutions and the FIU the evaluators were unable to determine which companies could be covered by this measure, which does not correspond to any of the cases envisaged by the FATF. The Andorran authorities underlined however that, without a technical communiqué from the FIU on this matter, financial institutions could not apply simplified due diligence measures to this type of customer.

325. Although the evaluators were informed that, so far, the FIU has issued no technical communiqué identifying other products or transactions as representing a low risk of money laundering or terrorist financing, the possibility of using technical communiqués to extend the list of products or transactions representing a low risk in AML/CFT matters could exceed the limits envisaged by the FATF.

Simplified or reduced due diligence measures applicable to customers resident in another country (C.5.10)

326. As mentioned above, under article 49 ter of the LCPI simplified due diligence measures can be applied where the customer is a credit or financial entity established in an OECD country that imposes requirements equivalent to those laid down in Andorra and is subject to controls to ensure compliance with those requirements.

327. During the on-site visit it transpired that article 8 of the implementing regulation of the LCPI specified that, to allow financial institutions to fulfil the requirements of article 49 ter, the FIU must draft a list of countries which impose requirements equivalent to those required by Andorran legislation on the prevention of money laundering and financing of terrorism. Article 8 as amended on 25 May 2011 now provides that it is possible, not obligatory, for the FIU to issue such communiqués.

328. The authorities informed the evaluators that, to date, it has not been deemed necessary to draw up a list of countries which impose requirements equivalent to those required by Andorran

legislation in respect of simplified due diligence measures, with the result that such measures are not applied. The evaluators nonetheless note that the amendment to article 8 makes it possible for financial institutions to draw up their own list of countries with equivalent requirements, even if, at the time of the on-site visit, no such list had yet been elaborated.

Simplified due diligence measures and suspicions of money laundering or terrorist financing (C.5.11)

329. Neither the LCPI nor its implementing regulation, as in force at the time of the visit, explicitly state that simplified due diligence measures cannot apply whenever there is a suspicion of money laundering or terrorist financing. The amendment made to article 3 b) of the RLCPI on 25 May 2011, concerning due diligence measures, now imposes an obligation to identify and verify the identity of the customer and the beneficial owner where there is a suspicion of money laundering or terrorist financing, without any exemption or minimum threshold determined under other legislation being applicable, but it does not expressly concern simplified due diligence measures. The evaluators cannot rule out a problem regarding the hierarchy of norms between the RLCPI and the LCPI.[45]

Guidelines issued by the competent authorities concerning a risk based approach (C.5.12)

330. Article 9 of the implementing regulation of the LCPI stipulates that, in addition to the situations described in the law as involving a high risk of money laundering or terrorist financing, it may be necessary to apply enhanced due diligence measures, in accordance with a risk analysis, to "other situations that may be determined by a FIU communiqué".

331. The FIU must also publish a list of countries for which the risk of money laundering or terrorist financing is high.

Timing of verification (C.5.13, C.5.14 and C.5.14.1)

332. Article 49 bis of the LCPI specifies when the identification of customers and verification of their identity must be carried out.

333. Undertakings are required to verify the identity of customers and beneficial owners before establishing any business relationship or carrying out a transaction.

334. The verification of the identity of the customer or beneficial owner may take place after the business relationship has been initiated so as not to place obstacles in the way of carrying out a transaction, provided that the risk of money laundering or terrorist financing is slight. The identification process must then be conducted as soon as possible. In this case, a report must be drawn up setting out the reasons why identification cannot be carried out and the known data regarding the customer or the beneficial owner and the transaction, while identifying the requirements for the subsequent monitoring of the funds or the due traceability of the legal steps taken by the customer.

335. In the life insurance field, verification of identity can take place after the policy is subscribed, provided that it is done before any payout is made or before the beneficiary intends to exercise the rights vested under the policy.

336. At all events, the LCPI provides that it shall be possible to open bank accounts prior to the identification of the customer only where there are safeguards in place to ensure that the customer,

[45] Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011, solves the hierarchy conflict by amending Article 49 ter 4 of the LCPI by introducing an express reference to this issue: "4. The appropriate measures of expedited CDD are not applicable in the following cases: a) when an act of money laundering or financing of terrorism is suspected."

or anyone acting on the customer's behalf, will not carry out transactions until the identification requirements have been complied with.

Failure to satisfactorily complete customer due diligence requirements (C.5.15 and C.5.16)

337. Point 6 of article 49 bis of the LCPI stipulates that, in the event that a customer cannot be identified in accordance with article 49, the undertaking may not establish a business relationship or carry out operations or transactions.

338. Where relations have already started, the business relationship must be ended and consideration must be given to sending a report to the FIU.

339. It should be noted that, where identification cannot be carried out, there is no obligation to consider filing a suspicious transaction report if the relationship has not already been initiated, which means that unsuccessful attempts to establish a relationship are not covered.

340. During the visit the evaluators voiced reservations about the existence of an obligation to end the relationship in the case covered by criterion 5.2.e) concerning doubts about the veracity or adequacy of previously obtained customer identification data. Article 3 c) of the RLCPI, as amended on 25 May 2011, now expressly provides that parties under obligation shall be required to identify the customer and beneficial owner anew in the event of doubt and, if necessary, to consider filing a suspicious transaction report in accordance with article 49 bis.

Existing customers (C.5.17 and C.5.18)

341. Article 49 bis of the LCPI requires undertakings to apply the due diligence procedures to existing customers at the appropriate time in accordance with their risk analysis.

342. Article 49 quater paragraph 3 of the LCPI provides for enhanced due diligence in respect of products that might favour anonymity.

Effectiveness and efficiency - R.5

343. The regulations governing the use of numbered accounts are too recent to be considered fully effective.

344. The regulations requiring financial institutions to apply due diligence measures to customers regardless of any exceptions or thresholds where there is a suspicion of money laundering or terrorist financing or where there are doubts about the veracity or adequacy of previously obtained customer identification data are too recent to be considered fully effective.

345. The regulations requiring financial institutions to obtain corroboration of the information (notably concerning the business activity) from a reliable, independent source are too recent to be considered fully effective.

346. The broadening of the identification measures provided for by the law and regulation to customers who are trusts or legal arrangements is too recent to be considered fully effective.

347. The requirement to obtain information concerning the names of senior management (for legal persons) or administrators (for trusts) and the provisions governing their powers to commit the legal person or legal arrangement are too recent to be considered fully effective.

348. The regulations prohibiting financial institutions from having a business relationship with companies issuing bearer securities are too recent to be considered fully effective.

349. Apart from the above observations concerning the scope of the legal and regulatory requirements in matters of due diligence, to guarantee the effectiveness of these requirements it is vital that the Andorran authorities effectively exercise close and regular supervision of the measures applied in this field by each undertaking.

350. On account of the weaknesses found regarding on-site controls, combined with the deficiencies in matters of customer due diligence mentioned in external audit reports, it cannot be concluded that the obligations are fully effective. In view of the very significant weaknesses noted elsewhere in this respect it cannot be concluded that the due diligence requirements imposed on Andorran financial institutions are fully effective.

Recommendation 6 (rated NC in the 3rd round evaluation report)

Reasons underlying the rating in the MER of 2007

351. Andorra was rated non-compliant in the 3rd round report concerning R.6 as no measure had been taken at national level concerning risk management and the application of due diligence measures in the case of politically exposed persons.

The concept of a politically exposed person

352. The LCPI and the RLCPI now contain specific obligations relating to politically exposed persons. Article 41 of the LCPI defines politically exposed persons as "individuals who carry out or have carried out prominent public functions, as well as their immediate family members and persons known to be close associates." This is supplemented by article 2 of the implementing regulation, which defines the terms "prominent public functions",[46] "immediate family members" and "persons known to be close associates". The regulations also provide that, where relevant, on a risk sensitive basis, parties under obligation are not obliged to consider that a person is politically exposed if that person has ceased to hold prominent public functions for a period of at least one year.

Risk management system (C.6.1)

353. Article 49 quater of the LCPI requires financial institutions to have procedures in place to determine whether a customer is a politically exposed person.

354. The wording of this article, drawing on article 13.4 of Directive 2005/60/EC, focuses on the customer and does not expressly state that this measure also applies to a beneficial owner.

355. The authorities consider that article 49 quater does not prevent the implementation of general due diligence requirements - namely those of article 49 of the LCPI. Enhanced due diligence

[46] 1.1. Prominent public functions:
a) heads of state, heads of government, ministers, deputy and assistant ministers;
b. members of parliament;
c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
d) members of courts of auditors, or of the boards of central banks
e) ambassadors, chargés d'affaires, and high-ranking officers in the armed forces;
f) members of administrative, management or supervision bodies of State-owned enterprises. None of the above categories shall be understood as covering middle ranking or more junior officials. Public functions exercised at a lower level than the national scale shall, in principle, not be considered as prominent. However, when the political exposure is comparable to that of similar functions held at a national level, the parties under obligation must evaluate, according to a risk based approach, whether those exercising these public functions must be considered as politically exposed persons.

measures are to be applied cumulatively ("Besides ...") rather than alternatively. They therefore maintain that the provisions concerning politically exposed persons require the identification of beneficial owners. The evaluation team cannot concur with this interpretation and considers that there is no obligation to identify whether the beneficial owner is a PEP. Nor would any failure to do so give rise to a sanction.[47]

Senior management approval (C.6.2 and C.6.2.1)

356. Under article 49 quater of the LCPI financial institutions are required to obtain senior management approval for establishing a business relationship with a politically exposed person.

Source of wealth and source of funds of customers and beneficial owners identified as PEPs (C.6.3)

357. Under article 49 quater of the LCPI financial institutions are required to take reasonable measures to determine the source of wealth and sources of funds concerned by a business relationship with a customer identified as a politically exposed person.

Enhanced ongoing monitoring of the business relationship (C.6.4)

358. Article 49 quater of the LCPI requires financial institutions to exercise enhanced ongoing supervision of business relationships with politically exposed persons.

Additional elements (C.6.5 and C.6.6)

359. Article 49 quater of the LCPI concerns politically exposed persons who reside abroad and seems to exclude de facto politically exposed persons holding prominent public office at national level, except if the latter are resident outside Andorra.[48]

360. The Andorran authorities pointed out that this development is consistent with the country's small size, since, on account of its population of only 83 000, those holding prominent public office, the members of their families and persons known to be their close associates are particularly well known.

361. However, during the discussions, the financial institutions informed the evaluators that, in practice, national politically exposed persons were also usually considered to pose a high risk.

Ratification of the Merida Convention

362. Andorra ratified the Council of Europe Criminal Law Convention against Corruption in 2007 but has so far not signed, ratified or transposed the United Nations Convention against Corruption of 2003.

Effectiveness and efficiency - R.6

[47] Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011, modified article 49 quater 1.c) of the LCPI as follows:
"c) In relation to transactions or business relationships with politically exposed persons performing prominent public functions for another state, the financial parties under obligation must:
- have appropriate risk-based procedures to determine whether the customer is a politically exposed person;
- obtain approval from management to establish business relationships with these customers;
- adopt adequate measures to determine the source of wealth and funds that are involved in the business relationship or transaction;
- conduct enhanced ongoing monitoring of the business relationship.
These obligations are also applicable where, subsequent to the identification and initial verification of identity of a customer or beneficial owner, that customer or beneficial owner becomes a politically exposed person."

[48] See the above footnote.

363. The evaluators were not fully convinced as to the effectiveness of the application of the new due diligence measures applicable to politically exposed persons. The supervisory authorities confine their controls concerning the due application of R.6 by financial institutions to requesting the external auditors to verify the existence of procedures to identify politically exposed persons residing abroad with a view to drawing up their annual report. No form of control is therefore required concerning the effective application of these procedures. Mention should also be made of the fact that during the discussions with the financial institutions the evaluators were informed that, in some cases, the inception of a business relationship could be approved solely by the institution's AML/CFT compliance officer. It accordingly cannot be concluded that the due diligence requirements imposed on Andorran financial institutions concerning politically exposed persons are fully effective.

Recommendation 7 (rated NC in the 3rd round evaluation report)

Reasons underlying the rating in the MER of 2007

364. Andorra was rated non-compliant in the 3rd round report concerning R.7 on account of the lack of standards relating to correspondent banking relations.

General

365. The question of cross-border correspondent banking relations is now addressed in point 1 b) of article 49 quater of the LCPI.

Gather sufficient information about a respondent institution (C.7.1)

366. In correspondent banking relations with foreign undertakings, financial institutions are required to gather sufficient information on the foreign respondent to understand the nature of its business and determine, on the basis of publicly available information, its reputation and the quality of its supervision.

Assess the respondent institution's controls (C.7.2)

367. Financial institutions must also assess the AML/CFT controls implemented by the respondent institution.

368. It should be noted that financial institutions are not expressly required to ascertain that these controls are adequate and effective.

Obtain approval from senior management before establishing new correspondent relationships.

369. Under article 49 quater of the LCPI financial institutions are required to obtain senior management approval for establishing a new relationship with a banking correspondent.

Document the respective AML/CFT responsibilities of each institution (C.7.4)

370. Article 49 quater of the LCPI also requires financial institutions with cross-border correspondent banking relationships to document the respective responsibilities of each institution.

Keeping of payable-through accounts (C.7.5)

371. Article 49 quater provides that for payable-through accounts financial institutions must have guarantees that the foreign respondent institution has verified the identity of and is performing

ongoing due diligence on customers who have direct access to the accounts of the correspondent Andorran institution.

372. Article 49 quater does not provide that the bank must ascertain that the respondent financial institution is able to provide relevant customer identification data on request (criterion 7.5 b).

Effectiveness and efficiency - R.7

373. The evaluators were informed that, to date, no Andorran financial institution has the role of banking correspondent for a foreign institution.

374. On account of the deficiencies noted regarding on-site controls, combined with the supervisory authorities' failure to require that the external auditors' annual report address the application of due diligence measures in respect of cross-border correspondent banking relationships, it cannot be concluded that the obligations concerning this type of relationship are fully effective.

Recommendation 8 (rated NC in the 3rd round evaluation report)

Reasons underlying the rating in the MER of 2007

375. Andorra was rated non-compliant in the 3rd round report in respect of R.8 on account of the absence of requirements concerning policies or measures to prevent the misuse of technological developments and manage risks through procedures applicable to non-face to face customers.

Policies to prevent the misuse of technological developments (C.8.1)

376. The question of new technologies is now addressed in point 3 of article 49 of the LCPI, which requires financial institutions to adopt constant supervision measures with regard to new technology so as to prevent any action that could lead to false identification of the customer in non-face to face transactions.

377. This requirement is limited in that it merely seeks to prevent false identification of the customer, rather than misuse of new technologies in money laundering or terrorist financing schemes.[49]

Measures for managing the specific risks associated with non-face to face business relationships or transactions which do not involve the parties' physical presence - due diligence measures applicable to non-face to face customers (C.8.2 and C.8.2.1)

378. Article 49 quater of the LCPI provides inter alia that financial institutions shall apply enhanced due diligence measures when the customer is not physically present for identification, taking specific and adequate measures to compensate for the risk inherent in this type of transaction. In particular, this entails ensuring that the customer's identity is established by means of additional documents, data or information, adopting supplementary measures to verify or certify the documents supplied or requiring a certificate of confirmation issued by an Andorran financial institution or a financial entity established in an OECD country that imposes requirements equivalent to those laid down in Andorra and is subject to supervision to ensure compliance with those requirements.

[49] Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011, modified article 49.3 of the LCPI as follows:
"3. Financial parties under obligation must adopt ongoing due diligence measures relating to new technologies **so as to prevent their misuse** for money laundering or terrorist financing purposes or any action likely to lead to the false identification of the customer in transactions carried out at a distance."

379. Article 6 of the implementing regulation of the LCPI also specifies that the procedures adopted by financial institutions to verify the identity of non face-to-face customers must be as effective as those applied to customers who are physically present.

Effectiveness and efficiency - R.8

380. The Andorran authorities indicated that there are no non-face to face relations with financial institutions' customers from the standpoint of customer identification and that such relations are infrequent in the everyday conduct of operations. Customer identification always takes place in the customer's presence. Concerning the management of non-face to face customers' accounts, IT security procedures (for Internet transactions) have been established, including the supply of access codes for confirming transactions, signature verification procedures for orders made by telephone and use of call-backs to confirm transactions.

381. However, the supervisory authorities confine their controls concerning the due application of R.8 by financial institutions to requesting the external auditors to verify the existence of procedures for supervision the use of new technologies in non-face to face transactions, with a view to drawing up their annual report. No form of control is required concerning the effective application of these procedures. The evaluation team accordingly has reservations about the full effectiveness of the requirements imposed on Andorran financial institutions concerning the use of new technology.

382. Moreover, although article 49 of the LCPI restricts the required due diligence measures to preventing any action that could lead to the false identification of the customer in non-face to face transactions, it should be noted that the evaluators were informed that, in practice, financial institutions also performed controls relating to the possible justification for Internet transactions.

3.2.2 Recommendations and comments

Recommendation 5

383. The Andorran authorities should expressly prohibit the keeping of accounts in fictitious names.

384. The due diligence requirements in respect of cross-border transfers of amounts between €1000 and €1250, the limit beyond which customer identification is clearly obligatory, should be clarified.

385. Although there is indeed an obligation to identify the true right-holder, financial institutions should also be required to verify this information using relevant information or data obtained from a reliable source such that the undertaking would have sufficient knowledge of the identity of the beneficial owner.

386. Although the issue of omnibus accounts seems to be properly addressed by authorising this type of account solely for the benefit of financial undertakings subject to AML/CFT requirements, the Andorran authorities should pay particular attention to the situation of lawyers' professional accounts, so that financial undertakings are able clearly to identify the real beneficial owner of each transaction.

387. The Andorran authorities should supplement the definition of beneficial owner of a legal person in article 41 of the LCPI so that it also covers the natural persons who constitutes the brains

behind or the management of the company and the definition of the beneficial owner of a trust so that it also covers the settlor and the beneficiaries. [50]

388. Financial institutions should be obliged to obtain information on the intended nature of the relationship with a customer.

389. The Andorran authorities should envisage extending the list of customers considered as high risk, in particular to companies having nominee shareholders.

390. The Andorran authorities should ensure that the simplified due diligence measures provided for in the LCPI are confined to the simplification of measures to verify the identity of customers, without constituting an exemption from all due diligence measures, and that these simplified due diligence measures are indeed restricted to the case provided for in the FATF Recommendations (which would seem to exclude "Andorran or foreign companies under regulatory supervision that mandatorily requires the identification and verification of their beneficial owners, located in Andorra or in a jurisdiction which imposes requirements equivalent to those of the Andorran legislation on money laundering and the financing of terrorism")[51].

391. To assist financial institutions in applying the due diligence measures provided for in the legislation the Andorran authorities should draft a list of countries which impose requirements equivalent to those required by Andorran legislation on the prevention of money laundering and financing of terrorism.[52]

392. The Andorran authorities should introduce an obligation to consider filing a suspicious transaction report if the relationship has not already been initiated.

393. The Andorran authorities should clearly specify that there is an obligation to end the business relationship if the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

Recommendation 6

394. The Andorran authorities should ensure that financial institutions have procedures in place to determine whether a customer is a politically exposed person.[53]

395. They should also ensure that, in practice, authorisation to establish a business relationship with a politically exposed person is always given by the financial institution's senior management.

396. The Andorran authorities should envisage signing, ratifying and transposing into domestic law the United Nations Convention against Corruption of 2003.

Recommendation 7

397. Concerning correspondent banking relationships, Andorran financial institutions should be required to ascertain that the AML/CFT controls implemented by the respondent institution are

[50] See the above footnote on the amendments to g) of article 41 of the LCPI introducing an express reference to the brains behind behind a legal person (that is the person who provides its effective leadership).
[51] Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011, modified article 49 ter by explaining in clearer terms that parties under obligation can limit the degree of performance of ordinary obligations in the cases concerned by simplified due diligence measures.
[52] It should be recalled that Article 8 of RLCPI, as amended on 25 May 2011, now states that the FIU can (rather than "should") develop a list of countries that impose equivalent requirements.
[53] See the above footnote. (Act of 2011)

adequate and effective and that it is able to provide relevant customer identification data upon request.

Recommendation 8

398. Financial institutions should also be required to take measures to prevent the misuse of new technologies in money laundering or terrorist financing schemes [54].

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Reasons underlying the rating
R.5	**PC**	• The following obligations have been introduced or spelled out explicitly through amendments of the RLCPI after the visit; they were too recent to be considered as fully effective: - the regulations governing the use of numbered accounts; - the regulations requiring financial institutions to apply due diligence measures to customers regardless of any exceptions or thresholds where there is a suspicion of money laundering or terrorist financing or where there are doubts about the veracity or adequacy of previously obtained customer identification data; - the regulations requiring financial institutions to obtain corroboration of the information obtained (notably concerning the business activity) from a reliable, independent source; - the broadening of the identification measures provided for by the law and regulation to customers who are trusts or legal arrangements; - the requirement to obtain information concerning the names of senior management (for legal persons) or administrators (for trusts) and the provisions governing their powers to commit the legal person or legal arrangement; - with regard to the actual beneficial owner, the definition is incomplete and should, among other, target those natural persons who are the brains behind the legal person, as well as the settlor and beneficiaries of a trust. [55] • The requirements of criterion 5.3* concerning verification by means of information and documents from reliable independent sources are not fully covered. • Lack of adequate rules concerning identification and verification of the identity of beneficiaries of professional accounts kept by lawyers. • The simplified diligence measures provided by article 49ter LCPI go far beyond what the FATF is saying since none of the diligence measures of article 49 are applicable in the situations foreseen, notably concerning the on-going monitoring of transactions. • Where identification cannot be performed, there is no requirement to consider filing an STR when the relationship has not yet been established, which leaves uncovered situations of attempted establishment of relationship which do not materialise. • The full effectiveness of the implementation of a number of

[54] See the above footnote on the amendments made to article 49.3 of the LCPI, in force since 23 June 2011.

[55] See the footnote in the report concerning amendments to article 41 letter g) of the LCPI, which introduced an explicit reference to the decision-maker of the legal entity (i.e. the person who effectively manages the entity)

	Rating	Reasons underlying the rating
		measures is not established: (1) doubts remain concerning the implementation and interpretation of certain obligations by financial institutions; (2) the controls put in place are very inadequate.
R.6	**LC**	• The concept of PEP is not applicable to persons who exercise or have exercised important public functions in a foreign country but who reside in Andorra. • The due diligence measures relating to politically exposed persons refer to customers and say nothing about their possible application to beneficial owners.[56] • The full effectiveness of the implementation of a number of measures is not established: there are still reservations about the adequate implementation of the obligations when initiating a business relationship and the sufficient level of approvals and concerning the very insufficient monitoring by the authorities of financial institutions' effective implementation of their obligations relating to R.6.
R.7	**LC**	• In the context of control assessments, financial institutions are not required to ascertain that the AML/CFT controls implemented by the respondent institution are adequate and effective. • Financial institutions are not required to ascertain that the respondent financial institution is able to provide relevant customer identification data on request. • The full effectiveness of implementation by financial institutions of obligations relating to R.7 could not be established.
R.8	**PC**	• The risk of money laundering through the use of new technologies is insufficiently monitored, since the obligations solely concern false identification of the customer. • The full effectiveness of implementation by financial institutions of obligations relating to R.8 could not be established.

3.3 Third parties and business generators (R.9)

3.3.1 Description and analysis

Recommendation 9 (rated NA in the 3rd round evaluation report)

Reasons underlying the rating in the MER of 2007

399. R.9 was rated non-applicable in the third round report. In view of the changes made by the new legislation, which now authorises reliance on third parties, the evaluation team considered that the implementation of this recommendation should be assessed in the fourth round.

General

[56] See the amendments introduced to section 49 quater 1 c) by Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011.

400. The issue of reliance on third parties and business generators is governed by article 50 of the LCPI, which provides that financial institutions may delegate the performance of the obligations set out in article 49 to third parties subject to the LCPI. This possibility is discussed in detail in article 7 of the implementing regulation.

401. There is no possibility of delegation to a member of the same group established abroad.

402. It should be noted that, pursuant to article 50 of the LCPI, a financial institution may in particular delegate supervision of the transactions referred to in point 1 a) of article 49. This possibility goes beyond what is permitted by criterion 9.1.

Obtaining necessary information from the third party

403. Article 7 of the implementing regulation of the LCPI provides that the delegating party must adopt measures making it possible to verify that it can obtain, without delay, a copy of the documents kept by the third party.

404. Article 7 merely provides for an obligation to ascertain that the financial institution can obtain a copy of the documents collected by the third party. There is no requirement that the delegating party obtain the necessary information concerning, inter alia, elements of the customer due diligence process (criterion 9.1).

Third party regulated and supervised

405. Article 7 of the implementing regulation of the LCPI provides that the delegating party must adopt measures making it possible to verify that the third party is indeed a party subject to the LCPI and has adopted the necessary measures to comply with its identification and due diligence obligations.

406. Nonetheless, the delegating party is not required to retain the documentation on which it based its verifications.

Responsibility for identification and verification of identity

407. Article 50 of the LCPI stipulates that the delegating party shall continue to be responsible for compliance with the delegated obligations. This is confirmed by article 7 of the implementing regulation of the LCPI, which stipulates that the party responsible for the fulfilment of the delegated obligations vis-à-vis the FIU and other authorities is, in any case, the delegating party.

Effectiveness and efficiency

408. Article 7 of the implementing regulation of the LCPI provides that, in any case, a delegation to a third party must be recorded in writing and notified to the FIU within fifteen days from the date of the delegation.

409. The supervision authorities confine their controls concerning the due application of R.9 by financial institutions to requesting the external auditors to stipulate, in the context of their annual report, whether the establishment has delegated the implementation of its due diligence obligations to another party subject to obligations. No control is required concerning a delegation's compliance with the requirements laid down by the legislation.

410. The Andorran authorities indicated that, to date, no financial institution relies on a third party. Nonetheless the evaluators noted during the discussions that delegations to third parties had

been put in place, notably between banks and their insurance subsidiaries, without being documented and without being reported to the FIU[57].

411. On account of these two factors the evaluators cannot conclude that the obligations relating to reliance on third parties or business generators are fully effective.

3.3.2 Recommendations and comments

412. The Andorran authorities should ensure that financial institutions cannot delegate to a third party their customer due diligence obligations regarding the supervision of transactions.

413. They should also ensure that, when they rely on a third party, financial institutions are required to obtain immediately the necessary information concerning, inter alia, elements of the customer due diligence process.

414. The authorities should take appropriate measures to verify the implementation of delegations by financial institutions and, where necessary, sanction failures to document and report delegations within the legal time limits.

3.3.3 Compliance with Recommendation 9

	Rating	Reasons underlying the rating
R.9	**LC**	• There is no requirement that the delegating party obtain the necessary information concerning, inter alia, elements of the customer due diligence process. • The financial institutions should not be permitted to delegate to third parties the performance of their diligence obligations concerning the supervision of transactions. • The full effectiveness of the implementation of a number of measures is not established: delegations to third parties seem to have been put in place without reporting them to the FIU; lack of measures to verify the delegation's compliance with the legal requirements.

3.4 Financial institutional secrecy or confidentiality (R.4)

3.4.1 Description and analysis

Recommendation 4 (rated LC in the 3rd round evaluation report)

Reasons underlying the rating in the MER of 2007

415. R.4 was rated largely compliant in the third round report. The report drew attention to the fact that the legal framework lacked coherence and retained strong elements of banking and professional confidentiality, other than in the case of banking information for which there were explicit exceptions. Exchanges of information between financial institutions were particularly limited. It was nonetheless noted that neither the FIU nor the judicial authorities had encountered difficulties in obtaining the information they needed.

General - Duty of professional confidentiality

[57] The Andorran authorities have indicated that a bank informed the FIU, on 27 October 2011, that it had delegated compliance with its AML/CFT obligations to third parties.

416. Professional confidentiality is provided for in article 28 of the LCPI, which requires all parties under obligation (as defined in article 45 of the LCPI) to keep secret all information affecting their customers, adopting appropriate prudent and precautionary measures.

417. The duty of confidentiality is also safeguarded by the Criminal Code, which lays down a penalty of three months to three years' imprisonment for violating the duty of confidentiality in an employment (article 190) or professional (article 191) context. Provision is also made for an exception to the duty of confidentiality concerning facilitated private information flows in connection with guarantees between Andorran banks concerning loans extended to customers and risks assumed.

Professional confidentiality in the financial sector (C.4.1)

418. Andorran law does not provide for any difference in the rules applicable to the financial sector and the non-financial sector, since article 48 of the LCPI refers to all parties under obligation, which therefore covers both sectors.

419. The duty of confidentiality applies to managers, directors and employees of parties under obligation as regards information affecting their customers within the context of their activity. Financial parties under obligation may provide information regarding their dealings with customers only in the framework of legal proceedings and upon written instruction from a judge in the cases specifically established under Andorran law. However, suspicious transaction reporting is expressly recognised as being compatible with the duty of confidentiality.

Access by the national authorities to information they require to perform their AML/CFT related functions

420. Under the legislation the authorities in respect of which professional confidentiality cannot be invoked are the FIU, the judicial authorities and the INAF. The police have access to information in accordance with the relevant judicial authorisation.

421. As regards the FIU, the last paragraph of article 48 of the LCPI rules out the possibility for parties under obligation to invoke professional confidentiality vis-à-vis the FIU and provides for an urgent procedure before the duty magistrate in the event of refusal or an incident, whereby, after hearing of the public prosecution service and the parties concerned, an immediately enforceable ruling is issued within 48 hours.

422. Article 48 also institutes a sole exception to the duty of confidentiality where information is requested in the framework of legal proceedings, upon written instruction from a judge and in the cases specifically established under Andorran law, requiring a reasoned judgment in the case of banking information (article 87 of the Code of Criminal Procedure, last paragraph).

423. Lastly, with regard to the INAF, the Financial System Act requires financial parties under obligation to provide any information deemed necessary, in which case any form of breach of professional confidentiality is excluded.

Sharing of information between competent authorities, either domestically or internationally.

424. The implementing regulation of the LCPI provides expressly that any Andorran authority can share information with the FIU when it discovers facts that constitute evidence or proof of money laundering or the financing of terrorism: this does not constitute a breach of the duty of confidentiality.

425. Regarding co-operation between the FIU and the judicial authorities, the regulations also provide that the latter have a duty to inform the FIU of any breach of the LCPI or the RLCPI that comes to their knowledge in the performance of their functions (article 22). Similar co-operation is provided for between the FIU and the INAF, each in its own sphere of competence.

Sharing of information between competent national and foreign authorities

426. Sharing of information at an international level is provided for under article 55 of the LCPI, which permits the FIU to co-operate with other equivalent bodies.

Sharing of information between financial institutions as required under Recommendation 7 (cross-border correspondent banking relationship)

427. Although this aspect is not expressly covered by law, during the on-site visit the evaluators were informed that, to date, no Andorran financial institution has the role of banking correspondent for a foreign institution.

Sharing of information between financial institutions as required under Recommendation 9 (third party introducing business)

428. This aspect is also not expressly covered by law. The authorities consider that it is implicitly covered by the possibility of obtaining information concerning third parties that receive a delegation in accordance with article 7.2 of the implementing regulation of the LCPI. The authorities informed the evaluators that no Andorran financial institution has so far availed itself of this possibility, which is nonetheless mentioned in the LCPI.

Sharing of information between financial institutions as required under Special Recommendation VII (wire transfers)

429. Although Andorran law establishes no express exemption from the duty of confidentiality concerning wire transfers, this exemption is implicit in article 49 bis of the LCPI, which requires intermediaries to transfer the full information required by law in the event of money transfers of more than € 1000.

Sharing of information within a single financial group

430. The RLCPI does not consider sharing of information on suspicious transaction reports within the same financial group as communication to a third party.

Effectiveness of implementation of Recommendation 4 and compliance assessment

431. None of the authorities with whom the team met during the on-site visit said they had difficulties in accessing the information they needed to perform their tasks. In particular, the procedure under article 48 for sanctioning cases of refusal to facilitate access to information has never been applied by the FIU.

3.4.2 Recommendations and comments

432. This recommendation is fully observed. The authorities should nonetheless ensure that the legislative framework is sufficiently clear when financial institutions rely on the provisions relating to the requirements of Recommendation 7 and 9, so that no difficulties may arise with regard to information sharing.

3.4.3 Compliance with Recommendation 4

	Rating	Reasons underlying the rating
R.4	**C**	• This recommendation is fully observed.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and analysis

Recommendation 10 (rated LC in the 3rd round evaluation report)

Reasons underlying the rating in the MER of 2007

433. R.10 was rated largely compliant in the third round, although the report recommended that the legislation specify more clearly the records and documentation to be retained and that training/awareness-raising activities in this area be set up. Similarly, it was recommended that records should be maintained for longer periods and that it be made a specific requirement that all customer and transaction records and information should be available on a timely basis to the competent domestic authorities upon appropriate authority.

General

434. Retention of documents and information is now governed by article 51 of the LCPI and article 10 of the RLCPI. Strictly speaking, the obligation concerns documentation on identification, plus suspicious transaction reports and accompanying information.

Maintaining all necessary records on transactions (C.10.1) and customer identification data (C.10.2)

435. Retention of documents concerning transactions and customer identification data is governed by article 51 of the LCPI, which provides for a minimum period of five years from different moments in time according to the type of transaction or report (habitual customers, occasional customers or suspicious transaction reports to the FIU).

436. Andorran law lays down a more stringent retention requirement than that provided for in R.10 since the five-year period begins to run from the end of a business relationship for all transactions with habitual customers or from the transaction date for occasional customers.

437. Under article 51 retention of other documents (accounting and contractual documents) in principle ensues from other relevant rules. The Andorran authorities stipulated that the Decree on commercial activities, insolvency and bankruptcy of 1969 is in practice the main relevant legal framework and, in accordance with article 54 thereof, information must be kept for a period of ten years after the last transaction. Specific general rules on retention of documents also apply (at least 5 years for orders concerning financial brokerage transactions and asset management,[58] 6 years for public limited companies and private limited companies[59] and 6 years for commercial accounting documents).[60] The authorities also referred to article 18 of the RLCPI, which expressly provides that financial parties are obliged to establish internal control policies and procedures relating to record-keeping and updating of data.

[58] Mandatory communiqué of the INAF No. 163/2005 of 23 February 2006
[59] Article 70(2) of Act20/2007 of 18 October
[60] Article 7 of Act30/2007 of 20 September

438. Failure to retain records for the period laid down in article 51 of the LCPI is a serious offence and, under article 57, is established and sanctioned by the Government, acting on a proposal from the FIU.

439. Article 10 of the RLCPI provides specifically that in specific cases, where duly justified, the FIU may request an extension of the 5-year period for retaining records established under article 51 of the LCPI. During the on-site visit the authorities stated that this possibility has never been utilised.

Transaction records sufficient to permit reconstruction of individual transactions (C.10.1.1)

440. It should be noted that article 51 of the LCPI establishes no explicit obligation to retain the name of the beneficiary of a transaction and merely sets out a general obligation to retain information concerning the customer's identity, the type, date, currency and amount of the transaction and the nature and purpose of the business relationship with the customer.

441. Following the on-site visit, amendments were made to article 10.3 of the RLCPI (in force since 25 May 2011) expressly requiring that documents retained in accordance with article 51 of the LCPI should permit the reconstruction of transactions performed in the event of an investigation by the FIU or other competent authorities.

442. The identification data are described in article 49 of the LCPI, which specifies that, if the customer is a natural person, the party under obligation must require the presentation of an official identity document bearing a photograph and keep a copy thereof. If the customer is a legal person, the party under obligation must require an authentic document accrediting its name, legal form, registered office and corporate purpose and justification of the identity of the individual who, according to the documentation presented, has powers to represent the entity and of the powers granted.

443. Although, as in the case of the provisions relating to natural persons, article 49 does not lay down an obligation to keep copies of documents concerning legal persons, this requirement is covered by article 51 of the LCPI, which requires the retention of documents concerning, inter alia, the customer's identity.

Availability of identification data to the competent national authorities (C.10.3)

444. The requirements of criterion 10.3 are covered by article 51, paragraph 3 of the LCPI, which provides expressly that parties under obligation must ensure that the documentation and information can be made available to the competent authorities in a timely manner. In addition, article 7 of the RLCPI on delegations to third parties requires the delegating party to verify that it can obtain, without delay, a copy of the documents kept by the third party in accordance with the obligation established by article 51 of the LCPI.

Effectiveness and efficiency - Recommendation 10

445. Although the institutions with whom the team had meetings mentioned no difficulties concerning record-keeping obligations, the five-year retention period could pose problems in practice in view of the longer statute of limitation applicable to certain offences established and sanctioned under Andorran criminal law. This observation was already made during the third round evaluation and seems not to have been acted upon.

446. The Andorran authorities stipulated that the Decree on commercial activities, insolvency and bankruptcy of 1969 is in practice the main relevant legal framework and, in accordance with article 54 thereof, information must be kept for a period of ten years after the last transaction.

447. Similarly, the information provided on controls carried out, offences detected and penalties applied does not permit any conclusion to be drawn concerning the effective implementation by parties under obligation of the record-keeping requirements, also in view of the fact that the legislation was amended very recently. It should lastly be underlined that the audit reports examined during the on-site visit revealed deficiencies regarding the obligations to retain and update documents.

Special Recommendation VII (rated PC in the 3rd round evaluation report)

Reasons underlying the rating in the MER of 2007

448. SR VII was rated partially compliant, as, although in practice banks applied the requirements in this field, Andorran law did not lay down the specific obligations required under SR VII.

Obligations of the ordering financial institution (C.VII.1, C.VII.2, C.VII.3, C.5.2, C.5.3, C.10.1 and C.10.2)

449. Most of the requirements relating to SR VII, which were already covered by a circular of the Andorran Banking Association, were introduced in law by article 49 bis of the LCPI or, with regard to other aspects, other general legal rules. In particular, regarding the requirement to identify the originator, Andorran law provides in quite general terms that "parties under obligation must diligently verify the identity of the customer ... before carrying out a transaction." The same principle is to be found in article 3 of the RLCPI.

450. This general principle allows of exceptions, which relate in particular to cases where the verification of identity may be carried out after the performance of a transaction (article 49 bis, paragraph 2, which also provides for specific procedures to ensure that the identification process is conducted as soon as possible thereafter) and to transactions not exceeding an amount of €1250, for which article 3 of the RLCPI does not require identification in the case of occasional customers. The obligation to retain the information is covered by article 51, already analysed above.

451. Concerning full originator information, Andorran law repeats criteria VII.2 and VII.3 word for word, the sole difference being that cross-border transfers for an amount of € 1000 are not covered by article 49 bis, which solely applies to those for an amount exceeding €1000.

Obligations of intermediary financial institutions (C.VII.4 and C.VII.4.1)

452. During the on-site visit a number of intermediaries informed the evaluators that, in Andorra, banks and other financial entities do not provide intermediary payment services but are present solely as ordering or receiving intermediary institutions. Although the law does not expressly provide that intermediaries must verify the existence of information on the originator in the information accompanying a wire transfer they receive, this obligation can be inferred from the general principles in force. The banks with whom the evaluators met confirmed that they perform a preventive control on transfers received. The exception provided for in criterion C.VII.4.1 is not covered by Andorran law, which does not permit the receiving of transfers without the required accompanying information.

Effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information (C.V.II.5)

453. Article 49 bis of the LCPI merely requires financial parties under obligation to adopt enhanced due diligence measures in cases where they receive transfers that do not include the required information on the originator, but does not require the adoption of specific preventive measures for detecting transfers where the complete information is missing.

454. Similarly, there is no obligation to file a report with the FIU or to consider restricting or terminating the business relationship with the intermediary that fails to provide originator information. Financial institutions indicated that, in practice, they simply refuse or reject the transaction where they do not have sufficient information.

Monitoring compliance by financial institutions with the rules and regulations implementing SR.VII (C.VII.6) and existence of sanctions (C.VII.7)

455. There are no specific provisions on monitoring compliance with SR.VII by financial institutions, which in this matter are subject to the same supervisory powers as article 53 of the LCPI confers on the FIU concerning application of the other obligations laid down by the LCPI. Similarly, given the lack of specific sanctions, any breach of the principles laid down for SR.VII must be considered a minor infringement in accordance with article 58.3.

Additional elements (C.VII.8 and C.VII.9)

456. The additional elements covered by criteria C.VII.8 and C.VII.9 are not provided for in Andorran law, which, for cross-border wire transfers either from or to foreign countries, makes the rules laid down in article 49 bis applicable solely to transfers of amounts exceeding €1000, although in practice a number of institutions with whom the evaluators met indicated that they did not apply any limit in terms of the amount of transfers handled.

Effectiveness of implementation of Special Recommendation VII

457. From the standpoint of effectiveness, the lack of controls concerning compliance with SR.VII, whether performed by the INAF or the FIU, raises questions about the effective implementation of the obligations laid down in article 49bis in this respect, although the financial institutions met during the on-site visit seemed to adopt a very prudent approach concerning transfers for which the required information was missing.

3.5.2 Recommendations and comments

Recommendation 10

458. The new provisions on retention of documents and information introduce some improvements compared with the situation at the time of the 3rd evaluation round.

459. In view of the different time limits for retaining documents in the various pieces of legislation, the authorities should consider taking steps to harmonise the standards in this area. More extensive supervisory measures concerning compliance with the recommendation in question would also be desirable.

Special Recommendation VII

460. The Andorran authorities should envisage introducing amendments to the legislation so as to avoid any misunderstandings concerning the effective scope of the standards in the specific field of wire transfers, particularly as regards the application threshold and the exceptions. Although

banks stated that they applied the bulk of the obligations under SR.VII, provision should be made for the performance of specific preventive procedures by intermediaries and for the introduction of controls by the competent supervisory authorities.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Reasons underlying the rating
R.10	**LC**	• Effectiveness: (1) in the light of the information provided and the recent adoption of the amendments to the RLCPI, effectiveness cannot be established.
SR VII	**LC**	• Verification of identity is not provided for by law regarding transfers in an amount of up to €1250 performed by occasional customers. • Provision should be made for the lack of originator information to be regarded as giving rise to suspicions with a view to filing a suspicious transaction report with the FIU • Effectiveness: (1) there are no preventive controls to detect transfers lacking the required accompanying information; (2) in the light of the information provided, effectiveness cannot be established.

3.6 Monitoring of transactions and business relationships (R.11 & R.21)

3.6.1 Description and analysis

Recommendation 11 (rated LC in the 3rd round evaluation report)

Reasons underlying the rating in the MER of 2007

461. R.11 was rated largely compliant in the third round report. The evaluation team nonetheless considered that, in the light of the recommendations set out in the report, the analysis concerning implementation of R.11 should be updated. In particular, the report raised the need to ensure that the requirement to pay close attention to all operations coming under recommendation 11 applied to all parties under obligation and not merely financial system institutions and to introduce a formal obligation to keep a written record of the results of examinations of the background and purpose of transactions and provide for their retention for at least five years.

Special attention to be paid to all complex, unusual large transactions or unusual patterns of transactions (C.11.1)

462. Concerning criterion 11.1, Andorran law now provides, in article 49 of the LCPI, that all parties under obligation (and not just financial institutions as mentioned in the previous evaluation round) are required to be particularly vigilant regarding transactions which, although not suspicious, are typified as susceptible of involving money laundering or terrorism financing and classified as requiring special vigilance by the FIU in technical communiqués.

463. The substance of this obligation is clarified by article 9 of the RLCPI, which provides that the institutions subject to the requirements must request the documentation necessary to justify the transactions in the situations concerned and parties under obligation must apply enhanced due diligence measures.

464. In 2010 the FIU issued a technical communiqué addressed specifically to insurance companies with the aim of facilitating the detection of suspicious transactions.

Examine as far as possible the background and purpose of such transactions and set forth the findings in writing (C.11.2)

465. As mentioned above, the examination of unusual or large transactions is mainly based on scrutiny of the additional documentation requested from the customer so as to justify the type of transaction. In this connection, article 9 of the RLCPI requires parties under obligation to examine in detail and with particular attention the past history and justification of transactions and to set forth their findings in writing.

466. During the on-site visit, the representatives of a number of banks indicated that they had implemented electronic systems permitting the automatic detection of unusual or suspect transactions (principally Siopeia and Abaloc) and that all transactions identified by the software had to be reviewed by the compliance officer's staff, who were required to draw up a report which was, in turn, examined by the internal auditor. The obligation to perform this analysis is expressly laid down by the RLCPI, which also requires that the written outcome of the analysis be retained for five years.

Availability of identification data to the competent national authorities and the auditors (C.11.3)

467. Andorran law contains no express obligation in respect of criterion 11.3, but this matter is ordinarily covered by the general principles whereby the competent authorities and the FIU have access to all kinds of information held by parties under obligation.

Effectiveness and efficiency - R.11

468. Although compliance Andorran law and the financial system with the requirements of R.11 is satisfactory, the competent authorities should envisage reinforcing the existing obligations by better clarifying their substance. In particular, the FIU should give more detailed instructions to parties under obligation concerning the detection of unusual or suspect transactions, which seems to be based almost entirely on the software used by financial intermediaries.

469. It should nonetheless be underlined that, for numbered accounts, the evaluation team noted, during the exchanges on site, that the information and documents relating to these accounts were retained by the financial institutions in hard copy form or on electronic databases, with restricted access for security reasons. This can in principle make it more difficult to perform a full analysis of transactions carried out on these accounts and to compare them with other transactions so as to detect those that are suspect.

Recommendation 21 (rated NC in the 3rd round evaluation report)

Special attention to be given to business relationships with legal persons and financial institutions in countries which do not or insufficiently apply the FATF Recommendations (C.21.1)

470. The obligation for financial institutions to pay special attention to business relationships and transactions with countries which do not or insufficiently apply the FATF Recommendations is laid down in article 9 of the RLCPI, which provides (for all parties under obligation and not just financial institutions) that special diligence measures must be applied.

471. No reference is made to legal persons and financial institutions in these countries, which means that the Andorran law, which covers all types of relationships and transactions regardless of the object, is worded in far broader terms than the international standard. In practice, identification of the countries to be considered at risk is left to the technical communiqués issued by the FIU, although the law does not regard these communiqués as exhaustive. The RLCPI, which was

recently amended, refers not to the non-application or insufficient application of the FATF Recommendations, but to the presence in the countries concerned of a high risk of money laundering or terrorist financing (which can in principle be considered equivalent).

Advice to financial institutions (C.21.1.1)

472. Measures have been taken in the past to advise financial institutions of concerns raised by weaknesses of the AML/CFT systems of countries identified by the FATF. In this respect, the FIU has distributed technical communiqués in which it reproduces the content of the FATF's official communications, inviting parties under obligation to reinforce their vigilance and to take additional measures when entering into business relations or carrying out transactions with these countries.

Measures to be taken in situations where transactions have no apparent economic or lawful purpose (C.21.2)

473. The parties under obligation must examine in detail, and with particular attention, the past history and justification of transactions with countries at risk (this obligation accordingly applies to all transactions, not just those with no apparent economic or lawful purpose) and must set forth their findings in writing, as already noted in relation to R.11. Although the law is worded in far broader terms than what is required by criterion C.21.2, it should nonetheless be noted that establishing such a broad scope for carrying out written analyses and due diligence measures raises questions with regard to the effectiveness of the criterion.

474. The recent amendment of article 9.4 of the RLCPI expressly introduced (with effect from 25 May 2011) the requirement that documentation resulting from the above-mentioned analysis must be kept at the disposal of the FIU, the other competent supervisory authorities, the external auditors and the internal control and communication departments.

Counter-measures (C.21.3)

475. Andorran law and the technical communiqués issued by the FIU simply impose a quite general requirement to implement special measures in terms of enhanced due diligence and to take additional measures not expressly envisaged before the amendment of article 9.4 of the RLCPI. In practice, the institutions met during the on-site visit stated that they paid special attention to transactions with these countries, requiring specific monitoring of these transactions (where enhanced due diligence rules are applied), which must be authorised by the compliance officer before they can be carried out. In specific cases involving countries on the FATF list banks systematically refuse transactions and have introduced selective blocks in the operation of their payment systems.

476. The new wording of article 9 of the RLCPI has introduced a number of counter-measures which the FIU can impose via its technical communiqués, ranging from stricter identification requirements to restrictions on commercial relationships or financial transactions with certain countries or natural and legal persons in those countries.

Effectiveness and efficiency - R.21

477. Regarding lists, it should be noted that during the visit the evaluators found that each institution used its own list which mentioned a number of countries either identified by the FIU or included on the basis of entirely different criteria (countries at risk from a financial standpoint, countries at war or close neighbours of countries at war, and so on). One of the banks with which the evaluators met stated that there were over 40 countries on its list, including two EU member

states. In practice, each financial institution has its own list, often including different countries and not just those that fail to apply the FATF standards.

3.6.2 Recommendations and comments

Recommendation 11

478. The FIU should give more detailed instructions to parties under obligation concerning the detection of unusual or suspect transactions, promoting specific controls in addition to the automatic controls performed by the software used by financial intermediaries.

479. Regarding transactions linked to numbered accounts, the competent authorities should ensure that financial institutions have implemented appropriate procedures enabling them to detect all complex, unusual or suspect transactions carried out on these accounts and to compare them with other transactions on non-numbered accounts.

Recommendation 21

480. The FIU should clarify the criteria to be used to identify countries which do not or insufficiently apply the FATF Recommendations and specify, via the technical communiqués provided for in article 9.4 of the RLCPI as amended, the appropriate counter-measures to be implemented.

481. The authorities should also reflect on the decision to apply very broad obligations in respect of these countries (for all transactions with all parties) without classifying the risks in view of the financial institutions concerned or transactions' lack of a lawful or economic purpose.

3.6.3 Compliance with Recommendation 21

	Rating	Reasons underlying the rating
R.11	**LC**	• Effectiveness: (1) lack of precise instructions to parties under obligation concerning the detection of unusual or suspect transactions; (2) recordkeeping concerning numbered accounts is solely in hard copy format or in a separate electronic database, which makes it difficult to perform a full analysis of transactions and compare them with other transactions so as to detect suspicious transactions.
R.21	**LC**	• In practice criteria are lacking for the identification of countries at risk in a uniform manner • Effectiveness: (1) the establishment of general controls concerning all transactions and all entities in countries at risk raises questions; (2) in the light of the recent adoption of the amendments to the RLCPI, effectiveness cannot be established.

3.7 Suspicious transactions and other reporting (R.13, 14, 19, 25 & SR.IV)

3.7.1 Description and analysis

Recommendation 13 (rated LC in the 3rd round evaluation report) and Special Recommendation IV (rated NC in the 3rd round evaluation report)

Reasons underlying the rating in the MER of 2007

482. R.13 was rated largely compliant in the third round report, whereas RS.IV was rated non-compliant. In this connection, the evaluation noted that the reporting obligation did not cover terrorist financing or suspicions relating to the proceeds of crime.

Reporting obligation concerning suspicions of laundering or terrorist financing (C.13.1, C.13.2, C.13.4, C.13.5 and C.IV.1 & 2)

483. Under article 46 of the LCPI parties under obligation are required to report "any transactions or proposed transactions concerning funds or securities about which there are suspicions of laundering or terrorist financing".

484. There is no denying the fact that, in comparison with the obligation provided for in the previous legislation, the amendments to the reporting obligation have not had the effect of explicitly broadening the scope of suspicious transaction reporting to the proceeds of crime. The obligation merely covers suspicions of laundering or terrorist financing.

485. The LCPI defines acts of laundering and terrorist financing by making express reference to the offences provided for in the Criminal Code. The extent of the reporting obligation is construed as broadly as the range of predicate offences[61] of money laundering.

486. As compared with the previous requirement, the amendments to the reporting obligation have not extended the scope of suspicious transaction reporting to the proceeds of crime. In this connection, it should be recalled that the offences of money laundering and terrorism financing are not fully compliant with the requirements of Recommendation 1 and Special Recommendation II, which has implications in terms of compliance with the requirements of Recommendation 13 and Special Recommendation IV.

487. The scope of the money laundering offence has nonetheless been broadened as regards the predicate offences, following the modification of the required threshold, but nonetheless, again in this respect, deficiencies remain with regard to the offence of terrorism and financing of terrorism. In addition, there are still uncertainties as to whether all situations involving attempted transactions would be covered.

488. Article 11 of the RLCPI stipulates that the report must be made to the FIU before the economic or financial transaction has been carried out. Reports must also be made concerning transactions that have already been executed where following their execution suspicions arise that the transactions could concern acts of money laundering or terrorist financing. These reports must always be made in writing, or in case of urgency by any other means, but the written report must be submitted within a maximum of two working days.

489. The authorities also indicated that, in September 2005, they had sent a communiqué to financial institutions providing them with a list of activities and typologies relating to money laundering and terrorist financing. In this context they also mentioned the regular communiqués sent to parties under obligation so as to implement the UN resolutions and a communiqué on non-cooperation with Iran.

Reporting of money laundering or terrorist financing attempts (C.13.3 and C.IV.2)

[61] It should be recalled here that certain offences are not covered such as participation in a criminal group or racketeering, smuggling, trafficking immigrants without aggravating circumstances, counterfeiting and piracy of products without aggravating circumstances, environmental offences without aggravating circumstances, forgery (other than counterfeiting currency or cards), fraud (other than qualified fraud), insider trading and market manipulation.

490. Article 46 of the LCPI clearly covers planned transactions without there being any threshold for filing a suspicious transaction report in respect of an executed or proposed transaction. Reports must be made before the party concerned has executed the suspicious transaction.

General statistics - Effectiveness of implementation of Recommendation 13 and Special Recommendation IV and overall compliance assessment

491. On the opinion of the evaluation team, the number of suspicious transaction reports received to date remains small. Following a significant increase in 2006 (32 compared with 15 in 2005), the number fell to 18 in 2007, before more or less stabilising at 25 reports in 2008, 16 in 2009 and 20 in 2010 (end October). In terms of effectiveness of the suspicious transaction reporting system, the statistics provided show a downward tendency in the number of reports received over the last three years, while the number is in any case generally low. Banks continue to be the main source of suspicious transaction reports, although reports were also received from financial intermediation companies, notaries, lawyers, an estate agent and the postal service. Insurance companies, portfolio management companies and DNFBPs contribute little or not at all. Suspicions about a transaction are frequently raised by parties in an informal manner, which, although it reflects a willingness by the FIU to assist parties, does not permit the formal documentation of the suspicions, which are then not included in the statistics.

492. The Andorran authorities do not fully share the view of the evaluation team regarding the assessment of the low number of STRs received, considering that the number remained stable. They also mentioned in this context that the issue should be linked to a greater awareness and training of relevant entities.

Statistics on Suspicious Transaction Reports received by the FIU

Entity/institution	2006	2007	2008	2009	2010
Commercial banks	28	16	21	12	12
Insurance companies	1				
Notaries		1		1	2
Currency changers					
Financial Service Providers			1	1	
Securities Registration Entities				1	
Lawyers			1		2
Accountants/Auditors					
Company Service Providers	1				
Dealers in high-value goods	1		1		
Realtors	1	1			
PMOs			1	1	5
Total	32	18	25	16	24

Statistics on cases opened by the FIU, reportings and enquiries

State of affairs			
	2008	2009	2010

STR received by relevant entities	25	16	21
Domestic cooperation		1	
International cooperation	11	12	25
Initiatives from the FIU	2	1	2
Cases opened by FIU	38	30	49
Cases sent to Ministry	12	10 [60 individuals]	14
Cases under preparation or enquiries	12 [60 individuals]	10 [203 individuals]	14
Sentences			

493. Regarding reports of suspicions of terrorist financing received by the FIU to date, three reports were made by banks in 2007, 2008 and 2009 and systematically gave rise to the opening of a case file by the FIU but without leading to the launch of an investigation.

494. On a positive note, following the opening of case files by the FIU a majority of cases result in a notification to the law enforcement bodies and go hand in hand with preparatory or investigatory measures. The evaluators were not convinced as to the effectiveness of the application of the suspicious transaction reporting requirement by the parties under obligation. Regarding the financing of terrorism, the parties under obligation seem in practice to have construed the obligation solely as requiring the reporting of transactions by listed persons, while the effectiveness of the monitoring of listed persons is not guaranteed.

Recommendation 14 (rated LC in the 3rd round evaluation report)

Protection by law of the professions concerned from any criminal or civil liability for breach of any confidentiality requirement (C.14.1)

495. Article 47 of the LCPI exempts persons making suspicious transaction reports to the FIU from any liability, including where a report is made without the person knowing exactly the type of crime or illegal activity that has been committed.

496. Moreover, article 48 of the LCPI stipulates that making a suspicious transaction report to the FIU does not constitute a breach of the duty of secrecy incumbent on members of the professions with a view to safeguarding the confidentiality of their clients' affairs. Reporting information to the FIU exempts the parties under obligation and their personnel from any kind of liability, whether general or contractual, including in cases where a suspicious transaction report is not in fact confirmed.

Prohibition on disclosing ("tipping off") the fact that a STR or related information is being reported (C.14.2)

497. Article 48 of the LCPI provides that, under no circumstances, can the persons concerned or any third party be informed of the existence of a suspicious transaction report and no information must be given to them on procedures under way. Nor must any information be disclosed as to the existence or content of any type of communication from the FIU.

498. This prohibition on warning customers or third parties that a STR or information relating to them is being reported to the FIU is confirmed by article 15 of the implementing regulation of the LCPI.

Additional elements (C.14.3)

499. Article 47 of the LCPI provides that the FIU must adopt measures to protect parties subject to the LCPI from any threat or hostile action arising from the execution of the obligations imposed by law. In particular, it is stipulated that the identity of the issuer of a suspicious transaction report must be kept confidential in all administrative and legal proceedings initiated subsequent to or in connection with the suspicious transaction report.[62]

Effectiveness and efficiency - R.14

500. The evaluators were informed that, despite the protection measures provided for in the legislation, the identity of persons having made a suspicious transaction report had already been disclosed in one case, inter alia in the press. Moreover, it would seem that suspicious transaction reports have been included among case-file documents in a number of instances.

Recommendation 19 (rated NC in the 3rd round evaluation report)

General framework

501. There is no system whereby financial institutions could report all cash transactions above a certain amount to a national central agency with a computerised database.

Consideration of the feasibility and utility of implementing a system for reporting cash transactions above a certain amount (C.19.1)

502. The Andorran authorities indicated that they had considered the feasibility and utility of such a system in the context of the study conducted prior to the promulgation of Act No. 2/2008 of 8 April 2008 on foreign investments.

503. The authorities finally decided not to apply a system for reporting all such transactions to a central agency.

Effectiveness and efficiency - R.19

504. Although it would seem that a study of the feasibility and utility of implementing such a system whereby financial institutions would report all cash transactions above a certain amount was performed during the work to prepare for the promulgation of Act 2/2008, the conclusions of that study, and in particular the reasons why such a system was rejected, were not transmitted to the evaluators.

505. The evaluators were all the more interested in these explanations since there is no system for monitoring cross-border transportations of currency (cf. SR.IX) and the threshold beyond which

[62] The new wording of article 47 of the LCPI, in force since 23 June 2011, reinforces the protection measures concerning parties filing a suspicious transaction report and their employees involved in this process, by preventing the FIU from disclosing their identities in any report it may submit to the prosecution services or the relevant judicial or administrative authorities.
The FIU's report has no evidential value and cannot be included in the relevant judicial or administrative proceedings.

sellers of high value objects, such as precious stones or metals, are subject to the LCPI where payment is made in cash has been raised from € 15 000 to € 30 000.[63]

506. Unfortunately, there is no element attesting to the performance of a study concerning the introduction of a reporting obligation concerning all transactions in excess of a certain amount.

3.7.2 Recommendations and comments

Recommendation 13 and Special Recommendation IV

507. The Andorran authorities should amend the legislation to ensure that the reporting obligation is not restricted on account of deficiencies regarding the offences of money laundering and terrorism financing and that it directly covers suspicions concerning the proceeds of crime.

508. The Andorran authorities should seek to identify possible reasons for the lack of reports or the very low quantity of reports made by a number of undertakings and, if appropriate, take the necessary measures to ensure that all undertakings effectively implement the reporting obligation.

509. The Andorran authorities should also do more to raise awareness among financial sector professionals and take appropriate measures to ensure the quality of the reports made (in this connection see also the recommendations and comments in section 2.5).

510. In particular, in view of the recent introduction of the reporting obligation concerning financing of terrorism, there is a need for awareness-raising efforts focusing on this obligation so as to ensure that this new obligation is well understood by the financial sector.

Recommendation 14

511. The Andorran authorities should ensure that the protection measures provided for in the legislation are effectively applied so that the identity of persons who have made a suspicious transaction report is not disclosed (notably in the press) and suspicious transaction reports are not included in the case-file documents of judicial proceedings.

Recommendation 19

512. Consideration should be given to the feasibility and utility of a system whereby financial institutions would report all cash transactions above a certain amount.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criterion 25.2) and with Special Recommendation IV

	Rating	Reasons underlying the rating
R.13	**PC**	• Deficiencies in the offence of money laundering (failure to include certain behaviours and a number of predicate offences) restrict the scope of suspicious transaction reports. • Deficiencies in the offence of financing of terrorism restrict the scope of suspicious transaction reports

[63] The amount beyond which dealers in high value goods are bound by the obligations of the LCPI was reduced to €15 000 following the amendment of article 45 of the LCPI, which entered into force on 23 June 2011.

	Rating	Reasons underlying the rating
		• The obligation to report suspicious transactions, including attempted transactions, extends only indirectly to the proceeds of crime through the definitions of the offence of money laundering and terrorist financing. • Effectiveness: (1) low number of suspicious transaction reports; (2) concerns about the quality of reports and effective implementation of the reporting obligation by the parties under obligation in view of the downward trend in reports made by the banking sector and the virtual absence of reports by other parts of the financial sector.
R.14	**LC**	• Effectiveness not established: 1) despite the protection measures provided for in the legislation the identity of a person having made a suspicious transaction report was disclosed in one case, notably in the press; 2) suspicious transaction reports have been included in the case-file documents of a number of judicial proceedings.[64]
R.19	**NC**	• The failure to provide the study conducted during the preparations for promulgating Act 2/2008 precludes any finding that a study concerning the introduction of a reporting obligation concerning all transactions in excess of a certain amount has been performed.
SR IV	**PC**	• Deficiencies in the offence of financing of terrorism restricting the scope of suspicious transaction reports • Effectiveness: concerns about (1) the quality of reports and (2) adequate knowledge of the scope of the reporting obligation by the parties under obligation, giving rise to reservations about the effective implementation of the reporting obligation.

3.8 Internal controls, compliance and foreign branches (R.15 & 22)

3.8.1 Description and analysis

Recommendation 15 (rated PC in the 3rd round evaluation report)

Reasons underlying the rating in the MER of 2007

513. Andorra was rated partially compliant in respect of R.15 in the third round report. Although the requirements of R.15 were generally deemed to be covered by Andorran legislation, the evaluators noted deficiencies regarding the required content of internal anti-laundering procedures; the duties and powers of compliance officers and the content and purpose of training should be more clearly spelt out; no machinery for internal testing or auditing of procedures; no rules on appropriate procedures for hiring employees.

Obligations applicable to all financial institutions except those coming under the supervisory jurisdiction of the authorities (C.15.1)

514. The new text of article 52 of the LCPI provides for three different kinds of obligation to be met by financial parties in control matters. In particular they are required to:

a) contract an independent external audit each year to verify compliance with all AML/CFT

[64] See the above footnote on the new wording of Article 47 of the LCPI.

obligations and send the FIU a copy of the report;

b) appoint an internal control body in charge of organising and supervising compliance with AML/CFT rules;

c) establish internal control procedures in accordance with guidelines received from the FIU via its technical communiqués.

515. Criterion 15.1.1 is covered by point b) and is detailed in the RLCPI, which imposes obligations relating to independence, adequacy of resources and duties to be fulfilled by the AML/CFT compliance officer. The amendments made to the RLCPI on 25 May 2011 provided expressly that the internal control and communication body should have timely access to all significant documentation and information (criterion 15.2.2). It should nonetheless be underlined that the latter requirement must be well monitored in practice, since during the on-site visit the evaluators noted a number of difficulties in obtaining documents relating to numbered accounts, for which some banks keep separate records concerning which access is not always simple and immediate.

Employee training (C.15.3)

516. From the training standpoint, in view of the very general content of the LCPI (article 49.2 quinquies) and the RLCPI, the financial system establishments which the evaluators met said they intended to implement general training schemes for all staff and specific training for internal audit employees. Participation in initiatives run either nationally by the INAF and the Bar associations or abroad (in particular in Spain and France) remains the main training approach. The representatives of all financial system establishments, who informed the evaluators on a number of occasions that there was a need for benefiting from a more plentiful training offer in the AML/CFT field so as to comply with the principles laid down in the LCPI concerning introduction of a specific further training programme.

517. In this connection, the authorities with which meetings were held during the visit said that over the period 2008-2010 the FIU had set up several training schemes (for financial establishments, DNFBPs and professional associations); in addition, during the second half of 2009 the Andorran Banking Association and the FIU had participated in the development of an AML/CFT training web-site, which provided updated information and covered the national and international legislation applicable. This training web-site had been made available to employees of the Andorran banking sector in November 2010.

Appropriate procedures when hiring employees (C.15.4)

518. This criterion is covered by article 19, paragraph 2 of the RLCPI, which requires all parties under obligation to apply appropriate policies and procedures to ensure high ethical standards in the hiring of employees. It should nonetheless be said that this provision seems too general in nature, since it gives no practical indications on the substance of the measures to be taken. Furthermore, this requirement did not seem to have been taken into consideration by the financial intermediaries with which the evaluators met during the visit, as they relied on the verifications performed by the immigration authorities in respect of foreign recruits and on personal contacts in the case of Andorran nationals, which implies that they have not adopted an appropriate procedure in practice.

Recommendation 22 (rated PC in the 3rd round evaluation report)

Reasons underlying the rating in the MER of 2007

519. Andorra was rated partially compliant in respect of R.22 in the third round report. Although the provisions of the LCPI and the RLCPI included references to foreign branches, subsidiaries or agencies of Andorran companies, they were not deemed adequate in the light of the specific requirements of R.22.

General

520. At the time of the on-site visit, Andorran financial institutions had subsidiaries or branches in the following jurisdictions: the Bahamas, Brazil, Spain, the United States, Hong Kong, Luxembourg, Mexico, Panama, Switzerland and Uruguay.

Obligations to ensure that foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations (C.22.1, C.22.1.1 and C.22.1.2)

521. Article 44 of the LCPI provides that financial institutions must ensure that their branches and subsidiaries located abroad that conduct commercial or financial transactions apply measures equivalent to those in force under Andorran law.

522. The same article stipulates that if there is a significant difference between Andorran regulations on money laundering and those of another country, where the branch or subsidiary is located, the financial institution must apply the most stringent measures, provided that local law so permits.

523. Point 6 of article 18 of the implementing regulation of the LCPI also provides that financial institutions must communicate their internal procedures to their branches and subsidiaries located abroad.

Situation of branches and subsidiaries located in countries that do not permit the application of equivalent measures (C.22.2)

524. If branches and subsidiaries located abroad cannot apply measures at least equivalent to those in force in Andorra, article 44 of the LCPI provides that the Andorran financial institution must inform the FIU.

Effectiveness and efficiency - R.22

525. The evaluation team was informed that a number of financial institutions had foreign branches or subsidiaries and the FIU had so far not been informed of any particular difficulty encountered in applying AML/CFT measures equivalent to those provided for under Andorran law.

526. There is no co-operation agreement between the FIU and the AML/CFT supervisory authorities in the countries where Andorran financial institutions' branches and subsidiaries are located. The authorities nonetheless pointed out that the INAF maintained contacts with the supervisory authorities of certain countries where Andorran banks had subsidiaries and received inspection reports also dealing with AML/CFT supervisory matters. During the period covered by the evaluation, the INAF had forwarded two of these reports to the FIU.

3.7.2 Recommendations and comments

Recommendation 15

527. Although the changes to the legislation are positive steps, the Andorran authorities still need to make additional efforts to ensure that financial institutions establish appropriate procedures.

528. The authorities should also ensure that financial institutions implement in an appropriate manner the obligations introduced in the legislation in respect of the requirements of R.15, in particular concerning the establishment by financial institutions of procedures for hiring staff, further training programmes and so on.

Recommendation 22

529. To supplement the existing arrangements, the Andorran authorities should ask financial institutions to pay particular attention to their branches and subsidiaries located in countries that do not or insufficiently apply the FATF Recommendations.

530. In its capacity as AML/CFT supervisory authority the FIU should also adopt a proactive policy so as to establish direct co-operation and the exchange of information with the AML/CFT supervisory authorities in countries where Andorran financial institutions' branches and subsidiaries are located, without necessarily going through the INAF.

3.7.3 Compliance with Recommendations 15 & 22

	Rating	Reasons underlying the rating
R.15	**LC**	• Training initiatives are inadequate in comparison with the needs reported by the parties under obligation. • The full effectiveness of implementation of a number of measures is not established: financial institutions have no adopted specific procedures for hiring staff or further training programmes.
R.22	**LC**	• No obligation for financial institutions to pay particular attention to their branches and subsidiaries located in countries that do not or insufficiently apply the FATF Recommendations. • Problem of effectiveness due to the inadequate monitoring by the authorities of the effective implementation by financial institutions of their obligations relating to R.22.

3.9 Shell banks (R. 18)

3.9.1 Description and analysis

Recommendation 18 (rated PC in the 3rd round evaluation report)

Reasons underlying the rating in the MER of 2007

531. Andorra was rated partially compliant in respect of R.18 in the third round report. Relations with shell banks were not prohibited, but were treated as high risk. Nor was there an obligation to monitor shell banks' use of accounts with client institutions of Andorran financial establishments.

General

532. The information provided by the Andorran authorities indicated that, in 2008 and 2009, the financial sector included two idle investment institutions (out of 18 such establishments in total). In 2010 one of these two institutions resumed its financial activities on 6 April 2010, leaving one inactive investment institution concerning which a notice of withdrawal of the operating licence

was published in the Official Gazette on 5 January 2011 (in accordance with the fifth transitional provision of Act No. 31/2010).[65]

Prohibition on establishing shell banks and on their continued operation in Andorra (C.18.1)

533. No natural or legal person may offer financial services without having obtained the compulsory administrative licence.

534. The INAF is competent for dealing with licensing requests.

535. The conditions for establishing a financial institution in Andorra are laid down in Act No. 14/2010 of 13 May 2010 governing the legal regime of banks and the basic administrative regime of entities operating in the financial system and Act No. 35/2010 of 3 June 2010 governing the regime for authorising the creation of new operational entities in the Andorran financial system.

536. The legislation provides inter alia that for licensing purposes banks must keep open at least two offices on Andorran territory (article 16 of Act No. 14/2010).

537. Banks or other financial institutions licensed are required to begin their proposed activities within a maximum of twelve months from the notification of award of the licence. Should an operational entity in the financial system fail to begin its activities in an effective and real manner, the INAF is obliged to revoke its licence. The same applies where an operational entity in the financial system has ceased to operate in an effective and real manner for a period of more than six months (article 9 of Act No. 35/2010).

Prohibition on entering into or continuing correspondent banking relationships with shell banks (C.18.2)

538. Point d) of article 49 quater of the LCPI prohibits entering into or continuing correspondent banking relationships with shell banks. This article also requires appropriate measures to be taken to ensure that corresponding banking relationships are not established or maintained with banks that permit their accounts to be used by shell banks.

Respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks (C.18.3)

539. Article 41 of the LCPI defines the concept of "shell bank" used in article 49 quater as follows: "Credit entity or entity engaged in similar activities, incorporated in a country in which it has no physical presence that enables it to exercise true direction or management power, and that is not a subsidiary of a financial group regulated by legislation equivalent to this law."

Effectiveness and efficiency - R.18

540. Although it is true that idle institutions formerly existed in Andorra, the regulations have now been changed and, as a result, there are no idle financial institutions at present.

3.9.2 Recommendations and comments

541. This recommendation is fully observed.

[65] This provision covers the compulsory revocation of licences of financial institutions that have been inactive for more than six months from the date of the Act's entry into force and of all other financial institutions which, at any time, cease to operate for more than six months.

3.9.3 Compliance with Recommendation 18

	Rating	Reasons underlying the rating
R.18	**C**	This recommendation is fully observed.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - Competent authorities and self-regulating organisations: role, functions, obligations and powers (including sanctions) (R.17, 23, 25, 29, 30 and 32)

3.10.1 Description and analysis

Recommendation 23 (rated NC in the 3rd round evaluation report)

Summary of reasons for the rating in the MER of 2007

542. Andorra was rated non-compliant in respect of R.23 in the third round report. The report raised a number of deficiencies in the effectiveness and scope of the monitoring system: the system relied too much on external audit reports, and thus second hand information; supervision seemed to focus mainly on formal aspects; INAF's responsibilities remained unclear in certain matters connected with identification and due diligence that are nevertheless common to the supervisory and AML/CFT spheres; the fund transfer services offered by the post office were illegal; measures were needed to protect the financial sector from criminal infiltration and in prudential matters.

General

543. Regulation and supervision of financial institutions' compliance with AML/CFT standards is mainly dealt with in the new provisions of the LCPI and the RLCPI.

544. In this connection, article 53 of the LCPI empowers the FIU to verify that the LCPT is being applied:

- either by requiring information and documents from parties under obligation (article 53.2.b);
- or by carrying out on-site inspections (article53.2.c).

545. A form of indirect supervision is also carried out through co-operation with external bodies or financial parties under obligation themselves, which article 52 of the LCPI requires to:

a) contract an independent external audit each year to verify compliance with all AML/CFT obligations and send the FIU a copy of the report;
b) appoint an internal control and communication body in charge of organising and monitoring compliance with AML/CFT rules and notify the FIU of this appointment;
c) establish internal audit and control procedures and inform the FIU of them.

546. The FIU is responsible for the specific substance of each of these obligations and establishes guidelines by means of its technical communiqués.

547. Article 20 of the RLCPI also provides that the FIU may carry out on-site inspections in order to meet the person or persons in charge of the organisation and monitoring of compliance with the AML/CFT legislation and request all the information and documentation necessary for that purpose and that these actions must be documented in a written report. Parties under obligation are required to provide the FIU with any information it requests in connection with the fulfilment of its role and refusing or giving excuses constitutes a very serious infringement.

Supervision of financial institutions - general description (C.23.2)

548. The LCPI assigns general responsibility for supervision of compliance with AML/CFT obligations by financial institutions (and other parties subject to the LCPI) to the FIU, whose functions include "co-ordinating measures for the prevention of money laundering and financing of terrorism" and "directing and promoting prevention activities and those aimed at preventing entities in the financial system or entities of any other nature in the country being used for money laundering or terrorism financing".

549. Despite this general competence, it should be underlined that Act 14/2003 makes the INAF responsible for "supervising and monitoring "establishments joining the financial system with a view to ensuring compliance with the regulations applicable to them". Although the LCPI assigns the FIU general and sole responsibility in AML/CFT matters, the INAF's competence, as the prudential supervisory body, for general supervision of compliance with all legislation and regulations (and therefore those specific to AML/CFT matters) enables it to supervise matters that are of common concern in both fields. In this connection, during the meetings on site it came to light that the supervision performed by the INAF, even including inspections, also takes account of certain AML/CFT related matters, such as those linked to record keeping, analysis of transactions and the existence of the in-house bodies required by law.

550. With regard to the insurance sector, the supervision performed by the Ministry of Economy and Finance in no way concerns AML/CFT matters, as a result of which the sole supervisory authority in that area is the FIU. In this connection, the authorities with which meetings took place during the on site visit informed the evaluators that in performing its supervisory role the ministry (which carries out no inspections) merely receives auditors' reports covering the accounting aspects, whereas audit reports focusing on AML/CFT matters are sent direct to the FIU and are not examined by the ministry.

551. The authorities nonetheless indicated that the vast majority of Andorran insurance companies active in the life sector are wholly-owned by banks and are therefore de facto subject to the prudential supervision exercised by the INAF in financial matters and into the bargain the supervision performed by the FIU.

552. As regards the FIU's supervising activity, the authorities informed the evaluators that, in 2008, six on-site inspections had taken place (2 banks, 2 non-banking financial institutions and 2 life insurance companies). These inspections were performed following the examination of the external auditors' reports on the establishments concerned and took into account numerous aspects of AML/CFT compliance, including the following:

- assessing the establishment's internal standards' compliance with AML/CFT requirements
- meetings with the establishment's accounts manager and other employees involved in implementing the control system
- review of customer acceptance and risk management policies
- review of the level of communication between the accounts manager and the establishment's controlling body
- taking a random sample accounts of natural and legal persons and numbered accounts
- verifying the documentation relating to the accounts and transactions performed on them
- verifying the effectiveness of the internal control process in respect of the warning systems (terrorist lists)
- verifying access to the necessary information by the internal compliance department.

553. Although the inspections carried out in 2008 covered a high percentage of the financial parties under obligation (2 banks out of 5, 2 non-banking financial institutions out of 13 and 2 insurance companies out of 14), it should be underlined that they were carried out by an FIU inspection team comprising only two people which stayed on site for only one day. It should also be noted that these inspections were carried out before the significant amendments of the LCPI and the RLCPI, which were adopted in 2008 and 2009.

554. Furthermore, the FIU carried out no on-site inspections in 2009 and 2010. The explanation advanced for this was the situation that prevailed during these two years, namely the fact that the FIU was without a director for six months, and the new tasks assigned to the FIU in an international context. During this period supervision was exercised by reviewing external audit reports received from the parties under obligation and through meetings with financial institutions' internal control officers to discuss matters raised by the external auditors.

555. Consequently, as noted during the previous evaluation round, the system of supervision seems to be based virtually entirely on the audit reports drawn up by external audit firms as submitted to the FIU and the INAF.

556. The effectiveness and the scope of the inspections performed by the FIU in 2008 cannot be deemed adequate in view of the extremely short duration of the on-site visits (just one day) as compared with the breadth of the subjects addressed and the types of controls the authorities claim to have performed on site. Furthermore, the most recent inspections date from a period when the principal amendments of the AML/CFT legislation (in particular the changes made to the LCPI and the RLCPI) had not yet been adopted.

557. It can be seen that the FIU did not perform any on-site inspections in the last two years, which means that no direct supervision of the application of the new standards has yet been put in place (except for the indirect controls performed based on the external audit reports and meetings with the heads of compliance departments).

558. In view also of the inadequacy of the resources assigned to the FIU's supervisory function (since there is lack of financial experts on its staff and the total number of staff assigned to it is incompatible with the tasks it is required to perform), concerns can also be raised regarding the effectiveness of the reviews of external audit reports carried out.

559. Lastly, during the on-site visit the evaluators were informed that the French post office offers banking services (such as current accounts and savings accounts) without having been licensed or registered by the INAF and without being subject to its supervision. Doubts also exist (at least from a legal standpoint) as to whether it is subject to the FIU's supervision (see section 3.11). The FIU has accordingly performed no on-site inspections over the last two years, the only two visits having been made by French and Spanish competent authorities. Moreover the audit reviews performed by the FIU can have only a limited impact, since it has no financial experts trained in the supervisory function on its staff.

Supervision of financial institutions - status and resources of supervisory authorities (Rec. 30)

The INAF

560. Although Andorran law does not expressly confer any specific role in AML/CFT matters on the INAF, its function of financial system supervisor gives it a degree of importance concerning its supervision activity to be exercised over financial intermediaries. In this connection, the INAF indicated that it has staff specially trained in financial matters or already experienced in the financial sector and to whom is assigned the specific tasks related to inspections.

561. No particular problem was raised regarding the INAF's independence (mentioned in Act 35/2003), confidentiality and the integrity of its staff. Regarding specific training in AML/CFT matters, the authorities met during the on-site visit said that the INAF's staff (most of whom already have financial sector experience) received special training in financial subjects, including specific sessions focusing on anti-money laundering aspects.

The FIU

562. Regarding the FIU, the authority with express responsibility for AML/CFT supervision, as mentioned above, at the time of the visit it had three members (in addition to the director), including a legal expert and two assigned to the operational department (police). The FIU had no financial expert on its staff, although the LCPI expressly provides for a maximum of three people expert in the financial sector.

563. The FIU's resources are clearly inadequate, not only in terms of the number of staff assigned to supervisory functions but also due to the lack of specialists in AML/CFT supervision matters. This is a major deficiency, especially as Andorran law assigns the FIU virtually sole responsibility for the supervisory function and also in view of the importance of the country's banking and financial sector. Regarding the FIU's independence, training issues and confidentiality standards incumbent on staff, it is necessary to refer to the observations already set out in section 2 of this report.

Recommendation 29 (rated PC in the 3rd round evaluation report)

564. The FIU derives its power to conduct inspections to verify the application of the AML/CFT obligations imposed under Andorran law from article 53 of the LCPI. Its duties are clarified by article 20 of the RLCPI, which provides that it shall be empowered to carry out on-site inspections on the premises of the parties under obligation, in order to meet the person or persons in charge of the organisation and supervision of compliance with the legislation on the prevention of money laundering and the financing of terrorism, and to request all the information and documentation necessary to that effect.

565. A similar power to conduct inspections is conferred on the INAF in its specific field of competence concerning supervision of the financial system, even if sole competence for AML/CFT issues is vested in the FIU. The law nonetheless stipulates that when the INAF detects a possible breach of the LCPI it shall inform the FIU and, in this connection, the possibility of a co-operation agreement between the two authorities is envisaged. No agreement had been signed at the time of the on-site visit and the two authorities indicated that such an agreement was not necessary.

566. From 2008 to 2010 the INAF conducted 24 inspections of parties subject to its monitoring, during which it took into account certain aspects of the LCPI, above all concerning the account opening process and record keeping. Aspects relating to the internal organisation of financial institutions were assessed on the basis of the external audit reports.

567. The authorities informed the evaluators that, up to the date of the on-site visit, no breaches had been referred to the FIU by the INAF, since the latter had found no evidence or sign of any failure to comply.

568. It can be noted that the new legislation lifted certain restrictions of the FIU's powers in matters of inspection, in particular those concerning advance notification of the inspection, giving reasons, and the categories of staff that the FIU could meet during its inspection visits.

569. However, as indicated above, in the period 2009-2010, no on-site inspection was conducted by the FIU, which lacks sufficient resources to perform this function.

Recommendation 17 (rated LC in the 3rd round evaluation report)

570. The system of sanctions is set out in Article 9 of the LCPI on administrative responsibilities, supplemented by Chapter 5 (Disciplinary proceedings) of the RLCPI.

Types of breach	*Measures covered*	*Investigative power*	*Power of enforcement*	*Fine*	*Supplementary sanction*
Very serious	- ***Failure to file a STR*** - ***Breach of secrecy concerning a STR*** - ***Breach of the duty to provide information to the FIU*** - ***Repetition of a serious breach***	***FIU***	***Government***	***€60 0000 to 600 000***	***Permanent or temporary (up to 3 years) suspension of the director or professional concerned***
Serious	- ***Breach of customer identification rules*** - ***Deficient verification of beneficial owner*** - ***Failure to retain documents*** - ***Lack of appropriate internal AML/CFT procedures*** - ***Repetition of a minor breach***	***FIU***	***Government***	***€6 0000 to 60 000***	***Temporary (1 to 6 months) suspension of the director or professional concerned*** + ***Ban from carrying out certain types of transactions***
Minor	***Any other breach of the LCPI***	***FIU***	***FIU***	***€600 to 6 000***	***Written warning***

571. The Andorran law provides for three types of infringement (minor, serious and very serious). The FIU investigates all kinds of disciplinary proceedings, and, for minor infringements, it is also empowered to enforce sanctions.

572. For serious and very serious infringements, once it has completed the investigation the FIU refers the matter to the Government, to which it transmits the entire case-file and a proposal for a sanction.

573. The serious or very serious infringements are expressly set out in the LCPI, whereas article 58 treats all other breaches of the LCPI as minor.

574. Sanctions are administrative in nature. They can be appealed against in the courts or a request can be made for a re-examination of the decision (for sanctions imposed by the Government) or its review by a higher authority (for sanctions imposed by the FIU).

575. According to the information obtained during the last evaluation visit, no sanctions have been imposed by the Andorran authorities, whereas the FIU conducted investigations in two cases but decided not to pursue them furthers with no transmission made to the Government.

Effective, proportionate and dissuasive sanctions applicable to natural or legal persons (C.17.1)

576. Andorran law provides for various sanctions covering all possible infringements of the AML/CFT requirements and applicable to either natural or legal persons as parties subject to the anti-money laundering legislation.

Designation of an authority empowered to apply the sanctions and related procedures (C.17.2)

577. Criterion C.17.2 is covered by articles 58 and 59 of the LCPI, which confers the power to apply sanctions on the FIU for minor infringements and the Government for serious and very serious infringements. In view of the inadequate resources of the FIU, which is also required to conduct administrative investigations, questions can be raised concerning the effectiveness of the system established by law.

Sanctions available for legal persons and also their directors and senior management (C.17.3)

578. In Andorra article 59 of the LCPI lays down both sanctions for legal persons (fines, written warnings, bans from carrying out certain specified kinds of financial or commercial transactions) and sanctions for the managers of both financial and non-financial undertakings (permanent or temporary suspension). Managers are not personally liable for the fines imposed on the legal entities they administer, but may be given different, separate penalties such as payment of a fine or suspension from their duties (which may be temporary or permanent).

Range of sanctions available (C.17.4)

579. The range of sanctions, all administrative in nature, is quite broad and includes financial penalties and penalties affecting the commercial or business activity (ranging from a written warning to permanent suspension of the professional concerned or the director of the undertaking). It should be noted that the Andorran AML/CFT legislation does not provide for the power of oversight authorities to withdraw, restrict or suspend the prior authorisation (or licence) held by a financial institution.

580. Particular consideration should be given to the issue of proportionality in so far as the vast majority of infringements qualify as minor and only a very small number are serious or very serious infringements. For example, it can be noted that failure to file a STR with the FIU carries a sanction of permanent suspension for a professional or manager (articles 58-1-a and 59), whereas failure to comply with the requirements concerning monitoring of transactions, the adoption of enhanced due diligence measures or the verification of data accompanying wire transfers constitutes only a minor breach. Particular consideration should be given to the fact that no sanction has been applied by the FIU or the Government, also in the light of the findings made during the previous evaluation round, since it may have an impact on the financial sector's perception as to the dissuasive nature of sanctions.

Recommendation 23 - market entry and measures to prevent criminals from taking control of financial institutions (C.23.3, C.23.3.1, C. 23.4, C.23.5, C.23.7)

581. The requirements of criteria 23.3 and 23.3.1 were recently introduced in Andorra under Act 35/2010, which assigns responsibility for authorising the establishment of any operational entity within the financial system (insurance companies are not regarded as financial entities) to the INAF and requires it to assess, inter alia, aspects linked to transparency as to the origin of funds and the identity of the persons who are to become the core partners in the proposed undertaking:

all these aspects must be adequately documented in the request for authorisation to establish an operational entity within the Andorran financial system.

582. Although Act No. 35/2010 applies only to newly formed establishments, in the event of a change in share ownership article 46 of Act No. 14/2010 provides that a change of shareholder must be registered with the INAF, which, when approving or refusing the registration, applies the same specific assessment criteria as are laid down in articles 12 and 18 of Act No. 35/2010, including in particular transparency as to the origin of funds and the identity of the persons who are to become the core partners in the proposed undertaking.

583. Concerning investments by non-residents, article 1.5 of Act 2/2008 provides that natural or legal persons concerning whom the FIU issues an unfavourable opinion shall not be permitted to invest in Andorra. The authorities indicated that the FIU report is binding as regards acceptance of the investor and, in this connection, on 7 April 2009 the FIU concluded an action protocol with the Foreign Investments Register, on the basis of which the latter conducts a check for any criminal record and verifies the other information on the investor contained in its databases. The FIU indicated it issues a negative opinion regarding any foreign investment arranged by means of foreign investment vehicles holding bearer shares or securities, except where the management structure and beneficial owner can be clearly identified.

584. Concerning criterion 23.3.1, Acts No. 13/2010 and 14/2010 lay down criteria of integrity and fitness to be met by natural persons destined to become directors or members of the senior management of a legal entity (including having no criminal record, not having been declared bankrupt and having held senior positions within the general management or supervisory structures of banks or other public or private establishments of a significant size). These rules apply to banks (articles 13 and 14 of Act No. 14/2010), financial investment institutions, investment fund management companies (articles 19 and 20 of Act 13/2010), and to the specialised non-banking credit institutions (articles 9 and 10 of Act No. 24/2008).

585. It should nonetheless be underlined that for insurance companies there is no specific provision similar to the requirements laid down in criterion 23.3 (fitness and integrity).

586. Regarding criterion 23.4, there is no express provision to the effect that the measures provided for in the legislation with regard to prudential supervision shall apply in a similar manner for anti-money laundering and terrorist financing purposes. Act 14/2003, which redefined the role of the INAF, establishes no link between prudential supervision and AML/CFT supervision, apart from indirectly by providing that the INAF shall have a general competence for verifying compliance with the regulations applicable to financial bodies. In addition, article 13 of Act 35/2010 expressly requires to submit to the INAF shall be accompanied by information on the general measures that will initially be taken to comply with the legislation on the fight against the laundering of money in order to obtain the authorisation to establish a new operational entity within the financial system.

587. The authorities met during the on-site visit informed the evaluators that, even without a specific reference to a link between prudential supervision and AML supervision, in practice many of the provisions established for prudential purposes are also applied for AML/CFT purposes (in particular the designation of a body responsible in matters of compliance, the adoption of effective risk management policies and procedures, internal and external audits). In this respect, the INAF stated that, in performing its role as prudential supervisor, it performs controls that are also of relevance to AML/CFT issues and informs the FIU of the outcome of these controls, in particular regarding insurance sector establishments.

588. In Andorra there are no natural or legal persons whose main or sole activity consists in providing a funds transfer service, and the establishments offering postal money transfer services

are deemed to be subject to the AML/CFT obligations. As stated below (see SR VI), in practice funds transfer services (and other banking services also) are proposed by the Spanish and French post offices which are active in Andorra without license or registration by the Andorran authorities. Supply of postal services is covered by an agreement signed by France and Spain in 1930 (confined to delivering letters and not including financial services).

589. Regarding money or currency exchange operations, the authorities met during the on-site visit stated that there were no bureau de change or other entities whose sole business was manual exchange in Andorra. The LCPI requirements accordingly apply to this activity by virtue of the fact that money or currency exchange operations can solely be performed by banks, which are subject to the AML/CFT requirements.

590. Regarding the funds transfer services proposed by the Spanish and French post offices, it must nonetheless be noted that efforts are being made by the competent authorities and by the post offices to foster the implementation of a system to verify compliance with AML/CFT requirements, as evidenced by the submission to the Andorran FIU of external audit reports, information on internal control procedures and suspicious transactions reports. In this connection, the authorities consider that, from a legal standpoint, these two establishments are subject to the AML/CFT requirements by virtue of article 41 of the LCPI, which provides expressly that money remittance companies shall qualify as financial parties under obligation in AML/CFT matters, subject to the entire range of requirements and obligations set out in the LCPI (customer due diligence, reporting, in-house procedures, etc.). However, the evaluators have reservations about this interpretation in so far as the financial activities performed should be authorised by an Andorran authority, which is not the case here.

591. Regarding manual exchange operations, no specific system of monitoring or supervision exists under the law, since this activity is performed solely by banks.

592. Andorra has no financial institutions other than those referred to in criterion 23.4.

Effectiveness and efficiency - Recommendations 23 and 17

593. The evaluation team is very concerned about developments regarding supervision of the effective application of the AML/CFT machinery. The system of supervision and monitoring established by the Andorran authorities in these matters continues to be confined mainly to a review of external audit reports relevant to AML/CFT issues, submitted by the parties under obligation, and there seems to be no systematic follow-up of any weaknesses noted. Although the FIU apparently conducted a number of on-site inspections in 2008, the appropriateness of the methodology applied to these inspections has not been established. In any event, no on-site inspections have been performed by the FIU since the adoption of the amended versions of the LCPI and the RLCPI.

594. The effectiveness and the implementation of R.17 must be assessed also compared with the observations made during the previous evaluation round: the failure to apply sanctions and the lack of proportionality of the sanctions laid down must be taken into consideration, as must the competent authorities' inadequate resources and the lack of on-site inspections on parties under obligation.

595. While the evaluation team considers the system of sanctions inadequate, no sanction in AML/CFT compliance matters has been imposed to date by the financial sector's supervisory authorities and this inevitably raises concerns as to the underlying reasons for this situation. In this context it should be noted that the FIU is very understaffed in relation to the many tasks assigned to it by the LCPI and, in particular, that it has no members with specific knowledge of supervisory and monitoring matters.

596. In view of the above, there are serious doubts as to the effectiveness of the supervision exercised by the competent authorities with regard to compliance with the AML/CFT legislation and regulations and also the effectiveness of the entire AML/CFT machinery in the financial sector.

597. Regarding implementation, significant efforts are needed to train financial institutions and their employees, so as to ensure they have a good understanding of the obligations ensuing from the legal framework and above all of new techniques, methods and trends in money laundering and terrorist financing. The FIU should envisage conducting on-site inspections within the premises of parties under obligation so as to verify compliance with the LCPI requirements and assess the need for eventual sanctions or for disciplinary proceedings as provided for by law.

3.10.2 Recommendations and comments

Recommendation 17

598. The Andorran authorities should review the range of sanctions applicable in AML/CFT matters to ensure that they are proportionate to the seriousness of the acts being sanctioned and should include the power of monitoring authorities to withdraw, restrict or suspend the prior authorisation (or licence) held by a financial institution.

599. The FIU and the Government should also take the necessary steps to ensure that sanctions for breaches of the AML/CFT requirements are effectively applied throughout the financial sector.

Recommendation 23

600. Andorra's system of supervision continues to suffer from a number of deficiencies raised in the previous evaluation round, although some progress has been made since in the standard-setting field.

601. Important issues remain to be dealt with both from a general standpoint (inadequate supervision of insurance companies, concerning which it was recommended that they be made subject to supervision by the INAF instead of the finance ministry; foreign post offices offering banking and financial services without due authorisation) and from an operational standpoint (supervision exercised virtually exclusively through reliance on external audit reports). To address these issues the Andorran authorities should not only amend the existing legislation and supervision policies and methodologies, but also take steps to endow the competent authorities (in particular the FIU) with adequate resources so they can properly fulfil their supervisory role in AML/CFT matters.

602. As a matter of priority the Andorran authorities should reinforce AML/CFT supervision of financial institutions, notably by establishing an appropriate supervision policy including a structural plan for the regular performance of on-site AML/CFT compliance inspections, using an appropriate methodology with a view to verifying that the financial sector effectively implements the requirements of the AML/CFT legislation, and performing regular, effective monitoring of the findings of other means of control such as external audit reports.

603. The authorities should ensure that the insurance sector is subject to appropriate supervision in AML/CFT matters.

604. The legislation and regulations applicable to insurance companies should be amended so as to introduce measures to prevent criminals or their accomplices from taking control of establishments, in particular by laying down clear requirements regarding the fitness and integrity of their management.

605. The Andorran authorities should review the implementation of the requirements of R.23 in respect of the financial services proposed by post offices.

Recommendation 29

606. Although the IFU is empowered to inspect financial institutions, including on-site inspections, and to implement sanctions, for lack of sufficient, appropriate resources assigned for this purpose these powers have not been fully utilised. It is essential that the Andorran authorities take all the necessary measures to address this situation as a matter of urgency.

Recommendation 30

607. As already mentioned, the Andorran authorities must ensure that the FIU has sufficient resources to perform its supervisory role in AML/CFT matters.

608. The FIU urgently needs to hire the staff needed to implement an appropriate AML/CFT supervision policy and to ensure that the persons assigned to these functions have the requisite qualities and skills.

609. The FIU must also ensure that its staff, in particular those assigned to supervisory functions, receive appropriate training in performing AML/CFT supervision.

3.10.3 Compliance with Recommendations 17, 23, 29 & 30

	Rating	Summary of underlying factors (relating specifically to article 3.10) for the overall compliance assessment
R.17	**PC**	• The range of sanctions is not proportionate to the seriousness of the acts and does not include the power of monitoring authorities to withdraw, restrict or suspend the prior authorisation (or licence) held by the institution. • Effectiveness: (1) No sanctions imposed in recent years; (2) The lack of on-site inspections in 2009 and 2010 and the supervisory authorities' inadequate resources raise doubts about the effectiveness of the system of sanctions.
R.23	**PC**	• Supervision is based almost entirely on the review of external audit reports and the approach adopted does not seem to satisfy all the criteria in terms of planning • The insurance sector is not subject to appropriate supervision in AML/CFT matters. • Lack of legislative or regulatory measures regarding fitness and integrity (23.3) for insurance sector companies other than financial institutions • Post offices propose financial services without authorisation or licence • In view of the information provided and the very small number of on-site inspections, effectiveness is not demonstrated.

R.29	**PC**	• The FIU's failure to perform on-site inspections in 2009 and 2010 raises questions regarding the effectiveness of the system of supervision and the application of the powers of compulsion and of sanction conferred by law.

3.11 Money or value transfer services (SR.VI)

Special Recommendation VI (rated PC in the 3rd round evaluation report)

Summary of reasons for the rating in the MER of 2007

610. Andorra was rated partially compliant in respect of RS.VI in the third round report on account of the existence of funds transfer services proposed by the Spanish post office without any licence or authorisation and without an appropriation system of supervision and sanctions.

General

611. In Andorra there are no parties under obligation whose main or sole activity consists in providing a funds transfer service, but this function can be performed by banks as an ancillary activity to banking services. Andorran law does not include money or value transfer services as a general category. Article 41 of the LCPI binds "money remittance institutions" to all AML/CFT obligations.

612. This type of service is proposed by the Spanish and French post offices which are active in Andorra without having been licensed or registered by the Andorran authorities and which are subject to no form of prudential supervision, apart from that exercised by their country of origin.

613. The presence of the French and Spanish post offices has its basis in an agreement signed in 1930 by the Spanish Director General of Communications and the French Minister for Postal, Telegraph and Telephone Services, which however refers solely to mail delivery services and does not concern financial services that were non-existent at the time of the conclusion of the agreement.

3.11.1 Description and analysis

Application of the FATF Recommendations to natural and legal persons that perform money or value transfer services (C.VI.2)

614. The measures concerning parties under obligation are in practice applied to the foreign post offices with differences that take account of their origins: suspicious transaction reports are filed with either the FIU of the home country or the Andorran FIU, while transactions monitoring is, according to the institutions met during the on-site visit, performed solely within the central French and Spanish structures. Regarding the French post office, the Andorran office is also treated as a branch of the Toulouse office and all reports made by the branch are regarded as reports initiated in France concerning non-resident parties.

615. In practice, the representatives of post offices did not foresee any particular difficulties in making the post offices subject to Andorran law in so far as their in-house rules, developed in accordance with the obligations imposed under Spanish and French law, already correspond to the LCPI requirements.

Monitoring natural and legal persons supplying money and value transfer services (C.VI.3)

616. As parties under obligation (even without authorisation or licence) the foreign post offices should be subject to FIU monitoring. However, it has performed no on-site inspections, the monitoring coming only from the reception of the annual audit reports provided for in the LCPI. It was noted that specific monitoring has been carried out by the competent authorities of the countries of origin.

Obligation to keep a current list of agents, which must be made available to the designated competent authority (C. VI.4)

617. This criterion is considered as not applicable since there are no agents providing money or value transfer services, the services are proposed solely in post offices without any intermediation.

System of sanctions applicable to natural and legal persons that perform money or value transfer services (C.VI.5)

618. As parties under obligation, the institutions providing money remittance services are subject to the same sanctions as exist for other undertakings. In this respect, reference is made here to the observations under R.17 with regard to proportionality and effectiveness.

Effectiveness of implementation of Special Recommendation VI and overall compliance assessment

619. The authorities met during the on-site visit said that, in 2007, the FIU had formally notified the French and Spanish post offices operating in Andorra that they were regarded as parties under obligation in AML/CFT matters and were consequently subject to all the Andorran laws and regulations and to the supervision exercised by the FIU in this field.

620. The FIU also organised individual meetings with representatives of the French and Spanish post offices at which it reminded them, in particular, of the following obligations:
- submission of an external audit report to the FIU on an annual basis,
- providing a copy of their internal rules to the FIU,
- filing of suspicious transaction reports with the FIU.

621. Although efforts have been made by both the Andorran authorities and the post offices, compliance with this recommendation is still impaired by the lack of a specific legislative framework and deficiencies in supervision, as mentioned earlier with regard to other financial institutions.

622. The observations set out above in respect of R.17 concerning the range of applicable sanctions and their effectiveness are also applicable.

3.11.2 Recommendations and comments

623. No competent authority has been designated and no specific structure for licensing or registering money or value transfer operators exists at present. The Andorran authorities should review these aspects, as already recommended, so as to settle the issue of the offer of funds transfer services by foreign post offices without any form of authorisation, which was already raised in the previous evaluation round.

624. The earlier recommendations concerning the supervisory machinery, proportionality of sanctions and their effectiveness also apply in this context and should be fully implemented by the authorities.

3.11.3 Compliance with Special Recommendation VI

	Rating	Reasons underlying the rating
SR VI	**PC**	• Money and value transfer services are proposed by the Spanish and French post offices without any formal legal framework • The earlier recommendations concerning the supervisory machinery, proportionality of sanctions and their effectiveness also apply in this context.

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12)

Recommendation 12 (rated PC in the 3rd round evaluation report)

Summary of reasons for the rating in the MER of 2007

625. Andorra was rated partially compliant in respect of R.12 in the third round report. The main reasons for this rating were: 1) deficiencies regarding the categories and circumstances in respect of criteria 12.1.d) (lawyers were not expressly mentioned and buying and selling of business entities was not covered) and e) (trust and company service providers not covered); 2) DNFBPs did not have a general obligation to show diligence (R.5) and identify clients apart from regarding transactions that raised suspicions of laundering; 3) the requirements of recommendations 6 and 8 and 9 to 11 were not applied to any parties under obligation, including DNFBPs.

4.1.1 Description and analysis

Compliance with Recommendation 5

Scope ratione personae

626. The measures to combat money laundering and terrorist financing laid down in the LCPI apply to the non-financial businesses and professions specified in article 45 of that law, who in the exercise of their profession or business activity undertake, control or advise on transactions involving funds movements which could be used for money laundering or terrorist financing.

627. In particular this covers:

a) professional external accountants, tax advisers, auditors, economists and business agents (*gestories)*

b) notaries, lawyers and members of other independent legal professions when they are involved in the planning or execution of transactions on behalf of their clients in the framework of the following activities:

- buying and selling real property or business entities
- the handling of the money, deeds, or other assets of their clients
- the opening or management of bank accounts, savings accounts or securities accounts
- the organisation of the contributions necessary for the creation, operation or management of companies
- creation, operation or management of companies, contractual fiduciary arrangements (*fideicomisos)* or similar structures; or when acting for their customers in financial or real estate transactions;

c) sellers of high value goods, such as precious stones and metals, when payment is made in cash, for an amount equal to or exceeding € 30 000,[66] or the equivalent in any other currency
d) suppliers of services to companies or contractual fiduciary arrangements not referred to in any other paragraph of this article
e) gaming establishments.
f) real estate agents carrying out activities related to the purchase and sale of property.

628. Article 45 of the LCPI stipulates that members of the professions referred to in paragraphs a) and b) are not bound by the obligations laid down in the LCPI with regard to information they receive or obtain from one of their clients in the course of ascertaining the legal position of the client or performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

Customer identification requirements applicable to the non-financial professions (C.12.1)

629. Gaming establishments (solely consisting of bingo establishments) are subject to the LCPI obligations regarding identification of customers and verification of their identity regardless of the amount of the transaction carried out by a customer. During the on-site visit, no casino was authorised by the Andorran authorities in the Principality. Nor were there online casinos operating in Andorra. In the case of such activities becoming authorised in Andorra, they would be bound to AML/CFT obligations by application of Article 45(e) of the LCPI.

630. Real estate agents are subject to the LCPI obligations regarding identification of customers and verification of their identity when they carry out transactions concerning the purchase and sale of property on behalf of their customers.

631. Suppliers of services to companies or contractual fiduciary arrangements are subject to the LCPI obligations regarding identification of customers and verification of their identity whatever the transaction being carried out.

632. Sellers of high value goods are subject to the LCPI obligations regarding identification of customers and verification of their identity solely when they carry out transactions with their customers for an amount equal to or exceeding € 30,000,[67] which is significantly higher than the amount of €15,000 stipulated by the FATF. However, the Andorran authorities indicated that the FATF definition of sellers of high value goods is confined to dealers in precious metals or stones, whereas the Andorran definition reflects the broader concept to be found in article 2.1.e) of Directive 2005/60/EC.

633. Professional external accountants, tax advisers, auditors, economists and business agents (*gestories*) (whose activities in Andorra equate with those of providers of services to companies and trusts) are subject to the obligations regarding identification of customers and verification of their identity laid down in the LCPI for all activities and not only those mentioned by the Methodology. However, these obligations do not apply when these professionals are ascertaining the legal position of the client or performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings. These exemptions regarding identification and verification of identity are not provided for in the FATF Recommendations and go further than what is required (namely when they prepare or undertake activities specifically mentioned in criterion 12.1d).

[66] Law 4/2011, amending the LCPI, in force since 23 June 2011, amended section 45 of the LCPI by reducing to € 15,000 the amount from which the dealers in high-value goods are subject to the obligations the RPI.
[67] See footnote on page related to Article 45 modified (threshold decreased to € 15,000).

634. Notaries, lawyers and members of other independent legal professions are subject to the LCPI obligations regarding identification of customers and verification of their identity when they are involved in the planning or execution of transactions on behalf of their clients in the framework of the following activities:
- buying and selling real property or business entities
- the handling of the money, deeds, or other assets of their clients
- the opening or management of bank accounts, savings accounts or securities accounts
- the organisation of the contributions necessary for the creation, operation or management of companies
- the establishment, management or control of companies, trusts or similar structures.
- when they act on behalf of their clients in financial or real estate transactions

635. However, these obligations do not apply when these professionals are ascertaining the legal position of the client or performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings. These exemptions regarding identification and verification of identity are not provided for in the FATF Recommendations.

636. Since all these professions are subject to the same obligations regarding identification of customers and verification of their identity as the financial professions, the observations already made in respect of R.5 also apply here, in particular concerning the following obligations, which have been introduced or clarified by the LCPI amendments made after the visit and which were too recent to be considered fully effective:
- The regulations requiring professionals to apply due diligence measures to customers regardless of any exceptions or thresholds where there is a suspicion of money laundering or terrorist financing or where there are doubts about the veracity or adequacy of previously obtained customer identification data.
- The regulations requiring professionals to obtain corroboration of the information obtained (notably concerning the business activity) from a reliable, independent source.
- The broadening of the identification measures provided for by the law and regulation to customers who are trusts or legal arrangements.
- The requirement to obtain information concerning the names of senior management (for legal persons) or administrators (for trusts) and the provisions governing their powers to commit the legal person or legal arrangement.

637. Similarly, it is appropriate to refer to the remarks concerning R.5 regarding the following aspects:
- As regards the beneficial owner, the definition remains incomplete and should, among other things, aim natural persons who are the decision-makers of the legal person and the settlor and beneficiaries of a trust.
- As regards the delegation to a third party, professionals should not be allowed to delegate to a third party the execution of their due diligence measures on the monitoring of operations.

Implementation of the due diligence (and reporting) obligations incumbent on the non-financial professions once a business relationship is established with a customer

Compliance with Recommendation 6

638. Article 49 quater of the LCPI determining the due diligence measures to be applied to customers who are politically exposed persons restricts its application to financial parties under obligation, that is to natural or legal persons operating within the financial system, insurance companies authorised to operate in the life insurance sector and money remittance institutions (cf. article 41 of the LCPI).

639. DNFBPs are therefore not required to implement specific due diligence measures in respect of their customers who are politically exposed persons.

Compliance with Recommendation 8

640. The due diligence measures relating to the use of new technologies and the risks associated with relationships which do not require the customer's physical presence are set out in article 49 of the LCPI, which restricts their application to financial parties under obligation (natural or legal persons operating within the financial system, insurance companies authorised to operate in the life insurance sector and money remittance institutions). The Andorran authorities stated that the restriction of this specific supervisory measure to financial parties alone is based on the nature of their activities and the possible use of new technologies, which are not identical in the case of DNFBPs.

641. DNFBPs are therefore not required to implement specific due diligence measures concerning the use of new technologies and the risks associated with relationships which do not require the customer's physical presence.

Compliance with Recommendation 9

642. The issue of relying on a third party or an intermediary to comply with certain elements of the due diligence requirements is addressed in article 50 of the LCPI, which provides that all the parties subject to this law (including DNFBPs coming under article 45) shall have the same obligations in these matters.

643. The observations already made in respect of Recommendation 9 should accordingly be taken into account here, notably the fact that there is no requirement that the delegating party obtain the necessary information concerning, inter alia, elements of the customer due diligence process.

Compliance with Recommendation 10

644. Article 51 of the LCPI concerning preservation of documentation provides that this obligation shall also apply to all parties subject to the law (including DNFBPs coming under article 45).

645. The observations already made in respect of Recommendation 10 should accordingly be taken into account here.

Compliance with Recommendation 11

646. Article 49 of the LCPI provides that all parties subject to this law (including DNFBPs coming under article 45) shall be required to monitor all transactions, even if not suspicious, where they are typified as susceptible of involving money laundering or terrorism financing.

647. As DNFBPs are subject to this requirement under the same conditions as financial undertakings, the observations already made in respect of Recommendation 11 should be taken into account here, in particular the lack of precise instructions to parties under obligation concerning the detection of unusual or suspect transactions.

Effectiveness and efficiency of implementation - R.12

648. Apart from the above observations concerning the scope of the legal and regulatory due diligence requirements incumbent on DNFBPs, to guarantee the effectiveness of these

requirements it is vital that the Andorran authorities effectively exercise close and regular supervision of the measures applied in this field by each undertaking. In 2008 the FIU inspected 18 DNFBPs (out of a total of over 450). In 2009 and 2010 there were no inspections of DNFBPs aimed at verifying the effective application of the due diligence measures in AML/CFT matters.

649. It was moreover noted that, in practice, certain DNFBPs did not fully comply with their obligations regarding identification of customers and verification of their identity.

650. On account of this finding and the deficiencies in the exercise of regular supervision by the Andorran authorities, it cannot be concluded that the due diligence requirements imposed on Andorran DNFBPs are fully effective.

4.1.2 Recommendations and comments

651. The Andorran authorities should ensure that:
- sellers of high value goods are subject to the LCPI obligations regarding identification of customers and verification of their identity when they carry out transactions with their customers for an amount equal to or exceeding € 15 000[68];
- the exceptions laid down in article 45 of the LCPI related to the identification and identity verification do not apply to Lawyers, notaries and other legal professions, accountants, tax advisors, auditors, economistas and gestorias, accountants, tax advisers, auditors, economists and business agents;
- DNFBPs are required to implement specific due diligence measures in respect of their customers who are politically exposed persons;
- DNFBPs are required to implement specific due diligence measures concerning the use of new technologies and the risks associated with relationships which do not require the customer's physical presence;
- In case of a future authorisation of casino, including Internet casino, authorities should take additional measures to ensure those activities comply with all the obligations, as provided for in R.12.

652. The recommendations set out in Chapter 3 concerning the measures to be taken in respect of the requirements of Recommendations 5 to 9 and 11, as well as R.17, are also applicable to DNFBPs and should be implemented by the Andorran authorities.

4.1.3 Compliance with Recommendation 12

	Rating	Reasons underlying the overall rating
R.12	**PC**	• Sellers of high value goods, precious stones and metals, are bound by the LCPI solely when they perform cash transactions for an amount exceeding €30 000.[69] • Lawyers, notaries and other legal professions, accountants, tax advisors, auditors, economistas and gestorias, accountants, tax advisers, auditors, economists and business agents, are not subject to the LCPI's requirements on identification and identity verification "in respect of information they receive or obtain from one of their clients in the course of ascertaining the legal position of the client or performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding

[68] See the above footnote on article 45 of the LCPI related to thresholds.
[69] See the above footnote on the change of the threshold to € 15,000 under Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011.

		proceedings, whether such information is received or obtained before, during or after such proceedings". • Recommendations 6 and 8 still do not apply to DNFBPs. • The observations and compliance ratings set out in Chapter 3 concerning Recommendations 5 to 9 and 11, and R.17, which are applicable to DNFBPs in the circumstances covered in R.12, are also applicable. • The full effectiveness of the implementation of a number of measures is not established: (1) in view of the recent adoption of the amendments to the RLCPI, following the visit, the effectiveness of certain measures cannot be assessed in respect of certain obligations; (2) doubts remain concerning the implementation and interpretation of certain obligations by the DNFBPs; (3) the observations regarding the lack of effectiveness of the supervisory machinery and the application of sanctions are also applicable here.

4.2 Suspicious transaction reporting (R.16)

(in accordance with R. 13 to 15 and R. 21)

Recommendation 16 (rated PC in the 3rd round evaluation report)

Summary of reasons for the rating in the MER of 2007

653. Andorra was rated partially compliant in respect of R.12 in the third round report. The main reasons for this rating included, apart from the absence of a requirement to report suspicions of terrorism financing, the same deficiencies as were raised for financial institutions with regard to the implementation of Recommendations 13, 14, 15, 21 and 17.

Compliance with the reporting obligation (C.16.1)

654. DNFBPs are subject to the same reporting obligations as financial institutions. This is because the requirement established in article 46 of the LCPI concerning reporting to the FIU applies to all parties under obligation, as provided for in article 45.

655. Andorran law goes beyond the requirements of R.16 in respect of providers of services to companies and trusts (for which the reporting obligation covers all activities not just those mentioned in C.16.1) and real estate agents (not covered by C.16.1). In addition, the law regards as parties under obligation (and therefore subject to the suspicious transaction reporting requirement) all other natural persons or entities who carry on, control or advise operations involving the movement of money that might be used for laundering or the financing of terrorism.

656. As already mentioned with regard to R.12, sellers of high value goods, such as precious stones and metals, are considered to be parties under obligation (including with regard to the reporting requirement) only when payment is made in cash, for an amount equal to or exceeding € 30 000 (instead of €15 000 as provided for in C.16.1).[70]

Role of self-regulatory organisations (C.16.2)

[70] It should nonetheless be noted that, after the on-site visit, Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011, amended article 45 of the LCPI by reducing to €15 000 the amount above which dealers in high value goods are subject to the requirements of the LCPI (including concerning suspicious transaction reporting).

657. Article 52 of the LCPI permits the designation of a self-regulatory body (or professional association) to which suspicious transaction reports may be sent, the body concerned being in turn obliged to submit the reports to the FIU. These bodies must be approved by a FIU technical communiqué and, in this connection, provision is made for co-operation agreements between the FIU and the designated self-regulatory bodies.

658. No self-regulatory body has been approved by the FIU so far. The only case of any relevance here would be that of lawyers, but the situation regarding them is still deadlocked since the parties concerned have not yet clarified the role of firms of lawyers. In particular, according to the professionals interviewed, lawyers should not have any direct responsibility once they have submitted a report to their firm, whereas article 14.2 of the RLCPI does not provide for this exclusion from responsibility. According to the interpretation given by the representatives of professionals whom the evaluators met during the on-site visit, the firm's role should be confined to verifying compliance with the duty of confidentiality by the lawyer making the report.

Compliance with Recommendations 14, 15, 17 and 21 (C.16.3 & C.16.4)

Recommendation 14

659. Articles 47 and 48 of the LCPI, which refer to protection from liability for breaches of the confidentiality rules and to the prohibition on "tipping-off", are applicable to all parties under obligation and accordingly to DNFBPs as well as financial institutions. Reference is nonetheless made to the observations in respect of R.14 concerning issues of effectiveness noted.

Recommendation 15

660. Concerning the applicability of R.15 to DNFBPs, the provisions concerning the internal control and communication body in charge of the organisation and monitoring of compliance with the AML/CFT legislation are applicable in respect of non-financial parties under obligation as well, subject to the clarification that natural persons under obligation are themselves considered to qualify as an internal control and communication body.

661. It must nonetheless be noted that certain categories of DNFBPs (above all accountants and economists in partnership with them) do not always observe the requirement to appoint an AML compliance officer.

662. Concerning training, during the on-site visit it was noted that virtually all the categories of DNFBPs with which the team met mentioned a need for additional training , as well as the competent authorities.

Recommendation 21

663. The requirement to pay special attention to business relationships with legal persons and financial institutions located in countries which do not or insufficiently apply the FATF Recommendations applies, under the same terms, to all parties under obligation. Reference can accordingly be made to the observations set out in the previous section.

Recommendation 17

664. The above observations in respect of R.17 in the context of the requirements of R.16 are also applicable.

Additional elements (C.16.5 and C.16.6)

665. Regarding additional elements, criterion 16.4 is, in principle, covered since no activity carried out by accountants is excluded from the reporting requirement, except activities that do not typically come within the accounting field (defending or advising clients in connection with legal proceedings); as regards criterion 16.5, article 46 says nothing on the matter since it solely concerns laundering and not the predicate offences.

Effectiveness of implementation of Recommendation 16 and overall compliance assessment

666. Regarding suspicious transaction reporting by non-financial businesses and professions, the FIU provided the following statistics:

Activity	Number of parties registered or operating	STRs sent in 2008	STRs sent in 2009	STRs sent in 2010	STRs sent in 2011
Casinos	**0**	**0**	**0**	**0**	**0-**
Real estate agents	**246**		**1**		**1**
Dealers in precious metals and stones	**29**	**1**			
Lawyers	**149**	**1**		**2**	**2**
Notaries	**4**		**1**	**2**	**1**
Accountants, auditors, economists	**136**				**1**
Fiduciaries or company service providers	**1**				**-**

667. In general, the statistics show that the commitment and level of interest of DNFBPs regarding money laundering and terrorism financing issues is still very low and that they make a very small contribution in the reporting system.

4.2.1 Recommendations and comments

668. The threshold beyond which AML/CFT obligations (in particular suspicious transaction reporting) apply to sellers of high value goods should be reduced to €15 000, as established under R.16. [71]

669. The authorities should raise awareness among DNFBPs of the need for a greater effort as regards their contribution to the fight against money laundering and terrorism financing and to the reporting mechanism.

670. The recommendations set out in Chapter 3 concerning the measures to be taken in respect of the requirements of Recommendations 14, 15, 21 and 17, are also applicable to DNFBPs and should be implemented by the Andorran authorities in respect of DNFBPs' suspicious transaction reporting obligation.

[71] See the above footnote concerning the amendment of this threshold.

4.2.2 Compliance with Recommendation 16

	Rating	Underlying factors (relating specifically to section 4.3) for the overall conformity assessment
R.16	**PC**	• The threshold applied to exclude sellers of high value goods from the AML/CFT requirements is far higher than that established by R.16.[72] • The observations and compliance ratings set out in Chapter 3 concerning Recommendations 14 15, 21 and 17, which concern DNFBPs in respect of their suspicious transaction reporting obligation, are also applicable. • The full effectiveness of the implementation of the reporting obligation by DNFBPs is not established as their contribution and commitment in AML/CFT matters is still very limited.

4.3 Regulation, supervision and monitoring (R.24)

Recommendation 24 (rated PC in the 3rd round evaluation report)

4.3.1 Description and analysis

Summary of reasons for the rating in the MER of 2007

671. Andorra was rated partially compliant in the 3rd round report concerning R.24 on account of the lack, in practice, of any monitoring or supervision measures relating to DNFBPs.

General

672. The situation regarding casinos has not changed significantly since the previous evaluation round. The only game of chance is bingo, which is covered by a law of 1996 whereby government authorisation is required for opening a bingo hall. In view of the value of the winnings, the risk of money laundering can be regarded as low in this sector.

Monitoring and sanctioning of casinos in AML/CFT matters (C.24.1.1)

673. Supervision of bingo halls is carried out by the finance Ministry, which performs a review of external audit reports and conducts on-site inspections. The law specifies certain forms of identification of bingo hall customers and lays down requirements concerning the payment of higher amounts of winnings (payment by non-transferable cheque).

Licensing of casinos (C.24.1.2)

674. Opening a bingo hall requires an authorisation from the Ministry of Economy and Finance, which may grant a licence after verifying that the conditions laid down by law are met (Andorran nationality, minimum capital amount and so on). At the time of the on-site visit only two bingo halls had been licensed.

Existence of legal or regulatory measures to prevent criminals or their associates from taking control of casinos (C.24.1.3)

[72] See the above footnote.

675. There are no specific measures to prevent criminals or their associates from taking control of bingo halls; the general measures provided for in the legislation on the commercial register are therefore applied (see the observations analyzing Recommendation 33).

Systems of monitoring and supervision of compliance with AML/CFT requirements applicable to other non-financial professions (C.24.2)

676. The system of monitoring and supervision of compliance with AML/CFT requirements applicable to other non-financial professions does not include specific measures regarding the various professions expressly mentioned in the LCPI.

677. In this connection, no study or assessment to evaluate the risk of laundering linked to each profession covered by R.12 has been performed in Andorra. The authorities (and professionals themselves) consider that these activities involve a very low risk. In general, the majority of representatives which the team during the on-site visit indicated that training initiatives had been taken by the FIU (although the firms of lawyers and estate agents had themselves organised a series of training sessions for their partners) but, generally speaking, there is still a considerable need to organise specific training.

678. Although the country's small size is conducive to personal contacts, some institutions or firms do not receive the FIU's technical communiqués, which means that consideration should be given to adopting more effective communication measures.

Existence of a designated competent authority responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements (C.24.2.1)

679. The authority responsible for monitoring compliance with AML/CFT requirements in Andorra is the FIU, for DNFBPs. In this connection, it must be underlined that, although the FIU has a fairly broad range of powers and functions in the area, it still does not have sufficient resources to perform its role, especially taking into account the extent of its tasks compared with the number of staff.

680. It transpired that no on-site inspection concerning DNFBPs had been performed by the FIU in the last two years, a situation similar to that noted with regard to the financial sector, and the most recent inspections dated from 2008.

681. Regarding sanctions, even with a legislative framework laying down sanctions for all possible breaches of the LCPI (a situation comparable to that observed with regard to financial institutions) and laying down the explicit designation of the authorities in charge of applying it, no sanctions or disciplinary proceedings have been taken nor applied by the FIU since the previous evaluation round.

Effectiveness of implementation of Recommendation 24 and overall compliance assessment

682. None of the measures recommending during the previous evaluation round has been taken into consideration by the Andorran authorities, apart from the separate training initiatives undertaken by some professional associations and meetings between the FIU and associations. Furthermore, the lack of effective supervision by the FIU in 2009 and 2010 and the fact that no sanctions have been imposed raises questions about the effectiveness of implementation of this recommendation.

4.3.2 Recommendations and comments

683. The Andorran authorities should first study the real risks of laundering or financing of terrorism with regard to each non-financial profession. The outcome of this study should provide food for thought regarding improvements in the means of communication used by the FIU in respect of DNFBPs (an FIU web-site for example).

684. In view of the many tasks already assigned to the FIU, the role that might be played by professional associations and firms including in supervisory matters should be taken into consideration.

685. The recommendations set out in Chapter 3 concerning the measures to be taken in respect of the obligation to establish an effective system of monitoring and supervision should be implemented by the Andorran authorities so as to ensure effective compliance with the AML/CFT requirements by DNFBPs.

4.3.3 Compliance with Recommendation 24

	Rating	Underlying factors (relating specifically to section 4.5) for the overall conformity assessment
R.24	**PC**	• Supervision of compliance with AML/CFT requirements by DNFBPs is inadequate. • No thorough study has been made of risks linked to DNFBPs. • The effectiveness of the controls and sanctions applicable to DNFBPs has not been established.

4.4 Other non-financial businesses and professions / Modern and secure techniques of money management (R. 20)

4.4.1 Description and analysis

Recommendation 20 (rated PC in the 3rd round evaluation report)

Summary of reasons for the rating in the MER of 2007

686. Andorra was rated partially compliant in the 3rd round report concerning R.20 on account of the existence of certain professions (*consels, gestorias, economistas, financiarias* and others) which were not clearly subject to the requirements despite what the evaluators regarded as significant risks. It was also recommended that consideration be given to introducing regulations or limitations on cash payments.

Application of Recommendations 5, 6, 8-11, 13-15, 17 and 21 to businesses and professions other than designated non-financial businesses and professions (C.20.1)

687. The Andorran authorities have envisaged the possibility of applying Recommendations 5, 6, 8-11, 13-15, 17 and 21 to other non-financial businesses and the Andorran list of DNFBPs is accordingly broader than that of the FATF.

688. Under Article 45 of the LCPI sellers of high value goods are subject to AML/CFT requirements, drawing on article 2.1 e) of Directive 2005/60/CE, when they carry out a transaction

for which payment is made in cash, for an amount equal to or exceeding € 30 000, or the equivalent in any other currency.[73]

689. Article 42 also stipulates that the LCPI applies to all natural or legal persons whose business activities may channel or facilitate a money laundering operation or terrorism financing.

Existence of measures to encourage the development and use of modern and secure techniques of money management that are less vulnerable to money laundering (C.20.2)

690. Since the third round mutual evaluation report no new measure to encourage the development and use of modern and secure techniques of money management that are less vulnerable to money laundering has been taken in Andorra.

691. The authorities nonetheless pointed out that the Andorran banking system is based on a universal banking model, including specialised banking services. Andorran banks offer a full range of banking services including credit operations, equity management and financial advisory services, liability operations, financial analysis and other services such as credit cards and transfers. Andorran banks operate in the main urban areas of the country through an extensive network of branches. As at 31 December 2010 Andorra had 56 branches providing banking services and 151 cash dispensers.

692. It was also stated that the Andorran Banking Association was working on an analysis of the Single Euro Payments Area (SEPA), the key regulatory aspects of which are governed by the Payment Services Directive (Directive 2007/64 EC of 13 November 2007). SEPA would allow customers to make cashless euro payments to anyone located anywhere in the euro zone using only a single bank account and a single set of payment instruments. All retail payments in Euros would thereby be considered domestic. There would no longer be any difference between domestic payments and cross-border payments within the euro area.

Effectiveness of implementation of Recommendation 20 and overall compliance assessment

693. Although article 42 stipulates that the LCPI applies to all natural or legal persons whose business activities may channel or facilitate money laundering operation or terrorism financing, the Andorran authorities said they left it to each party concerned to determine whether or not it was covered by this article.

4.4.2 Recommendations and comments

694. The Andorran authorities should clearly indicate which activities are covered by article 42 so as to leave no room for individual interpretations in this matter.

695. In view of the specific situation in Andorra (no means of detecting cross-border transportation of currency (RS.IX), no study of the feasibility and utility of implementing a system whereby financial institutions would report all cash transactions above a certain amount to a national central agency (R.19)) the Andorran authorities should envisage introducing a limit on cash payments.

[73] See footnote above on the modification of the threshold from €30,000 to €15,000 by Law No. 4/2011, amending the LCPI and in force since 23 June 2011.

4.4.3 Compliance with Recommendation 20

	Rating	Reasons underlying the rating
R.20	**LC**	• Lack of precisions as to the natural or legal persons whose business activities may channel or facilitate a money laundering operation or terrorism financing and who should apply the LCPI. • No measure has been taken to encourage the development and use of modern and secure techniques of money management that are less vulnerable to money laundering.

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

Recommendation 33 (rated PC in the 3rd round evaluation report)

5.1.1 Description and analysis

Summary of reasons for the rating in the MER of 2007

696. Andorra was rated partially compliant in respect of R.33 in the third round report on account of a number of deficiencies regarding measures to clarify and facilitate access to information in the companies register and ensure this information is kept up to date, and measures to eliminate de facto companies, prohibit the use of name-lenders and ensure that bearer securities are converted into named securities.

General

697. The legal and regulatory framework applicable to legal persons in Andorra has been considerably amended since the previous evaluation.

698. The adoption of the following pieces of legislation should be noted in particular:
- Act No. 20/2007 of 18 October 2007 on public limited companies and limited liability companies, concerning measures to make public the identity of shareholders and members of companies' governing bodies, as amended by Act No. 4/2008 of 15 May 2008;
- the Business Accounting Act No. 30/2007 of 20 December 2007, as amended by Act No.8/2010 of 22 April 2010;
- the Decree of 26 March 2008 amending the regulations governing the commercial register, whereby changes in the share ownership and governing bodies of companies must be reported;
- the Foreign Investments Act No. 2/2008 of 8 April 2008, whereby foreign investments in Andorra are subject to prior clearance by the AML/CFT authorities, as amended by Act No. 36/2008 of 18 December 2008;
- Act No. 11/2008 of 12 June 2008, regulating foundations;
- the Decree of 23 July 2008 on adoption of the General Chart of Accounts.

Measures to prevent the unlawful use of legal persons (C.33.1)

699. Article 1 of the Regulation on the Commercial and Companies Register provides for the creation of a central register covering all of Andorran territory. Under article 10 the register must include the following information for all commercial companies:
- the articles of incorporation;
- agreements amending these articles;
- appointment of directors and termination of their terms of office;
- powers of attorney and delegations of authority, with details of any amendments, withdrawals or substitutions;
- changes of partners and changes in the ownership of shares or interests;
- the adoption of articles of incorporation of one-man businesses;
- merger, takeover or spin-off agreements;

- agreements on dissolving companies or appointing liquidators and liquidation agreements;
- transformation agreements;
- the creation of subsidiaries in the case of foreign companies.

700. Article 10 also requires the filing of annual accounts for financial years beginning on or after 1 January 2009, with a view to their inclusion in the Accounts Register.

701. Regarding the public availability of this information, article 101, paragraph 2 of Act No. 20/2007 of 18 October 2007 on public limited companies and limited liability companies provides that anyone lawfully residing in Andorra may request access to the following information, which is public in nature:
- partners' or shareholders' identities and the number of parts or shares they hold;
- the composition of the company's governing bodies and the titles of the individual office-holders;
- the authorised capital and the articles of incorporation filed with the registry.

702. Concerning company accounts, article 10 of the Business Accounting Act No. 30/2007 of 20 December 2007 provides that a judge or court acting of its own motion or at the request of a party, the finance ministry or the INAF may request the disclosure of all or part of the accounting documents, correspondence and supporting vouchers and documents.

703. Under article 30 of the Decree of 26 March 2008 amending the regulations governing the commercial register, any change in the share ownership of an Andorran company must be reported within 15 days of the date of the notarised act (the identities of new members and the number of parts or shares they hold must be indicated). It should be noted that the sole sanction for failing to comply with this requirement is that the change of shareholder is invalidated.

704. Regarding foreign investments in Andorran companies, Act No. 2/2008 and the implementing decree of 8 October 2008 establish a system of prior clearance by the Government and of subsequent reporting of investments and the corresponding payments. In addition, an Andorran notary must verify compliance with the legal conditions and the operation must be recorded in the Foreign Investments Register kept by the finance ministry.

705. As an additional control measure, article 3.1 of the Foreign Investments Act No. 2/2008 of 8 April 2008 requires that investments and disposals of assets must go through a bank licensed to operate in Andorra.

Possibility for competent authorities to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons (C.33.2)

706. The identities of partners or shareholders and the number of parts or shares they hold, the persons composing a company's governing bodies and the titles of the office they hold within the company, the authorised capital and the articles of incorporation filed with the register are public and the competent authorities accordingly have access to this information.

707. In addition, the judicial authorities have access not only to the information laid down in article 101, paragraph 2 of Act No. 20/2007, but also to any other information recorded in the Commercial and Companies Register.

708. With a view to exercising their official functions, administrative authorities have free access to all information recorded in the Commercial and Companies Register.

709. Concerns can however be raised regarding the updating of the information recorded in the register given the lack of a sufficiently dissuasive sanction for failure to report any changes.

Situation of legal persons issuing bearer shares (C.33.3)

710. Under article 15, paragraph 3 of Act No. 20/2007 of 18 October 2007 on public limited companies and limited liability companies parts or shares must be documented by issuing named and numbered certificates. Issuing bearer shares is therefore prohibited. Moreover, article 3 of the RLCPI, as amended, on 25 May 2011, prohibits financial institutions from having a business relationship with natural or legal persons who own shares in bearer form where it proves impossible to determine the underlying ownership and control structure.

Additional elements (C.33.4)

711. The identities of partners or shareholders and the number of parts or shares they hold, the persons composing a company's governing bodies and the titles of the office they hold within the company, the authorised capital and the articles of incorporation filed with the register are public and financial institutions accordingly have access to this information.

712. All members of the Andorran Bar Association moreover have direct electronic access to the Commercial and Companies Register database. Financial parties under obligation also have direct access to the data through the lawyers employed within their legal departments.

Effectiveness of implementation of Recommendation 33 and overall compliance assessment

713. Significant efforts have been made to improve the system of registration of legal persons, in particular concerning changes in beneficial owners (managers, settlors, partners).

714. The competent authorities can obtain information on the beneficial ownership (managers, settlors, partners) and control of legal persons in a timely fashion.

715. Measures have also been taken to facilitate financial institutions' access to information on beneficial ownership (managers, settlors, partners) and control of legal persons so as to make it easier for them to verify customer identification data.

716. However, since there are no dissuasive sanctions for failing to report changes via the registration system, there is not guarantee that the information held by the authorities is up to date.

717. Moreover it transpired from the interviews conducted by the evaluators that the issue of the use of name-lenders remains a particular area of concern, notably in view of the restrictions on foreign investments in Andorra.

718. The Andorran authorities point out that article 10 of the General Council decree of 10 October 1981 regulating administrative authorisation to carry on a business or industrial activity expressly prohibits Andorrans or other residents who are economic rights holders to lend their names with a view to the pursuit of a business and/or professional activity. Recent judicial decisions (concerning purchases of property) sanctioned the use of "name-lending" in order to circumvent the law (for example the restrictions on purchases of property by non-residents), declaring the sales contracts null and void under civil law.

719. Concerning agreements between natural persons, the Andorran authorities state that they are aware of the use of "name-lending" only if a private agreement is brought to light by judicial

proceedings. In such cases, the criminal division of the High Court of Justice has repeatedly held that where the real owner of a business is a given natural person and the administrative owner another, both are liable for the impression given to third parties (decision 166/08 of 23 December 2008, pages 5 and 6, paragraph VI). It should also be added that criminal liability lies primarily with the perpetrator of an offence, regardless of whether they are the real or apparent owner. As provided for in articles 98.2, 98.3, 98.5 and 98.8 of the Criminal Code, subsidiary civil liability arising out of a criminal offence lies with the real or apparent owner of a business through which the offence is committed

720. The same applies in the case of bearer securities. Although bearer securities have been prohibited since 1983 (with a twenty year period for their conversion into registered securities), the evaluators were informed that 17 of the Andorran companies concerned had still not performed the conversion.

721. On 17 May 2011 the representatives of these companies (of which there were 18 at the time) were informed that an administrative procedure had been initiated and were given two months to regularise their situation, failing which the unlawful state of affairs would be recorded in the register, which would hamper the normal conduct of their business. Upon expiry of the two-month time-limit, only one company had regularised its situation; a second is currently being wound up. Consequently, the unlawful state of affairs of the seventeen other companies was recorded in the Companies Register, which de facto prevents them from carrying on any business or professional activity. The Andorran authorities indicated that the Government plans to table a bill during the first quarter of 2012, which would permit the Companies Register to request the judicial dissolution of companies in an unlawful situation.

722. Furthermore, although since 1 January 2009 commercial companies have been required by law to file their accounts, the evaluators were informed that only 36% of companies effectively did so in 2009, and 42% in 2010. On 22 April 2010 the General Council passed Act No. 8/2010 amending the Business Accounting Act No. 30/2007, which includes a list of accounting offences and related sanctions applicable as from the 2010 financial year with the aim of enhancing compliance with business accounting obligations.[74]

723. The study concerning de facto companies requested at the time of the 3rd round evaluation has not been carried out and no measure to limit the risk of their use for laundering purposes has been taken. The Andorran authorities pointed out that, as a result of the developments in the legislation described above, there was no need to carry out the study recommended at the time of the 3rd evaluation round.

724. On account of these findings (notably concerning the updating of information and the practice of name-lending) it cannot be concluded that the measures taken to prevent the unlawful use of legal persons for money laundering and terrorist financing are fully effective.

*5.1.2 **Recommendations and comments***

725. To guarantee the effectiveness of the measures to improve the system of registration of companies, a number of steps should be taken, including in particular:
- ensuring that use of name-lending is stamped out;
- conducting a study on de facto companies and, if necessary, taking additional measures to limit the risk of their use for money laundering or terrorist financing;
- ensuring that the competent authorities can obtain information on the beneficial ownership and control of legal persons in a timely fashion by introducing obligations so that updated

[74] The authorities subsequently informed the evaluators that, on 29 December 2011, the General Council had approved an amendment of Act No. 30/2003 reinforcing the system of sanctions, which would enter into force in January 2012.

information is reported without delay and duly registered and dissuasive sanctions become applicable and are applied where appropriate;

- ensuring that the various legal and regulatory requirements intended to ensure transparency concerning legal persons are effectively applied, notably by allowing the competent authorities to take appropriate steps in the event of non-compliance and by amending the system of applicable sanctions so that they are sufficiently dissuasive.

5.1.3 Compliance with Recommendation 33

	Rating	Reasons underlying the rating
R.33	**PC**	• Despite the Andorran authorities' efforts to improve the system of registration of legal persons, a number of problems subsist such as the issue of name-lenders or the non-conversion of bearer shares following the expiry of the time-limit laid down in the legislation. • The possibility for the competent authorities to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership (managers, settlors, partners) and control of legal persons is not guaranteed. • The system of sanctions does not seem sufficiently dissuasive to guarantee the effective implementation of the legal and regulatory requirements, including as regards the updating of information recorded in the Companies Register.

5.2 Non-profit organisations (SR.VIII)

5.2.1 Description and analysis

Special Recommendation VIII (rated NC in the 3rd round evaluation report)

Summary of reasons for the rating in the MER of 2007

726. Andorra was rated non-compliant in the 3rd round report concerning RS.VIII on account of the lack of measures to implement the aspects covered by this recommendation and of a risk assessment in this area.

General legal framework

727. The non-profit sector in Andorra is primarily made up of associations and foundations. Each of these forms of non-profit organisation is subject to specific legislation and regulations.

728. There have been no changes in the regulation, operation or supervision of associations since the 3rd round evaluation. The associations legislation[75] and the regulations on the Associations Register continue to apply.[76] Associations receiving public subsidies have a reporting obligation to the authority that awarded the subsidy regarding the use made thereof and may be audited by the Court of Auditors.

729. At the time of the previous evaluation, although they existed in Andorra, foundations were not regulated. The situation has changed following the adoption of the Foundations Act No.

[75] Legislation passed on 29 December 2000 and published in the Official Gazette on 24 January 2011.

[76] The decree approving the regulations on the Associations Register was published in the Official Gazette on 16 August 2001.

11/2008,[77] which governs various aspects of their functioning. This law applies to Andorran private foundations which are registered in Andorra and to public foundations. It covers their formation, dissolution and registration, as well as the Foundations Register, among other subjects.

730. The regulations governing the Foundations Register and the Protectorate were approved under a decree of April 2009, amended by a decree of 1 July 2009. Inter alia, they deal with: access to the register, identification, reporting of appointments, replacements and suspensions of Board members, reporting of the termination of their terms of office, reporting of their general powers of representation and of delegations of authority, co-operation with the Protectorate, the concept and purpose of the Protectorate, filing and auditing of the accounts and the annual activity report.

731. The first additional provision of the Act on international criminal co-operation and the fight against the laundering of money or securities deriving from international delinquency and against the financing of terrorism of 11 December 2008, also provides that associations and other non-profit organisations shall be required to retain for five years the identification data concerning persons to whom funds are paid and the documents mentioned in article 28 of the Associations Act (register of members, book of minutes, inventory of assets and accounting registers relating to the association's activities).

Review of the adequacy of domestic laws and regulations relating to non-profit organisations (C.VIII.1)

732. Andorra has not conducted a review of the adequacy of its laws and regulations governing non-profit organisations, nor a specific assessment of the sector's potential vulnerabilities to terrorist activities.

733. The authorities nonetheless indicated that the vast majority of associations are sports related and the risk of their involvement in terrorist activities is therefore limited. As regards foreign associations, only five have been registered, including four carrying on an international activity. Concerning general associations, 62 of them pursue international activities and 281 have no international activity.

734. Article 10.1 d) of the Foundations Act No. 11/2008 provides that Andorran foundations must be domiciled in Andorra. Article 4 stipulates that the foundation's purpose must be lawful, comply with the public interest and serve the collective benefit of groups of individuals. The authorities have indicated that, in the light of their declared purpose, foundations may be active in eleven main fields: religion, music, science, social activities, cultural affairs, childhood, patient support, support for the elderly, educational support, tourism, education. The authorities have stated that, in their opinion, foundations also pose a limited risk.

735. The table below shows statistics on the public/private nature of associations and foundations and whether or not they pursue an international activity.

	Private	**Public**	**With an international activity**	**No international activity**
Foundations	21	4	10	15
General associations			62	281
Foreign associations			4	1

[77] Act passed on 12 June and published in the Official Gazette on 16 July 2008.

Measures to protect the NPO sector from terrorist financing abuse (C.VIII.2)

736. No campaign has been run (by either the Government legal office in charge of the associations register or the FIU) to raise awareness in the NPO sector of the risks of abuse in connection with terrorism and of the protective measures available. The regulations include a number of measures to promote transparency and integrity in the management of associations and foundations and, although they are not designed to protect the NPO sector against terrorist financing abuse, they may nonetheless help to do so to some extent. The authorities consider that the monitoring measures concerning registered organisations and the controls over foreign investments are likely to reduce the possibilities of abuse of the NPO sector.

Measures to promote supervision and monitoring of non-profit organisations (C.VIII.3)

737. The authorities indicated that the vast majority of registered associations are active solely at a local level and are sports related.

738. Only non-profit organisations receiving public subsidies have a reporting obligation to the authority that awarded the subsidy regarding the use made thereof and may be audited by the Court of Auditors. Non-profit organisations carrying on a commercial activity are required to file their accounts.

Requirement to maintain information on the purpose and objectives of NPOs' stated activities and the identity of persons who own, control or direct their activities (C.VIII.3)

739. *Associations.* Information on the purpose and objectives of their stated activities, their declared purpose, the identity of their founders (natural or legal persons) and the identity of board members must be supplied in the authenticated act of association drawn up with a view to their registration (article 5). Article 5 of the Associations Act makes no specific provision for the verification of the identities of Board members named in the act of association, but the authorities pointed out that this condition was inherent in their very appointment and their acceptance of this role. The Associations Register requires that the person submitting a registration request should provide a photocopy of the Andorran passport and/or official residence permit of all the founders and Board members.

740. Moreover, in the case of charitable organisations, clubs and non-profit associations, article 4 of the RLCPI lays down specific measures concerning the identification and verification of the identity of at least two agents or responsible principals, and the identity of the organisation itself. For identification purposes, responsible principals are considered to be persons who exercise control or a significant influence over the assets of the organisation, such as the members of a management body or committee, the chairman, members of the board or the treasurer.

741. Under article 12 of the Associations Act of 29 December 2000, registered associations must file agreements modifying their articles of association and agreements on the appointment or termination of office of the members of their governing bodies. The legislation does not stipulate a time-limit for filing this information.

742. Article 13 provides that the Associations Register must include information on the founders, the name, the declared purpose, the registered office, the governing bodies, the date of first registration, and the appointment and dismissal of members of the governing bodies.

743. The Associations Register is public and persons wishing to consult it must submit a request stating reasons to the Government legal office in charge of keeping the register. The authorities indicated that such requests were very rare in practice.

744. *Foundations.* Under article 11.4 of the regulations governing the Foundations Register and the Protectorate the books composing the register must be kept as follows:

"*4.* All the books must be duly identified, they must be opened and closed by the person in charge, they must keep a correlative record and must be archived in such a way that their traceability and preservation can be guaranteed."

745. There is no minimum retention period and all records relating to a foundation's registration are accordingly kept until it is removed from the register.

746. Under article 36 of the Foundations Act and article 4 of the regulation governing the Foundations Register and the Protectorate, the register is public and anyone claiming a legitimate interest may request the issuance of a certificate concerning the information registered, the documents filed and the issuance of extracts from the information registered and the documents filed. The person concerned must submit a request giving the reasons for this interest. However, paragraph 3 of the above-mentioned article provides that the registrar may oppose access to such information, giving reasons, where he/she considers that the request does not correspond to a legitimate interest.

Measures to sanction violations of oversight measures or rules by NPOs or persons acting on their behalf (C.VIII.3.2)

747. *Sanctions applicable to associations.* Associations may be dissolved by decision of the courts under the terms specified in the Criminal Code (article 30 of the Criminal Code Act).

748. Their registration may also be annulled ex officio by the registrar if they fail to register any of the acts required under article 12 of the Act over a ten-year period. Article 24 of the regulations on the Associations Register provides "the registrar shall propose the ex officio removal from the register of an association where, within ten years of the date of the last registration, the association has not requested the registration of any of the acts mentioned in article 12 of the Associations Act."

749. *Sanctions applicable to foundations.* Foundations may be dissolved by a court decision in accordance with article 30.1.f) of the Foundations Act No. 11/2008 of 12 June 2008. Moreover, article 37.2 of the Act provides that if the registrar considers that there is evidence that a document submitted by a foundation is unlawful, and this entails a breach of criminal law, he or she shall be obliged to inform the Protectorate and the competent judicial authority. The registrar must also inform the foundation concerned and suspend the registration procedure until a final court decision has been delivered.

750. Article 33.2 of Act No. 11/2008 also empowers the Protectorate to challenge the acts and undertakings entered into by a foundation's board which are incompatible with the legislation and statutory provisions governing the foundation, and paragraph 3 thereof provides that any reasonable evidence of a breach of criminal law in the documents submitted by the foundation shall be reported to the prosecution service or the competent judicial authority.

751. Article 34.1 b) provides that, if a serious irregularity is noted in the foundation's economic management, such as to jeopardise its existence, or if there is a serious departure from the foundation's declared purpose in the activities carried out, the Protectorate may take over the foundation's management on a provisional basis.

752. The application of these specific measures is concurrent with any civil, administrative or criminal liability incurred as a general rule.

753. *Sanctions applicable to NPOs.* Failure to retain the records provided for in the first additional provision of the LCPI is considered a minor infringement and may incur a written warning and a fine of €600 to 6000.

754. In addition, article 71 of the Criminal Code on additional consequences for legal persons in the event of a conviction, as amended by Act No. 15/23008, now provides that the court may impose a number of penalties, including in particular:

a) Dissolution of the company, association or foundation;
b) Suspension of the activities of the company, association or foundation for not more than six years;
c) Imposition of a fine of up to €300 000 on a company, association or foundation convicted of offences such as terrorism or the financing of terrorism.

755. The authorities reported no instance of an association or foundation having been sanctioned, or made subject to an oversight measure, under the above-mentioned articles. The effectiveness of the oversight measures is accordingly not established.

Licensing or registration (C.VIII.3.3)

756. The only foundations and associations entered in the relevant register are those pursing a legitimate, non-profit aim by legal means, as provided for in article 1.2 of the Associations Act of 29 December 2000 and article 4 of the Foundations Act No. 11/2008 of 12 June 2008. In addition, with a view to their registration, their purpose must not involve the commission of any kind of offence, the facilitation thereof or any unlawful aim, nor must they utilise violent means of a criminal nature to achieve this purpose and/or promote discrimination or violence against persons, groups or associations on the basis of their origin, nationality, ethnic identity, religion, philosophical beliefs, political tendencies or trade union membership or of any other personal or social condition, in accordance with article 359 of the Criminal Code Act No. 9/2205 of 21 February 2005.

757. *Associations.* Under article 8 of the Associations Act of 29 December 2000, to benefit from the protection of this law, associations must be made public by their inclusion in the Associations Register. There are three parts to this register: one concerning Andorran associations, another foreign associations and a third sports associations.

758. Registration is carried out within 30 days of the submission of the required documents and is free of charge. The registrar verifies the documents and may grant a time-limit of 30 days for their correction should one of the required conditions not be met. The registrar may also refuse to register the association, and an administrative appeal against this decision lies to the Minister of the Interior. If the registrar considers, in the light of the documents, that there is reasonable evidence of a breach of criminal law, he or she must notify the Minister of the Interior, who may refer the matter to the prosecution service.

759. Article 16 provides that the members of an association that has not been registered are jointly liable with the association for acts carried out on their behalf and undertakings entered into by the association vis-à-vis third parties.

760. *Foundations.* Article 22 of the regulation governing the Foundations Register and the Protectorate requires the following information be submitted for registration purposes:

- The act of foundation;
- Any increase or decrease in the authorised capital;
- A decision of the foundation's board determining the precise number of members, where not specified in the articles;

- The appointment of board members, their acceptance of this office, their re-appointment, replacement or suspension and the termination of their office, for any reason whatsoever.
- General powers of representation and delegations of authority conferred by the board;
- The appointment by the Protectorate of the person or persons provisionally composing the foundation's governing and representational body;
- An amendment or rewording of the foundation's articles;
- Mergers or divisions of foundations;
- A court decision authorising temporary administration of a foundation and the fulfilment by the Protectorate of the legal and statutory responsibilities of the board, specifying the time-limit set by the court;
- Any action for liability brought against one or all the members of the board, where ordered by a court and the relevant judicial decision;
- An agreement winding up the foundation endorsed by the Protectorate or any judicial decision to terminate or liquidate the foundation, necessarily including evidence of the destination of its assets and entitlements.

761. Article 21 provides for identification and the registration of the following information: the surnames and first names, civil status, legal majority, nationality and address, indicating the street, street number and municipality, and passport number. For legal persons, the information required is the registered name and registered office, in the same format as for the address of natural persons.

762. Lastly, it should be noted that the registration of the documents provided for in article 22 of the regulations must be requested by the foundation's governing body within one month of the decision's adoption or the administrative or judicial authorisation, where required.

Maintenance of records of domestic and international transactions (C.VIII.3.4)

763. *Associations.* Associations have a number of record-keeping obligations: article 28 of the law stipulates that they must keep a register of members, a register of minutes, an inventory of assets and accounting registers relating to their activities, which must all be numbered and initialled by the Associations Register Office and signed by the chairperson and secretary, or equivalent officers. All members can consult these registers.

764. In addition, under the first additional provision of the LCPI of 11 December 2008, non-profit organisations are required to retain for five years the identification data concerning persons to whom funds are paid and the register of members, book of minutes, inventory of assets and accounting registers relating to the association's activities.

765. *Foundations.* The same LCPI provision also applies to foundations.

Investigatory powers and sharing of information on NPOs (C.VIII. 4, C.VIII.4.1, C.VIII.4.2 and C.VIII.4.3)

766. Under article 53 of the LCPI, the FIU can request and obtain information from any official body (including the Government legal office in charge of the Associations Register).

767. Article 22 of the implementing regulation of the LCPI provides inter alia that should the authorities discover facts that could constitute evidence or proof of money laundering or the financing of terrorism, they must inform the FIU in writing and provide the FIU with the information that it may request in the exercise of its duties. Likewise, civil servants and other personnel working for the Andorran public administration who discover such facts must immediately report them to the organisation in which they work.

768. Information held by the Government legal office in charge of the Associations Register is also accessible by the judicial authorities in connection with an investigation.

Points of contact and procedures to respond to international requests for information concerning NPOs (C.VIII 5)

769. International requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support are dealt with by the judicial authorities in the case of international letters rogatory or the FIU in the case of requests received from other financial intelligence units.

Effectiveness of implementation of Special Recommendation VI and overall compliance assessment

770. The introduction of a register of foundations is a positive step. However, according to the information obtained during the visit, the Government legal office in charge of the Associations Register apparently does not perform any verification on NPOs entered in the register and has no contacts with the FIU. Once they have been registered NPOs are subject to no particular form of oversight by the authorities (apart from verification of the information entered in the register), except for oversight in connection with the receipt of public subsidies and monitoring by the police intelligence service. Furthermore, there are non-registered associations in Andorra which escape all forms of oversight, and their number is not available.

5.2.2 Recommendations and comments

771. Although, in view of the particularities of NPOs operating in Andorra, the risk of misuse of this sector for terrorism financing can be regarded as low, this analysis is not based on an objective assessment of the situation. A formal risk assessment study should be carried out, in particular in view of the relatively relaxed regime applicable to associations and the limited oversight exercised regarding them.

772. The authorities should also review the suitability of the legal framework relating to non-profit organisations to ensure that it meets financial transparency requirements, ranging beyond the specific measures provided for where an organisation is in receipt of public subsidies, and requirements concerning the updating of identification data in the event of any change in the founders or persons managing the activities of NPOs, including identification of the main managers, governing board members or directors. Appropriate penalties should therefore be established to sanction non-compliance with these requirements.

773. It would also be desirable to involve the Government legal office in charge of the Associations and Foundations Registers in the implementation of the requirements of SR.VIII.

774. Measures should be taken to ensure that non-registered NPOs cannot carry out financial transactions in their own name through the financial system.

775. Effective monitoring of NPOs' compliance with their legal obligations should also be established.

5.2.3 Compliance with Special Recommendation VIII

	Rating	Reasons underlying the rating
SR VIII	**PC**	• The legal framework governing the requirements in respect of financial transparency and record keeping and updating is not fully satisfactory, in particular as there is no possibility of imposing sanctions. • Andorra has not performed any specific review to identify any weaknesses in this sector that could give rise to terrorist activities. • No awareness-raising measures have been taken in respect of NPOs regarding the risks of their being misused for terrorist purposes and the protective measures available. • Effectiveness of implementation not established: (1) very limited involvement of the competent authorities in the implementation of SR VIII; (2) it is not clear to what extent the registers of associations and foundations are kept up to date in practice; (3) partial oversight exercised by the authorities regarding this sector.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31 & 32)

6.1.1 Description and analysis (R. 31 & 32 (criterion 32.1 only))

Recommendation 31 (rated PC in the 3rd round evaluation report)

Summary of reasons for the rating in the MER of 2007

776. Andorra was rated partially compliant in respect of Recommendation 31 in the third round report. Although national co-operation was deemed satisfactory overall, a number of issues subsisted regarding the extent of national co-ordination and its effectiveness, in particular the lack of a co-ordination group and diverging views on certain key questions.

General

777. The country's size, the number of people responsible for AML/CFT matters and the closeness of the various institutions facilitates contacts and co-ordination at national level. Since the 3rd round visit a number of measures have been taken to improve co-operation at this level.

778. A decree of 13 February 2008 established a Standing Committee on Money Laundering and Terrorism Financing (see below for its composition). Its role is to (1) analyse the money laundering situation in Andorra, providing available information in the form of statistics or findings resulting from the exercise of its tasks; (2) participate in the assessment of measures and action taken in the AML/CFT field; (3) provide legal advice concerning proposed legislation; (4) assist the FIU in connection with its international activities; (5) provide advice on drafting reports to be submitted to international bodies.

779. The FIU continues to have a key role in steering the activities of and in co-ordination between the competent authorities.

780. Article 22 of the implementing regulation of the LCPI establishes the modalities of co-operation between the FIU and other bodies and judicial authorities.

Existence of effective co-operation and co-ordination mechanisms at national level in AML/CFT matters (C.31.1)

The Standing Committee on Money Laundering and Terrorism Financing

781. The decree of 13 February 2008 set up a new technical and advisory body. This committee meets at least once every three months and is chaired by the head of the FIU. It includes a representative of each of the following ministries or official organisations:

a) Permanent members:
- Ministry of Economy and Finance
- Ministry of Foreign Affairs and Institutional Relations
- Ministry of the Interior

b) Non-permanent members:
- judiciary:
- prosecution service;
- the police;

- customs;
- the INAF (solely when issues affecting the financial sector are discussed).

782. Representatives of other institutions may be invited to participate in meetings subject to the prior agreement of the permanent members and provided they are contributing to activities in progress.

783. At the time of the on-site visit six meetings of this committee had taken place since 2008. On 25 August 2010 the Government appointed new permanent and non-permanent members to the committee, which met on 19 October 2010. It should nonetheless be noted that, although it is required to meet every three months, the committee held only one meeting during the 2009-2010 period.

Operational co-operation

784. Article 22 of the implementing regulation of the LCPI establishes the modalities of co-operation between the FIU and other bodies and judicial authorities.

> *"**Article 22. Cooperation of authorities and civil servants***
>
> *1. The FIU will cooperate with the judicial authorities, at the request of these authorities, both in criminal investigations and in the execution of letters rogatory relating to acts of money laundering or financing of terrorism.*
>
> *The judicial authorities, ex officio or at the request of the public prosecutor, shall make available information to the FIU when, in the course of legal proceedings, there is evidence of non-compliance with the Law or this Regulation.*
>
> *2. In the event that the Andorran authorities discover facts that could constitute evidence or proof of money laundering or the financing of terrorism, they must inform the FIU of this in writing and provide the FIU with the information that it may request in the exercise of its duties. Likewise, civil servants and other personnel working for the Andorran public administration who discover such facts must immediately report them to the organisation in which they work.*
>
> *3. Information submitted in accordance with this section does not represent a breach of professional secrecy and confidentiality, and the authors must benefit from the tutelage and protection established in article 48 of the Law and article 19 of this Regulation."*

785. Significant liaison efforts have been made by the FIU and the prosecuting authorities, in particular through the appointment of a former prosecutor to head the FIU, which is naturally conducive to such dialogue. National co-operation between the FIU and the authorities bringing prosecutions appears satisfactory, and operational meetings are organised as and when necessary.

786. Periodic meetings have taken place between the FIU and the police. The fact that two national police officers are on the staff of the FIU also helps to reinforce operational co-operation and the exchange of information. There is nonetheless room to reinforce operational co-operation regarding interim measures.

787. The lack of an AML/CFT policy for monitoring cross-border transportations of currency means that there is significantly less need for co-operation with customs.

788. Regarding co-operation between the FIU and the INAF, as the supervisory authority, the team was informed that a number of bilateral meetings had been held and that an annual reporting procedure was in place whereby INAF provided information on compliance with AML/CFT requirements by all banks and financial institutions, on the basis of external audit reports and AML/CFT inspection reports of foreign subsidiaries. In the light of the information received, the evaluation team repeats the conclusions arrived at during the 3rd round visit. It is important that the exchange of information and co-operation between the INAF and the FIU in supervisory matters should be reinforced, above all regarding consultation and co-ordination of supervision in their respective fields of competence.

Additional elements (C.31.2)

789. There is no formal mechanism in place for consultation between competent authorities, the financial sector and other sectors subject to AML/CFT requirements.

790. The authorities said that, in 2007, a working group in AML/CFT matters had been set up, comprising the FIU and the Andorran Banking Association, and had since held meetings from time to time. These meetings allow the presentation of legislative developments and other general AML/CFT issues and discussion of various other aspects, such as internal training.

791. Between February 2010 and 21 April 2010 the FIU held individual meetings with representatives of Andorran banks, the Andorran Banking Association, the post office, the Association of financial investment institutions (Associació d'Entitats Financeres d'Inversió or ADEFI), the professional body of Andorran real estate agents and managers (Collegi Professional d'Agents i Gestors Immobiliaris d'Andorra or AGIA), the French post office, the Andorran Insurers Association (Associació d'Asseguradors d'Andorra or AAA), the Andorran association of insurance and reinsurance companies (Associació de Societats Andorranes d'Assegurances i Reassegurances or ASAAR), the Andorran Jewellers Association ((Associació de Joiers d'Andorra), the Andorran economists' organisation ((Col legi Oficial d'Economistes d'Andorra), the Andorran Bar Association (Col legi d'Advocats d'Andorra) and the Andorran Chamber of Notaries (Cambra de Notaris d'Andorra). Moreover, in 2009 and 2010 members of the FIU participated in a number of training sessions for parties under obligation. These gatherings constitute a forum for operational exchanges.

ffectiveness of implementation of Recommendation 31 and overall compliance assessment

792. The establishment of the Standing Committee is an important step and should in the long run permit effective co-ordination between all the competent authorities if this body is effectively used as a forum for dialogue, co-operation and policy co-ordination and for regular analysis of the AML/CFT situation in Andorra and of measures taken, with a view to proposing reforms where necessary.

793. The effectiveness of operational co-operation regarding the application of interim measures needs to be improved. Co-operation arrangements between the FIU and the INAF do not seem to be sufficiently utilised, so as to ensure a satisfactory degree of co-operation, and such arrangements have not been put in place with the customs authorities.

Recommendation 32 (C.32.1)

Regular review of the effectiveness of systems for combating money laundering and terrorist financing

794. The authorities said they reviewed the effectiveness of AML/CFT systems on a regular basis, a task which is facilitated by the limited number of cases identified each year as a result of Andorra's small size. This was reflected in the statistics and in the FIU's annual report.

795. The evaluation team does not fully concur with this conclusion in the light of the information obtained during the meetings it held with the various AML/CFT system players, the limited action taken by the Standing Committee, whose role as defined by the decree is in point of fact to analyse the situation in laundering matters, and developments in the Andorran system for combating money laundering and terrorist financing.

Effectiveness of implementation of Recommendation 32 and overall compliance assessment (C.32.1)

796. In the light of the information obtained, the arrangements to review the overall effectiveness of Andorra's AML/CFT system are not considered to have fully attained their objective of enabling a regular review of the AML/CFT system's effectiveness.

6.1.2 Recommendations and comments (R. 31 & 32 (criterion 32.1 only))

Recommendation 31

797. It is essential that the Standing Committee on Money Laundering and Terrorism Financing continue its action, while actively involving the representatives of the institutions competent in AML/CFT matters therein, so as to play a more effective inter-institutional coordination role.

798. Additional efforts are needed to improve inter-institutional co-operation, in particular by reinforcing consultation and co-ordination of supervision between the FIU and the INAF in their respective fields of competence and between the FIU and the customs authorities with a view to implementing SR. IX

799. Lastly, the authorities should pursue their dialogue with the undertakings subject to AML/CFT measures.

Recommendation 32

800. Andorra should ensure that the effectiveness of its AML/CFT system is reviewed on a regular basis, including consultation among all the authorities concerned, and on the basis of well-defined quantitative and qualitative criteria.

6.1.3 Compliance with Recommendation 31

	Rating	Reasons underlying the rating
R.31	**PC**	• Co-operation in general policy and co-ordination matters through the Standing Committee, which did not hold regular meetings in 2009 and 2010, is not sufficiently satisfactory; • The level of consultation/coordination between the FIU and the INAF in matters of oversight is inadequate; • There is no co-operation between the FIU and the customs authorities for monitoring cross-border transportations of currency since there is no AML/CFT policy in this matter.

6.2 UN conventions and special resolutions (R. 35 & SR. I)

6.2.1 Description and analysis

Recommendation 35 (rated PC in the 3rd round evaluation report) and Special Recommendation I (rated NC in the 3rd round evaluation report)

Summary of reasons for the rating in the MER of 2007

801. Andorra was rated partially compliant in the 3rd round report concerning Recommendation 35 as it had not yet ratified or implemented the Palermo Convention or the Convention for the Suppression of the Financing of Terrorism. Regarding SR.I, the non-compliant rating was due to the fact that Andorra had not ratified or implemented the Convention for the Suppression of the Financing of Terrorism and to the inadequacy of measures taken to implement UN Security Council Resolutions 1267, 1373 and subsequent resolutions.

Signature, ratification and implementation of the Vienna Convention, the Palermo Convention and the Convention for the Suppression of the Financing of Terrorism

802. It should be recalled that, under Article 3 of the Andorran Constitution, international treaties and agreements ratified by Andorra are deemed to form part of the legal system after their publication in the official gazette and cannot be modified or repealed by law.

Vienna Convention

803. As noted in the 3rd round evaluation report, Andorra deposited its instrument of ratification of the Vienna Convention (United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances) on 23 July 1999. The convention entered into force on 23 October 1999. Andorra made a reservation in respect of the option under paragraph 4 of Article 32 (settlement of disputes) and a declaration to the effect that the implementation of the Convention would necessitate only minor changes to Andorra's legal system, since it satisfied most of the Convention's requirements.

804. However, as mentioned elsewhere in this report, there are some deficiencies affecting the application and implementation of the Convention (see in particular the comments in respect of R.1 as regards implementation of Article 3 - Offences and sanctions; R.3 as regards implementation of Article 5 - Confiscation; and R. 36 and 38 as regards implementation of Articles 7 - Mutual legal assistance - and 8 - Transfer of proceedings). The information obtained does not permit any firm conclusion regarding the effective implementation of Articles 9 (Other forms of co-operation and training), 10 (International co-operation and assistance for transit States), 11 (Controlled delivery), 15 (Commercial carriers), 17 (Illicit traffic by sea) and 19 (Use of the mail).

Palermo Convention

805. Andorra signed the Palermo Convention on 11 November 2001. At the time of the on-site visit it had not yet been ratified. The Government nonetheless brought a proposal to ratify the convention before parliament on 22 December 2010, and the General Council approved it on 25 May 2011.[78]

The 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention).

[78] Ratification deposited on 22 September 2011, entered into force on 21 October 2011

806. Andorra signed the Terrorist Financing Convention on 11 November 2001 and ratified it on 12 June 2008. It entered a reservation under Article 24, paragraph 1 on the settlement of disputes.

807. As already mentioned in the analysis of implementation of SR.II, the authorities have taken a number of measures to implement certain obligations under the Convention. The Criminal Code, as amended, now contains a specific offence of financing of terrorism, which also provides for additional consequences for legal persons, and the relevant provisions use almost exactly the same wording as those of the UN Convention. In addition, the amended Criminal Code now establishes new penalties for legal persons and contains an explicit provision permitting the confiscation of equivalent assets (article 70), which will be applied in terrorist financing cases. There are nonetheless still some deficiencies.

Implementation of the UN Security Council resolutions on the prevention and suppression of terrorist financing

808. Since the adoption of UN Resolutions 1267 (1999) and 1373 (2001) Andorra has so far applied (and continues to apply) a number of legal amendments that permit the competent national authorities (the judiciary and the FIU) to freeze all funds deriving from or utilised in the financing of terrorism. The powers to freeze funds can also be utilised at the request of third countries regarding individuals who are suspected or are being prosecuted within their jurisdiction.

809. The most significant legal changes implemented by Andorra so far are:

- confiscation of assets in connection with the criminalisation of terrorism financing (articles 70, 366 bis and 366.3 of the Criminal Code);
- application of international confiscation orders (articles 38 and 39 of the Criminal Code);
- freezing of assets in connection with criminal proceedings (article 116 of the Code of Criminal Procedure and article 20 of the LCPI); and
- temporary freezing orders adopted by the FIU on a regular basis (article 47 of the LCPI) in accordance with a list of natural and legal persons concerned by freezing of assets and termination of the business relationship.

810. It should be noted that financial institutions have access to the specialist databases containing, inter alia, all UN Security Council decisions referring to the lists of people and entities involved in terrorist activities and that they periodically verify their internal files.

811. However, as mentioned above, the measures taken by Andorra do not allow a positive conclusion regarding the effective implementation of Resolutions 1267 and 1373 and subsequent resolutions (cf. section 2.4).

Additional elements (ratification of other international conventions such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime)

812. Andorra signed and ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in 1999. It should be noted that it made six reservations, in particular under Articles 2, paragraph 1 (confiscation measures), 6 (money laundering offence), 14 (execution of confiscation), and two declarations.

Effectiveness of implementation of Recommendation 35 and Special Recommendation I and overall compliance assessment

813. Andorra has implemented the Vienna and New York Conventions. Although the Palermo Convention had not yet been ratified at the date of the visit, a number of provisions were already

incorporated in Andorran law. However, the effectiveness of implementation of the three conventions and UN Security Council Resolutions 1267 and 1373 and subsequent resolutions is affected by the deficiencies noted in this report. Accordingly, not all the relevant articles have been transposed into Andorra's legal system.

6.2.2 Recommendations and comments

Recommendation 35

814. Andorra should implement the evaluators' recommendations set out in section 2 of this report concerning the offence of money laundering and terrorist financing and should improve implementation of the provisions of the Palermo Convention against Transnational Organised Crime[79] and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Special Recommendation I

815. Andorra should improve its implementation of the provisions of the Convention for the Suppression of the Financing of Terrorism.

816. It should implement the UN Security Council Resolutions, adopting legislation, regulations and other measures as necessary.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Reasons underlying the rating
R.35	**PC**	• Ratification of the Palermo Convention approved by the General Council but not yet deposited with the United Nations at the time of the evaluation[80] • Deficiencies in the implementation of certain provisions of the Vienna Convention and the Palermo Convention
SR I	**NC**	• Failure to implement UN Resolutions 1267 and 1373; • Deficiencies in the implementation of the Convention for the Suppression of the Financing of Terrorism.

6.3 Mutual legal assistance (R. 36, 38 and SR. V)[81]

6.3.1 Description and analysis

Recommendation 36 and Special Recommendation V (rated LC in the 3rd round evaluation report)

Summary of reasons for the rating in the MER of 2007

817. Andorra was rated largely compliant in the 3rd round report with regard to Recommendation 36 and Special Recommendation V, taking into account deficiencies relating to a lack of clarity of the wording of the LCPI and insufficient staff to respond rapidly to requests for assistance. The

[79] The Palermo Convention was ratified after the on-site visit (ratification deposited on 22 September 2011, entered into force on 21 October 2011)
[80] See above
[81] The analysis in respect of the Special Recommandation took into account the recommendations assessed and rated in this report. It also takes account of the 3rd round conclusions in respect of Recommendations 37 and 39.

report noted that Andorra was able to provide extensive assistance, but the co-operation capacity was affected by deficiencies noted with regard to the offence of financing of terrorism.

General

818. Mutual legal assistance is covered in general by articles 1 to 40 of the LCPI. Andorra also ratified the European Convention on Mutual Assistance in Criminal Matters on 26 April 2005 (entry into force on 25 July 2005) while making a number of declarations and reservations.

Ability to provide the widest possible range of mutual legal assistance in AML/CFT investigations, prosecutions and related proceedings (C.36.1)

819. The LCPI makes possible very broad mutual legal assistance, including all the investigatory and precautionary measures required in AML/CFT matters. The LCPI was amended by the Act of 11 December 2008, which supplemented the mutual legal assistance measures that now include the execution of foreign decisions concerning confiscation of assets.

Ability to provide such assistance in a timely, constructive and effective manner and without undue delays (C.36.1.1 and C.36.3)

820. According to the statistics provided by the authorities, the time taken to execute international letters rogatory (ILR) was pretty variable, ranging from 2 to 644 days, giving an average of 184 days. About 40% of ILR are dealt with within three months. In view of the varying complexity of such requests, the time needed to execute them does not appear unreasonable. According to the authorities there have been a few refusals for reasons of form, but without this constituting a structural problem.

Mutual legal assistance should not be prohibited or made subject to unreasonable, disproportionate or unduly restrictive conditions (C.36.2)

821. Mutual legal assistance is subject to the conditions set out in article 4 of the LCPI:
- conformity with Andorran constitutional principles;
- measures requested must not be contrary to the fundamental principles of the Andorran legal system;
- proceedings must not have been taken against a person because of his/her political opinions, membership of a particular social group, race, religion or nationality;
- dual criminality (all offences must be criminally punishable under Andorran law);
- the non bis in idem principle;
- the events giving rise to the action must not be of a political nature and the action must not have a political purpose;
- sufficient importance criterion (de minimis non curat praetor);
- no prejudice to Andorran sovereignty, security or public order or other essential Andorran interests.

822. Apart from the importance criterion (which is not unreasonable per se), all these conditions are universally recognised.

Dual criminality (cf. C.37.1)

823. The principle of dual criminality enshrined in article 4 d) of the LCPI raises concerns about its impact on the tangible implementation of mutual legal assistance, in particular coercive measures. Since, the offence of laundering in Andorran law is closely linked to the predicate offences under article 409 of the Criminal Code, the question is whether this principle would not prevent the execution of requests based solely on a laundering offence (as an autonomous

offence), laundering as a result of a criminal activity, which is not a predicate offence in Andorra, or laundering for which the predicate offence is not known.

824. According to the Andorran authorities there would be no execution problem, as it is solely the offence of laundering that counts and the predicate offence is not taken into account. In the case of self-laundering, ILR could be executed on the basis of an investigation into the predicate offence. However, this interpretation does not yet seem to have been confirmed by court decisions.

Clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without undue delays (C.36.3)

825. The handling of requests is governed by articles 9 to 14 of the LCPI. The procedural rules are precise and fairly standard. They are not anomalous nor are they likely to prevent the flexible execution of requests. The procedure based on the European Convention on Mutual Assistance in Criminal Matters makes possible direct communication between justice ministries or, in case of urgency, between judicial authorities.

A request for mutual legal assistance should not be refused on the sole ground that the offence is also considered to involve fiscal matters (C.36.4)

826. The LCPI does not recognise the fiscal exception as a ground for refusal. It is therefore of no matter that the ILR involve fiscal issues. Furthermore, Act No. 3/2009 of 7 September 2009 provides a legal framework for the exchange of information for tax purposes. As mentioned above, under this law Andorra had by the end of 2010 signed and ratified 18 information exchange agreements and had initiated negotiations with other countries. [82]

A request for mutual legal assistance should not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBPs (C.36.5)

827. Parties under obligation cannot refuse to exchange information on grounds of professional secrecy, which moreover cannot be invoked vis-à-vis the FIU or investigating judges.

The powers of competent authorities under R.28 should also be available for use in response to requests for mutual legal assistance (C.36.6)

828. Reference is made to the analysis of conformity with R.28 of the 3rd round evaluation report that evaluators took into consideration for the analysis of the implementation of criteria under consideration. In accordance with Chapter I, articles 2 to 4 of the LCPI, all the powers available to the investigating and prosecuting authorities in the domestic context may be used to respond to ILR. Andorran judges may order precautionary measures, such as the freezing or seizure of assets located in Andorra, at a foreign authority's request.

Managing conflicts of jurisdiction (C.36.7)

829. The authorities did not refer to any specific mechanism or practice for managing conflicts of jurisdiction. Nonetheless, any such conflict may be resolved by applying the procedure for reporting an offence or delegating a criminal action, as laid down in articles 25 to 30 of the LCPI.

Additional elements (C.36.8)

[82] Austria (17.09.2009), Liechtenstein (18.09.2009), Monaco (18.09.2009), San Marino (21.09.2009), France (22.09.2009), Belgium (23.10.2009), Argentina (26.10.2009), the Netherlands (06.11.2009), Portugal (30.11.2009), Spain (14.01.2010), Sweden (24.02.2010), Iceland (24.02.2010), Greenland (24.02.2010), Norway (24.02.2010), the Faroe Islands (24.02.2010), Finland (24.02.2010), Denmark (24.02.2010), Germany (25.11.2010).

830. In case of urgency, requests from foreign judicial authorities may be sent direct to the Andorran judicial authorities (article 10 of the LCPI), which have full powers to execute such requests. Direct contacts are frequent in practice.

Effectiveness of implementation of Recommendation 36 and Special Recommendation IV and overall compliance assessment

831. As can be seen from the statistics set out below, Andorra frequently provides mutual legal assistance in money laundering matters. This mutual legal assistance has a firm legal basis in the LCPI and its application does not pose any major problem. The time taken to execute international letters rogatory naturally varies, with an average of six months, which could be improved. The only outstanding issue is the potentially restrictive impact of the principle of dual criminality, given the lack of any relevant case-law.

Recommendation 38 (rated PC in the 3rd round evaluation report) and Special Recommendation V (rated LC in the 3rd round evaluation report)

Summary of reasons for the rating in the MER of 2007

832. Andorra was rated partially compliant in the 3rd round report in respect of Recommendation 38 on account of deficiencies noted in connection with the system of interim and confiscatory measures, in particular with regard to apparent problems in executing foreign confiscation decisions for lack of a procedure for validating and recognising such decisions. With regard to SR.V, rated largely compliant, deficiencies linked to establishment of the terrorist financing offence were considered likely to affect the authorities' capacity to provide the requisite assistance.

Ability to provide an effective and timely response to mutual legal assistance requests by foreign countries concerning identification, freezing, seizure or confiscation (C.38.1)

833. As already mentioned, since the last evaluation the already broad range of investigatory and precautionary measures has been supplemented through the amendment of the LCPI, with the addition of provisions permitting the Andorran judicial authorities to execute foreign confiscation decisions or judgments. Freezing and seizure are governed by article 20.[83]

834. Confiscation at the request of a foreign authority pursuant to a judicial decision is now covered by articles 38 and 39 of the LCPI.[84] Here too,[85] although the legislature's intention seems fairly clear since precautionary measures are provided for in article 20 of the LCPI, it must be said that the use of the term "saisie" (seizure) in article 38 of the French version of the law (received by the evaluation team) is misleading, since this concerns a confiscation procedure. The reference to

[83] **Art. 20**, **2nd para**: "At the petition of a foreign state which has commenced criminal proceedings and formulated a request for freezing, seizure or confiscation, the bailiff may also order the adequate precautionary measures, such as the blocking of accounts or preventive confiscation, prohibition of any operation or the alienation of any asset that may be subject to subsequent confiscation under Andorran or foreign legislation."

[84] **Article 38:** "In cases of requests made by a foreign judicial authority for the confiscation of the instruments of the offence or their products, money, securities, or assets acquired with these or their equivalent as referred to in article 147 of the Criminal Code or deriving from any other major offence, the request is presented by the Attorney General's office to the Criminal Court, which after previously hearing the interested parties, decides by writ which may be appealed before the Superior Court of Justice.

The Tribunal may not revise or amend a foreign confiscation decision, although it must decide on the claims of bona fide third parties, which have not been decided upon in the aforementioned decision.

The same procedure applies generally, officially or at the petition of the claimant state to the assets, money or securities deriving from any criminal infraction that have no identifiable legitimate owners."

Article 39: "Without prejudice to international conventions or agreements that provide to the contrary, the confiscation will always be to benefit of the state of Andorra."

[85] See above concerning article 70 of the Criminal Code.

article 147 of the Criminal Code (non-consensual sexual acts) also makes no sense. The authorities clarified that article 38 of the LCPI indeed concerned confiscation and that the reference to article 147 of the Criminal Code concerned the 1990 version of the code, in which article 147 related to the confiscation of laundering assets (article 70 of the Criminal Code of 2005).

835. Article 38 of the LCPI provides for the confiscation of the instruments or products of a "major offence", the assets acquired therewith or their "equivalent". There is again no reference to the laundered assets themselves[86] as the offence's subject matter (corpus delicti). The judicial authorities argue that these assets are regarded as instruments of laundering or terrorist financing or proceeds of the predicate offence. However, the observations made in respect of Recommendation 3 also apply in the international context.

836. It should also be noted that the legal assistance measures are confined to confiscation of assets deriving from "major offences". This means that there is a legal loophole that prevents Andorra from complying with a foreign request concerning the proceeds of "non-major" predicate offences.[87]

Confiscation of property of corresponding value (C.38.2)

837. Article 38 of the .LCPI does not use the wording of article 70 of the Criminal Code concerning confiscation of assets of equivalent value. However, it covers confiscation of assets resulting from the offence (or their equivalent). This term is ambiguous since it can be interpreted as either assets that can be substituted for the proceeds of the offence or assets truly of equivalent value.

838. According to the authorities, article 38 does indeed cover the confiscation of assets of equivalent value, within the meaning of article 70 of the CC. Article 20 of the LCPI also permits the seizure of all property that can be subject to "subsequent confiscation" and accordingly of assets of an equivalent value. Although this last interpretation appears logical, it has not yet been confirmed by court decisions. In these circumstances a rapprochement of the terms used in article 38 of the LCPI and article 70 of the Criminal Code can in any case be recommended.

Arrangement for co-ordinating seizure and confiscation actions with other countries (C.38.3)

839. The conclusions of the previous evaluation report remain unchanged.

Establishing an asset forfeiture fund (C.38.4)

840. The conclusions of the previous evaluation report remain unchanged.

Sharing of confiscated assets (C.38.5)

841. The conclusions of the previous evaluation report remain unchanged.

Additional elements (C.38.6)

842. The conclusions of the previous evaluation report remain unchanged.

Effectiveness of implementation of Recommendation 38 and Special Recommendation IV and overall compliance assessment

[86] See above in respect of R.3.
[87] See above in respect of R.1.

843. The statistics reproduced in respect of R.3 reflect four cases of confiscation at the request of a foreign authority, all relating to the proceeds of offences, which points to an effective, regular practice in this field. Nonetheless, the system may be impaired by a number of legal loopholes, in particular regarding the confiscation of the corpus delicti of laundering and the restriction of predicate offences to those that are "major".

Recommendation 32

844. The authorities supplied the following statistics on requests received concerning laundering over the period 2006-2010:

File number	Date of receipt	Date of execution	Duration	Case reference	Place of origin
CRI-092-4/2006	24.03.2006	18.09.2006	178	3509501	T.G.I Paris (France)
CRI-170-2/2006	16.05.2006	16.02.2007	276	OJIF/VU.05.09	*Ofici dels Jutges d'Intrucció Federals*
CRI-177-5/2006	29/05/2006	20.09.2006	114	326/01-M	Central inv judge 5 Madrid (Spain)
CRI-207-5/2006	14.06.2006	19.09.2006	97	1474/2005-E	J.1a Instancia i Intr. 3 Martorell (Spain)
CRI-256-1/2006	11.08.2006	16.02.2007	189	3509501/7	Paris Court of Appeal (France)
CRI-270-3/2006	14.08.2006	19.09.2006	36	251/1999	Inv judge. 5 Madrid (Spain)
CRI-274-3/2006	07.09.2006	19.09.2006	12	PA 251/1999	Inv judge 5 Madrid (Spain)
CRI-316-2/2006	09.10.2006	14.07.2008	644	1136/06	Interpol Madrid (Spain)
CRI-339-5/2006	31.10.2006	09.01.2007	70	1771/2006	Inv judge 2 Valdemoro (Spain)
CRI-203-2/07	03.07.2007	02.04.2008	274	FR/U20070615	Police Amsterdam (Netherlands)
CRI-288-2/07	05.10.2007	26.11.2008	418	10672/20/RVS	Interpol Madrid
CRI-292-1/07	09.10.2007	19.12.2007	71	EEG7/473/RVS/84208	Interpol Madrid
CRI-319-3/07	07.11.2007	06.12.2007	29	787/2005	Inv judge 2 San Javier (Spain)
CRI-021-1/08	15.01.2008	22.05.2008	128	787/05	Inv judge 2 San Javier (Spain)
CRI-257-2/08	02.06.2008	28.05.2009	360	589/07	Inv judge 2 Guipuscoa (Spain)
CRI-321-3/08	29.08.2008	28.01.2009	152	SRB 01/B/GP/HML	*Serious Fraud Office* (UK)
CRI-388-4/08	07.11.2008	06.04.2009	150	108/00014	TGI Tarrascon (France)
CRI-425-1/08	24.12.2008	03.12.2009	344	81/2003-C	Inv judge 2 *Audiencia Nacional* (Spain)
CRI-016-1/09	04.02.2009	06.04.2009	61	10/2008-JM	*Audiencia Provincial*, Barcelona (Spain)
CRI-053-2/09	17.03.2009	29.09.2010	561	148/2006 E	Inv judge 5 Madrid (Spain)
CRI-088-1/09	08.05.2009	27.11.2009	203	608/00047	TGI Nice (France)
CRI-218-3/09	27.10.2009	29.10.2009	2	222/2006 N	Central in judge 5 *Audiencia Nacional*

					(Spain)
CRI-241-2/09	23.11.2009	17.02.2010	86	DP 4990/05	Inv judge 3 Valencia (Spain)
CRI-068-2/10	07.04.2010	31.08.2010	146	16/712068-07	Crown prosecution service (Belgium)
CRI-178-3/10	03.09.2010	10.09.2010	7	NN-F07-0030-10	Venezuela
CRI-157-2/10	12.10.2010	In progress at the time of the evaluation		2007/009	Belgium

845. At the time of the evaluation, Andorra had neither received nor made any request for mutual legal assistance with regard to the financing of terrorism.

846. The table below shows confiscation measures taken by the authorities with regard to letters rogatory executed in money laundering cases:

Year	*Case number*	*Offence*	*Persons convicted*	*Sentence*
	CRI-236-1/09	*Laundering of the proceeds of criminal conspiracy to perpetrate an offence or fraud against the United States and fraud using electronic, radio or television devices*	*1 natural person*	*Confiscation of the funds and seizure of the natural person's property and assets*
	CRI-300-2/08	*Laundering the proceeds of drug trafficking and unlawful possession of firearms*	*2 natural persons*	*Confiscation of the two persons' immoveable property*
	CRI-425-2/08	*Laundering the proceeds of drug trafficking, membership of a criminal organisation, money laundering and unlawful possession of firearms*	*11 natural persons*	*Confiscation of the funds and seizure of the natural persons' property and assets*

Notes:
1 - Judgment handed down by the Tribunal de Corts on 26.02.2010. Ref. CRI-236-1/09. Foreign judgment executed in Andorra. Confiscated proceeds: € 629.558.61 (content of bank strongbox).

2 - Judgment handed down by the Tribunal de Corts on 12.04.10. Ref. CRI-300-2/09. Foreign judgment executed in Andorra. Confiscated proceeds: 1 flat, 1 parking space

3 - Judgment handed down by the Tribunal de Corts on 13.09.10. Ref. CRI-425-0/08. Foreign judgment executed in Andorra. Confiscated proceeds: 1 flat, 1 parking space, 1 cellar and € 16 013 468.86

4 - Judgment handed down by the Tribunal Superior de Justícia on 19.11.10. Ref. TC- 028-4/09. Foreign judgment executed in Andorra. Confiscated proceeds: € 290 288.18

847. The authorities keep statistics on mutual assistance requests received in respect of money laundering, predicate offences and financing of terrorism, concerning the nature of requests, their acceptance or refusal and the response times. The equivalent statistics for requests made were not available.

Recommendation 30 (resources of the competent authorities)

848. The Andorran authorities indicated that mutual legal assistance is implemented through the offices of the judicial authorities competent for conducting investigations (*Batllia*) with the result that the staff is the same as handles all other cases to be investigated (one judge (*battle*), one judicial secretary, three officers and two civil servants). Cases are allocated by order of receipt, unless ILR have been received previously in a case and are already assigned to a specific judge or ILR are received concerning a case already under investigation, in which case the judge already

dealing with the case is assigned the request. These persons have appropriate training since they have succeeded in the compulsory judicial service entrance examinations (with the exception of a number of judges and secretaries who have received no specific training in this field). There are no budget resources specifically earmarked for this activity, which means that the expenses are met out of the general justice system budget.

849. There are no standards or guidelines concerning confidentiality that apply to staff working specifically in this field, but such staff are generally bound by a duty of discretion and confidentiality (article 28 f) of Act 9/2004 of 27 May 2004 on the judicial service administration).

6.3.2 Recommendations and comments

Recommendation 36

850. The system and practice regarding international judicial co-operation appear to be sound and effective. Andorra is able to offer a broad range of judicial assistance measures and the authorities' attitude is flexible and constructive, as reflected in the statistics obtained. Nonetheless, although there has never been such an occurrence, the principle of dual criminality could affect effectiveness - above all with regard to coercive measures - on account of the deficiencies noted regarding establishment of the offences of AML and CFT, which should be remedied.

Recommendation 38

851. Regarding seizure and confiscation, the principle of dual criminality has a considerable impact. From a legal standpoint, seizure and confiscation requests may encounter obstacles not only due to the lack of a legal basis for confiscation of the corpus delicti where a request is based on money laundering with no identified predicate offence, but also as a result of the restriction of predicate offences to those that are "major". In addition, in the context of mutual legal assistance, doubts can be raised regarding the legal basis for confiscation of assets of an equivalent value in view of the differences in wording between article 38 of the LCPI and article 70 of the Criminal Code.

852. Consequently, it is recommended that Andorra address the deficiencies noted regarding the confiscation of the corpus delicti of laundering (predicate offences, criminal behaviours, self-laundering) and regarding financing of terrorism (establishment of the offence, self-financing), so as to avoid situations where the principle of dual criminality causes problems with the execution of mutual legal assistance.

853. Andorra should also make express provision for the confiscation of assets of an equivalent value in article 38 of the LCPI.

Special Recommendation V

854. The above comments and recommendations also apply to the offence of financing of terrorism, except those regarding confiscation of the corpus delicti, which is expressly provided for in the terrorism financing context (article 366 ter of the Criminal Code) and consequently poses no problem in the international context.[88]

Recommendation 30

[88] See above in respect of R.3.

855. The integrity and professionalism of the judges and prosecutors concerned are established. There are also sufficient human resources to deal with requests for mutual assistance in an appropriate manner.

Recommendation 32

856. The statistics provided are sufficiently complete, clear and detailed concerning requests received. It is recommended for authorities to collect and hold similar statistics on requests made.

6.3.3 Compliance with Recommendations 36 and 38 and Special Recommendation V

	Rating	Underlying factors (relating specifically to section 6.3) for the overall conformity assessment
R.36	**LC**	• The effectiveness of mutual legal assistance may be impaired by the deficiencies noted concerning establishment of the money laundering offence.
R.38	**LC**	• Doubts as to the legal basis for confiscation on request of laundered assets or assets of an equivalent value • Restrictions in the way in which the offence of laundering is established may affect the legal feasibility of confiscation on request (dual criminality principle)
SR V	**LC**	• The deficiencies noted in the establishment of the offence of financing of terrorism affect the possibility of rendering mutual legal assistance (dual criminality)

6.4 Other forms of international cooperation (R. 40, SR.V)

6.4.1 Description and analysis

Recommendation 40 (rated LC in the 3rd round evaluation report)

The FIU

Obligation to ensure that the competent authorities are able to provide the widest range of international co-operation to their foreign counterparts (C.40.1 and C.V.5), ability to provide assistance in a rapid, constructive and effective manner (C.40.1.1 and C.V.5), ability to exchange information both spontaneously and upon request and in relation to both money laundering and the underlying predicate offences (C.40.3 and C.V.5), exchange of information subject to no disproportionate or unduly restrictive conditions (C.40.6 and C.V.5)

857. Under article 55 of the LCPI the FIU is authorised to co-operate with other equivalent foreign bodies. In accordance with article 56, it may communicate spontaneously or on request "information concerning transactions, or proposed transactions, related to money laundering, financing of terrorism and international crime, including extracts from the register of previous convictions." The prior authorisation of the director of the FIU is required and the following conditions apply:

a. reciprocity in the exchange of information;
b. the receiving state must undertake not to use the information for any other purpose than that sought by the LCPI;
c. the foreign services receiving the information are bound, under threat of criminal sanction, by a duty of professional secrecy.

858. Article 25 of the RLCPI also allows the FIU to sign cooperation agreements with other "equivalent foreign organisations" and requires it to publish a list of the equivalent foreign organisations with which it has signed agreements. The FIU does not need to sign international co-operation agreements in order to co-operate with foreign counterparts provided the conditions laid down in article 56 of the LCPI are respected.

859. Exchange of information between the FIU and foreign FIUs is possible both spontaneously and upon request and in relation to both money laundering and the underlying predicate offences.

Existence of clear and effective gateways, mechanisms or channels that will facilitate and allow for prompt and constructive exchanges of information directly between counterparts (C.40.2 and C.V.5)

860. The FIU has been a member of the Egmont Group since June 2002 and accordingly uses the ESW system to exchange information with foreign FIUs. Although under Andorran law a co-operation agreement is not required for exchanging information, at the time of the on-site visit Andorra had signed 18 such agreements with the FIUs of Spain, France, Belgium, Portugal, Luxembourg, Monaco, Poland, the Netherlands Antilles, the Bahamas, Thailand, Albania, Mexico, Panama, Peru, Saudi Arabia, Georgia, San Marino and Ukraine.

Authorisation to conduct inquiries on behalf of foreign counterparts (C.40.4 and C.V.5)

861. Under article 523 of the LCPI the FIU can conduct all kinds of inquiries on behalf or at the request of foreign authorities, in particular in all kinds of databases, including its own databases or other public or administrative databases.

A request for mutual legal assistance should not be refused on the sole ground that the offence is also considered to involve fiscal matters (C.40.7 and C.V.5)

862. The General Council of Andorra passed Act 3/2009 relating to the exchange of tax information on prior request on 7 September 2009; this Act establishes a legal framework for relations between Andorra and other countries regarding the exchange of information for tax purposes and focuses in particular on key issues with regard to guaranteeing confidentiality for customers, including the following:

a. the request for information must give reasons and be substantiated;
b. a notification procedure is implemented whereby the person concerned may oppose the request for information through an appeal giving due reasons lodged with the competent authority;
c. the agreement is not retroactive, and the principle applied is that no customer information will be provided if it concerns a situation predating the date on which the bilateral agreement entered into force;
d. "fishing expeditions", that is general, collective requests, are prohibited.

863. The LCPI does not recognise the fiscal exception as a ground for refusal.

A request for co-operation should not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBPs (C.40.8 and C.V.5)

864. The duty of professional secrecy incumbent on financial institutions and DNFBPs does not constitute a ground for refusal. Nor can it be invoked vis-à-vis the FIU.

Controls and safeguards exist to ensure that information received by competent authorities is utilised only in an authorised manner (C.40.9 and C.V.5)

865. Under article 56 of the LCPI the foreign authority must be bound by a duty of professional secrecy and may use the information only for the purpose indicated in the request.

Additional elements (C.40.10, C.40.10.1 and C.40.11)

866. Under article 55 of the LCPI and article 25 of the RLCPI the FIU may exchange information only with foreign counterpart FIUs.

The police (R. 40, SR.V)

867. The police primarily exchange information with all other Interpol member states through Interpol's national central bureau (NCB) in Andorra, which is part of the International Co-operation Group. The NCB also has two fully trained European liaison officers, who belong to the Interpol contact officers network so as to ensure the rapid and secure exchange of information via the Interpol I-24/7 communication system. Information exchanged over the Interpol networks may concern information required by the operational group during the preliminary stages of a police investigation or information requested directly by the judicial authorities (international letters rogatory dealt with under the Interpol emergency procedure, with the original sent through diplomatic channels). Information is exchanged in a number of languages (Catalan, Spanish, French and English).

868. The International Co-operation Group is also responsible, with the Organised Crime and Laundering Group, for transmitting all information requests received from foreign operational groups; direct exchanges of information can solely concern intelligence.

869. To date the Andorran Police Directorate has signed two police co-operation agreements with the Spanish Guardia Civil (dated 18 September 2001) and the Spanish National Police Force (dated 24 September 1999). A similar agreement is being drawn up with the French Ministry of the Interior so as to determine the manner in which police co-operation will take place with the French authorities and the border networks of the Police and Customs Command Centres (CCPD).

Customs (R. 40, SR.V)

870. The customs service belongs to the World Customs Organisation (WCO) and participates in periodic meetings of the Execution Committee. This committee identifies the main areas of international fraud, such as drug trafficking, money laundering, cigarette smuggling, arms trafficking and infringements of intellectual property rights and recommends strategies to member countries to overcome these illegal practices. The Andorran customs supply information to the WCO's CEN database, which contains anonymous information on the activities of the various customs services which can be analysed on an international scale.

871. The Andorran customs service is also a member of the Regional Information Liaison Office for western Europe. This office co-ordinates and checks information submitted to the CEN system by the countries of western Europe. It then analyses this information and draws up the national, regional and global strategic documents for submission to the member states and the WCO secretariat. Finally, the Andorran customs take part in various multilateral meetings, such as the annual meeting of directors general and meetings of European customs services and of the heads of their information and research departments, all of which help to strengthen links.

872. As already mentioned, a number of provisions of the Customs Union Agreement of 28 June 1990 concern co-operation and agreement between the Andorran customs authorities and those of EU member states. Moreover, Andorra and the European Union have signed administrative assistance agreements in customs related matters, which permit the communication and exchange of information obtained through customs operations. Consequently, if a customs operation brings

to light links with a money laundering transaction, the customs authorities have means of co-operation and information exchange at their disposal. The information received would then be sent to the FIU.

873. Andorran customs have apparently not so far exchanged information on cross-border transportation of currency with their foreign counterparts. In view of their powers and responsibilities and the general legal framework, and given the lack of a mechanism for declaring or monitoring cross-border movements of currency or bearer negotiable instruments, it seems unlikely that they would be able to co-operate in a satisfactory manner at an international level.

Supervisory authorities

874. As regards the supervisory authorities (in particular the INAF), although article 9 of Act 14/2003 expressly provides (in quite general terms) that the INAF shall be able to establish contacts and sign co-operation agreements with the supervisory authorities of other countries, at the time of the on-site visit no such agreement was in force despite the recommendations made on this subject during the previous evaluation

875. It also establishes the basis for international co-operation in matters of supervision (consolidated global supervision and other forms of supervision), providing INAF (the Andorran national financial institute) with a legal framework that enables it to conclude agreements with the supervisory bodies of third countries.

876. On 4 April 2011 the INAF concluded a co-operation agreement in supervisory matters with the Bank of Spain ("the BoS-INAF Memorandum of Understanding").[89] This agreement provides that there shall be no legal obstacles to prevent foreign subsidiaries and branches from providing their parent company with any information necessary for accounting consolidation purposes or for the overall management and control of the entity or the group. In addition, regarding the exchange of information between the Bank of Spain and the INAF, whether or not upon request, it contains provisions relating to: a) the licensing of branches or subsidiaries and b) continuous oversight of credit establishments and their groups, recognising that here too there are no legal obstacles to the full and effective exchange of information.

877. In particular, this MoU is expressly acknowledged to concern information exchange in supervisory matters regarding procedures for preventing money laundering and terrorist financing adopted by the banks for which the Bank of Spain and the INAF are competent, and these two entities moreover undertake to serve as intermediaries or provide the necessary contacts with the authorities competent in such matters in their respective countries (the SEPBLAC and the FIU).

878. The MoU also contains provisions on a) the confidential nature of information, which is subject to the general requirement of professional confidentiality and cannot be used for purposes other than those set out in a request, except where the law provides otherwise; and b) on-site inspections of foreign subsidiaries (or branches where they exist), which may be carried out by the supervisory authority of the host country or that of the home country with the former's consent.

879. The LCPI contains no provision permitting the FIU, as the supervisory authority, to exchange information and co-operate at an international level with other oversight authorities. The sole provisions concern co-operation with other FIUs.

880. The Andorran authorities consider that the legislation requires that any exchange of information held by the FIU as supervisory body should be made via the co-operation

[89] The Andorran authorities also indicated that, on 28 June 2011, the INAF had concluded a co-operation agreement on supervision with the Spanish securities markets supervisory authority, the "CNMV".

arrangements existing between the finance sector supervisors (INAF), in accordance with article 45 of Act No. 14/2010. The communication of such information between the INAF and the FIU is covered by article 23, paragraph 2 of the RLCPI, which provides in general for co-operation and information exchange between the INAF and the FIU as and when necessary in the exercise of their supervisory and monitoring duties. Although the law does not provide explicitly for the FIU to ask the INAF to make a request to a foreign supervisory authority on its behalf, the authorities consider that such a request would be possible by virtue of Article 23. Nevertheless, it should be noted that this would only apply to requests concerning institutions under the prudential control of the INAF.

881. The second paragraph of article 23.2 of the regulation implementing the LCPI refers to co-operation between the INAF and the FIU concerning a given question without this precision or example ("In particular" ...) entailing any form of restriction of the general co-operation provided for in the first paragraph of the same article, which accordingly covers AML/CFT issues.

882. Regarding co-operation concerning the insurance sector, all requests for information concerning money laundering and terrorist financing matters affecting the insurance sector are handled by the FIU, through the Andorran body that received the request. The supervisory power in the insurance sector provided for in the Act of 11 May 1989 concerns any request for information relating to insurance companies, which are to be dealt with by the finance ministry, without prejudice to any co-operation with the INAF if the insurance company is part of the Andorran financial sector. In this respect the BoS-INAF Memorandum of Understanding, referring to article 6 of the Spanish royal legislative decree No. 1298/1986, provides that the Bank of Spain may transmit information requests to the insurance sector supervisor (Directorate General of Insurance) for it to perform its tasks, without the duty of confidentiality enshrined in the MoU entailing any limitation in this respect.

Statistics

883. The Andorran authorities provided the following statistics concerning international co-operation by the FIU and the police in money laundering matters with the available information on response times for co-operation requests:

2007

a. Information requests received by the FIU

No.	Date of request	Country	Date of reply	Days
1	24.07.07	United Kingdom	13.08.07	19
2	30.07.07	United States	06.08.07	6
3	21.09.07	Spain	24.10.07	33
4	01.10.07	United Kingdom	09.10.07	8
5	04.10.07	Spain	03.12.07	59
6	08.11.07	Luxembourg	03.12.07	25
7	01.02.07	Spain	06.03.07	35
8	23.03.07	Spain	30.03.07	7
9	23.07.07	Portugal	11.09.07	48
10	24.07.07	Croatia	24.07.07	1
11	25.07.07	Bolivia	26.07.07	1
12	25.07.07	Bolivia	26.07.07	1
13	06.08.07	United Kingdom	13.08.07	7
14	05.10.07	Venezuela	18.10.07	13
15	30.10.07	Croatia	14.11.07	15
16	01.11.07	The Former Yugoslav Republic of Macedonia	13.11.07	13
17	16.11.07	Portugal	26.12.07	40
18	21.12.07	Latvia	07.01.08	16
			Total:	**347**
			347/18= Average:	**19.27 days**

Country	Nbr
Spain	4
United Kingdom	3
Bolivia	2
Croatia	2
Portugal	2
United States	1
Latvia	1
Luxembourg	1
The Former Yugoslav Republic of Macedonia	1
Venezuela	1
Total:	**18**

b. Information requests made to FIUs

No.	Date of request	Country	Date of reply	Days
1	25.05.07	United Kingdom	01.06.07	6
2	25.05.07	Israel	11.12.07	194
3	10.09.07	Netherlands Antilles	17.10.07	37
4	10.09.07	Spain	23.11.07	73
5	10.09.07	Portugal	12.10.07	32
6	10.09.07	Venezuela	24.09.07	14
7	26.11.07	United States	08.02.08	72
8	26.11.07	Denmark	27.11.07	1
9	26.11.07	Sweden	18.01.08	52
			Total:	**481**
			481/9 = Average:	**53.44 days**

Country	Nbr
Netherlands Antilles	1
Denmark	1
Spain	1
United States	1
Israel	1
Portugal	1
United Kingdom	1
Sweden	1
Venezuela	1
Total	**9**

2008

a. Information requests received by the FIU

No.	Date of Request	Country	Date of Reply	Days
1	11.01.08	Germany	10.02.08	29
2	31.01.08	Georgia	26.02.08	26
3	14.02.08	United Kingdom	26.03.08	42
4	14.02.08	Portugal	06.03.08	22
5	30.04.08	Switzerland	30.04.08	1
6	23.05.08	Moldova	02.04.09	309
7	02.06.08	Spain	12.06.08	10
8	23.07.08	United States	30.07.08	7
9	13.10.08	Spain	05.05.09	232
10	24.10.08	Spain	04.11.08	10
11	02.12.08	Chile	17.12.08	15
12	02.01.08	Venezuela	07.01.08	5
13	31.03.08	Chile	07.04.08	7
14	19.03.08	Brazil	07.04.08	18
15	02.04.08	Chile	07.04.08	5
16	07.03.08	Guatemala	09.04.08	32
17	26.03.08	Albania	09.04.08	13
18	14.04.08	The Former Yugoslav Republic of Macedonia	15.04.08	1
19	05.05.08	St. Vincent and Grenadines	07.05.08	2
20	07.05.08	Taiwan	09.05.08	2
21	06.05.08	France	14.05.08	8
22	22.05.08	France	06.06.08	14
23	01.07.08	Qatar	03.07.08	3
24	24.07.08	Spain	29.07.08	5
25	04.07.08	Belgium	07.07.08	3
26	03.06.08	Spain	17.07.08	17
27	11.07.08	Lebanon	17.07.08	6
28	24.07.08	Spain	29.07.08	5
29	10.09.08	Taiwan	17.09.08	7
30	18.09.08	Belgium	23.09.08	5
31	22.10.08	Belgium	28.10.08	6
32	10.11.08	United Kingdom	11.11.08	1
33	13.11.08	France	18.11.08	5
34	25.11.08	Venezuela	15.12.08	20
			Total :	893
			893/34 = Average	**26.26 days**

Country	Nbr
Spain	6
Belgium	3
Chile	3
France	3
United Kingdom	2
Taiwan	2
Venezuela	2
Albania	1
Germany	1
Brazil	1
United States	1
Georgia	1
Guatemala	1
Lebanon	1
The Former Yugoslav Republic of Macedonia	1
Moldova	1
Portugal	1
Qatar	1
St. Vincent and Grenadines	1
Switzerland	1
Total:	**34**

b. Information requests made to FIUs

No.	Date of Request	Country	Date of Reply	Days
1	14.01.08	Spain	13.02.08	29
2	10.06.08	United States	11.07.08	31
3	27.03.08	Luxembourg	25.04.08	28
4	26.06.08	United Kingdom	16.07.08	20
5	18.07.08	Peru	11.08.08	23
6	30.10.08	United States	04.12.08	34
			Total :	**165**
			165/6 = Average	**27.5 days**

Country	Nbr
United States	2
Spain	1
Luxembourg	1
Peru	1
United Kingdom	1
Total:	**6**

2009

a. Information requests received by the FIU

No.	Date of Request	Country	Date of Reply	Days
1	13.03.09	Spain	17.04.09	34
2	26.03.09	Slovakia	30.03.09	4
3	07.05.09	Bulgaria	15.05.09	8
4	07.07.09	Liechtenstein	09.07.09	2
5	29.07.09	Ukraine	07.08.09	8
6	17.08.09	Italy	17.09.09	30
7	15.09.09	Estonia	20.09.09	5
8	26.10.09	Spain	15.12.09	49
9	26.10.09	United Kingdom	03.11.09	7
10	03.11.09	United Kingdom	11.11.09	8
11	08.01.09	Denmark	16.02.09	38
12	08.01.09	The Former Yugoslav Republic of Macedonia	29.01.09	21
13	27.01.09	Costa Rica	02.02.09	5
14	20.02.09	Spain	13.03.09	23
15	25.03.09	Costa Rica	15.04.09	20
16	06.04.09	France	15.06.09	69
17	09.04.09	Taiwan	15.04.09	6
18	28.05.09	Netherlands	03.06.09	5
19	10.07.09	Liechtenstein	14.07.09	4
20	30.09.09	Spain	16.10.09	16
21	14.10.09	Bosnia and Herzegovina	16.10.09	2
22	26.10.09	Spain	26.10.09	1
23	05.11.09	Spain	11.11.09	6
24	07.12.09	Venezuela	22.12.09	15
25	23.12.09	Spain	21.09.10	296
26	23.12.09	Venezuela	11.01.10	18
			Total:	**700**
			700/26 = Average:	**26.92 days**

Country	Nbr
Spain	7
Costa Rica	2
Liechtenstein	2
United Kingdom	2
Venezuela	2
Bosnia and Herzegovina	1
Bulgaria	1
Denmark	1
Estonia	1
France	1
Italy	1
The Former Yugoslav Republic of Macedonia	1
Netherlands	1
Slovakia	1
Taiwan	1
Ukraine	1
Total:	**26**

b. Information requests made to FIUs

No.	Date of Request	Country	Date of Reply	Days
1	09.02.09	United States	31.03.09	52
2	23.06.09	Spain	24.07.09	31
3	07.10.09	Netherlands Antilles	15.10.09	8
4	01.12.09	Switzerland	03.12.09	2
5	04.12.09	Spain	11.03.10	97
6	13.05.09	Switzerland	28.05.09	15
			Total:	**205**
			205/6 = Average:	**34.16 days**

Country	Nbr
Spain	2
Switzerland	2
Netherlands Antilles	1
United States	1
Total:	**6**

2010

a. Information requests received by the FIU

No.	Date of Request	Country	Date of Reply	Days
1	14.01.10	Monaco	31.03.10	75
2	26.01.10	Panama	04.02.10	8
3	05.02.10	Monaco	04.03.10	29
4	04.03.10	United States	22.03.10	18
5	16.03.10	Venezuela	16.03.10	1
6	26.03.10	France	01.04.10	4
7	12.04.10	France	22.04.10	10
8	28.04.10	United Kingdom	15.06.10	47
9	10.04.10	Bahreïn	17.05.10	37
10	24.05.10	Spain	04.06.10	10
11	04.06.10	Panama	16.06.10	12
12	10.06.10	Albania	17.06.10	7
13	08.07.10	Greece	03.08.10	25
14	08.07.10	Jersey	28.08.10	50
15	20.07.10	Argentina	05.08.10	15
16	03.09.10	United Kingdom	16.09.10	13
17	03.09.10	Venezuela	29.11.10	86
18	03.09.10	Monaco	09.09.10	6
19	03.09.10	Liechtenstein	14.09.10	11
20	02.09.10	Spain	15.09.10	13
21	06.09.10	Jersey	15.09.10	11
22	14.09.10	Paraguay	23.09.10	39
23	17.09.10	Spain	18.10.11	395
24	06.10.10	Croatia	26.10.10	20
25	04.10.10	Greece	26.10.10	22
26	12.10.10	Croatia	26.10.10	14
27	12.10.10	Philippines	26.10.10	14
28	18.10.10	Spain	26.01.11	98
29	31.12.10	Slovakia	31.01.11	30
30	31.12.10	Monaco	09.03.11	69
31	31.12.10	Montenegro	19.01.11	19
			Total:	**1208**
			1208/31 = Average:	**38.96 days**

Country	Nbr
Spain	4
Monaco	4
Croatia	2
France	2
Greece	2
Jersey	2
Panama	2
United Kingdom	2
Venezuela	2
Albania	1
Argentina	1
Bahreïn	1
United States	1
Liechtenstein	1
Montenegro	1
Paraguay	1
Philippines	1
Slovakia	1
Total:	**31**

b. Information requests made to FIUs

No.	Date of Request	Country	Date of Reply	Days
1	03.05.10	Spain	23.02.11	280
2	09.02.10	Spain	10.06.10	121
3	03.03.10	United States	13.05.10	70
4	11.03.10	United States	15.04.10	34
5	04.06.10	Spain	25.06.10	21
6	29.10.10	Spain	25.11.10	26
7	21.09.10	Spain	25.11.10	64
8	03.11.10	United States	27.01.11	84
9	15.10.10	Spain	30.11.10	45
10	05.08.10	Moldova	18.10.10	73
			Total:	**818**
			818/10 = Average:	**81.8 days**

Country	Nbr
Spain	6
United States	3
Moldova	1
Total:	**10**

2011

a. Information requests received by the FIU

No.	Date of Request	Country	Date of Reply	Days
1	13.01.11	Kirghizistan	31.01.11	18
2	13.01.11	Kirghizistan	09.03.11	54
3	17.01.11	Moldova	31.01.11	14
4	24.01.11	United Kingdom	10.05.11	106
5	08.02.11	Spain	15.03.11	37
6	11.02.11	Venezuela	29.03.11	35
7	11.02.11	Bahreïn	29.03.11	35
8	11.02.11	Jersey	16.05.11	94
9	23.02.11	Belgium	08.03.11	15
10	25.02.11	Spain	01.06.11	97
11	15.03.11	United Arab Emirates	15.04.11	30
12	15.03.11	Spain	15.04.11	30
13	28.03.11	Montenegro	07.04.11	10
14	08.04.11	Egypt	10.06.11	62
15	13.04.11	Spain	07.10.11	174
16	10.05.11	United Arab Emirates	09.06.11	29
17	10.05.11	Montenegro	25.05.11	15
18	10.05.11	Spain	12.10.11	152
19	13.05.11	Montenegro	25.05.11	12
20	13.05.11	Montenegro	25.05.11	12
21	23.05.11	Belgium	23.06.11	30
22	02.02.11	Spain	09.08.11	187
23	11.07.11	United States	16.09.11	65
24	11.07.11	Spain	06.09.11	55
25	11.07.11	United Kingdom	05.09.11	56
26	11.07.11	United States	05.09.11	56
27	11.07.11	Spain	13.09.11	63
28	20.07.11	Romania	12.10.11	82
29	20.07.11	Argentina	23.08.11	33
30	22.08.11	Argentina	23.08.11	1
31	24.08.11	United Kingdom	15.11.11	82
32	18.08.11	Brazil	19.10.11	61
33	22.08.11	Norway	12.09.11	21
34	07.09.11	Monaco	06.10.11	29
35	07.09.11	Venezuela	10.10.11	33
36	15.09.11	Spain	06.10.11	21
37	27.09.11	Spain	24.10.11	27
38	06.10.11	Spain	07.10.11	1
39	18.10.11	France	10.11.11	22
40	31.10.11	Moldova	07.11.11	7
41	21.11.11	Lithuania	30.12.11	39
42	05.12.11	Monaco	30.12.11	25
43	14.12.11	Luxembourg	30.12.11	16
			Total:	**2043**
			2043/43 = Average:	**47.51 days**

Country	Nbr
Spain	11
Montenegro	4
United Kingdom	3
Argentina	2
Belgium	2
United Arab Emirates	2
United States	2
Kirghizistan	2
Moldova	2
Monaco	2
Venezuela	2
Bahreïn	1
Brazil	1
Egypt	1
France	1
Jersey	1
Lithuania	1
Luxembourg	1
Norway	1
Romania	1
Total	**43**

b. Information requests made to FIUs

No.	Date of Request	Country	Date of Reply	Days
1	13.01.11	Colombia	02.11.11	289
2	15.04.11	Spain	04.08.11	109
3	06.04.11	Spain	30.09.11	144
4	06.04.11	Portugal	06.05.11	30
5	06.04.11	United Kingdom	11.04.11	5
6	06.04.11	Cyprus	18.04.11	12
7	10.08.11	Spain	Pending	…
8	10.08.11	Monaco	26.08.11	16
9	24.08.11	Bulgaria	20.10.11	56
			Total:	**661**
			661/8 = Average:	**82.63 days**

Country	Nbr
Spain	3
Bulgaria	1
Cyprus	1
Colombia	1
Monaco	1
Portugal	1
United Kingdom	1
Total:	**9**

Police statistics on international information requests received and sent regarding money laundering

Year	2006	2007	2008	2009	2010	*2011*
Requests Received	6	7	51	50	20	*61*
Requests Sent	25	19	71	104	73	*119*

Note: Since the operating mechanisms for exchanging money laundering information with foreign police counterparts are different, the above statistics have been taken from the registers of the International Co-operation Group ((Interpol Andorra) concerning official or judicial exchange of information, excluding intelligence related (non-judicial) requests which are not recorded.

Effectiveness of implementation of Recommendation 40 and overall compliance assessment

884. International co-operation at the level of the police and the FIU, as regards its main duties of financial intelligence unit, does not seem to pose any specific problems.

885. The situation is however different concerning co-operation with foreign supervisory authorities as regards the exchange of ALM/CFT information since, at the date of the on-site visit, no co-operation activities had taken place. This was subsequently remedied, as mentioned above, but the changes are too recent for an evaluation of their effectiveness to be possible. The above comments concerning the FIU's capacity effectively to perform its oversight function and the resources allocated to it to that end are also valid here, as the inadequacies noted in chapters 3 and 4 do not allow the FIU, as the supervisory authority, to have the information it needs to be able to co-operate effectively. This is reflected by the total lack of requests made or received by the Andorran supervisory authorities during the reference period and inevitably raises concerns.

886. Since there is no machinery to detect cross-border transportation of currency or bearer instruments, the Andorran authorities are not able to co-operate as fully as possible at an international level.

6.4.2 Recommendations and comments

887. Andorra should ensure that the customs authorities have the resources and an appropriate legal framework to be able to provide the broadest possible co-operation to their counterparts in AML/CFT matters, in particular concerning cross-border transportation of currency and bearer instruments.

888. The Andorran authorities should ensure that the INAF continues to establish effective contacts with its foreign counterparts (in particular those of neighbouring countries) so as to put in place a clear, effective mechanism for direct, rapid and constructive information exchange.

889. In particular, the applicable legislative and regulatory framework should also be reviewed to ensure that the existing arrangements are sufficiently clear and precise and, if need be, to supplement them so that they permit the Andorran supervisory authorities rapidly to provide the broadest possible assistance to foreign supervisory authorities not just as regards the exchange of information on financial sector institutions, but also concerning the insurance sector and DNFBPs.

890. The Andorran authorities should make additional efforts to ensure that international co-operation and information exchange with foreign supervisory authorities are reinforced.

6.4.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Underlying factors (relating specifically to section 6.5) for the overall conformity assessment
R.40	**LC**	• For lack of machinery to detect cross-border transportation of currency or bearer instruments, the Andorran authorities are not able to co-operate as fully as possible at an international level. • The legislative framework in place does not seem to cover correctly the exchange of information and international co-operation with foreign supervisory authorities in matters of insurance (non-banking entities) and DNFBPs. • The effectiveness of international co-operation in supervisory matters is not established.
SR V	**LC**	• The deficiencies noted in respect of Recommendation 40 also apply to SR.V.

7 OTHER ISSUES

7.1 Resources and statistics

891. The description, analysis and recommendations for improvement relating to recommendations 30 and 32 are contained in the relevant sections of the report, i.e. all of section 2, parts of sections 3 and 4, and section 6. There is a single rating for each of these recommendations, even if they are addressed under a number of sections. Section 7.1 of the report solely contains the box indicating the ratings and the underlying factors for them.

	Rating	Underlying factors (relating specifically to section 6.5) for the overall conformity assessment
R.30	**PC (consolidated rating**	FIU • Some reservations remain regarding the structure of the FIU and on the regulatory framework to fully guarantee its administrative independence and autonomy; • The FIU's human resources, equipment and premises at the time of the on-site visit were not sufficient to enable the FIU to successfully perform its tasks; • Training of FIU members is of an ad hoc nature and would appear to be

	Rating	Underlying factors (relating specifically to section 6.5) for the overall conformity assessment
		insufficient Customs • It has not been shown that the customs services have sufficient operational independence and autonomy, and there are still questions about the adequacy of resources, especially where the customs services are required to fully implement the criteria set out in Special Recommendation IX. Supervisory authorities • The FIU's resources for supervision purposes (staff, training, etc.) are clearly inadequate
R.32	**LC (consolidated rating)**	• The arrangements to review the overall effectiveness of Andorra's AML/CFT system are not considered to have fully attained their objective of enabling a regular review of the AML/CFT system's effectiveness. • Minor differences in the statistics received concerning STRs (FIU). • Given the lack of a detection mechanism and corresponding measures, Andorra has no statistics concerning declarations of cross-border movements of cash and bearer securities, as required by R.32. • Statistics on requests for mutual legal assistance were not available.

7.2 Other relevant AML/CFT measures and issues

Not applicable.

7.3 General structure of the AML/CFT system (see also 1.1)

Not applicable.

IV. IMPLEMENTATION OF EUROPEAN UNION STANDARDS

Andorra is not a member state of the European Union and is consequently not directly obliged to implement **Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing** (hereinafter: "the Directive") and the **Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis**.[90]

The following section describes the main differences between the directives and the 40 Recommendations and 9 Special Recommendations of the FATF.

7.	**Liability of legal persons**
Art. 39 of the Directive	Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.
FATF R. 2 and 17	Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
Key elements	The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive. What is the position in your jurisdiction?
Description and Analysis	Andorran law no longer recognises the criminal liability of legal persons, which existed until 2005. Criminal liability is based on the concept of culpability, which in Andorra applies solely to natural persons. It follows that legal persons involved in criminal proceedings can be held liable only with regard to acts perpetrated by their senior managers in the performance of their management tasks, via the legal concept of ancillary consequences. For both money laundering and terrorist financing offences, the Criminal Code expressly provides for the possibility of adopting additional measures in respect of legal persons that can go as far as the dissolution of the undertaking concerned. This liability of a criminal nature, albeit not specifically designated as such, is laid down as follows: *"**Article 411. Money laundering*** ***Additional consequences*** *The court must also order one or more of the following measures:* *1. Confiscation of the proceeds of the offence, as provided for in Article 70.*

[90] Under the agreement of 30 June 2011 with the European Union, the Principality is committed to adopt appropriate measures to transpose legal acts and rules of the European Union listed in the agreement, which include, among others, legislation concerning banking and finance, in particular with regards to the activities and the supervision of relevant institutions, as well as the prevention of money laundering, fraud prevention, etc.

	2. Dissolution of the organisation or permanent closure of its premises or establishments open to the public. *3. Suspension of the organisation's activities or closure of its premises or establishments open to the public for a period of up to five years.* *4. Prohibition from carrying out activities, commercial operations or transactions by using what was procured or concealed by the offence, for a period of up to five years.* *5. A fine, as provided for in Article 71."* Article 71 of the Criminal Code provides for specific sanctions for legal persons or companies and the conviction of their representatives or managers in the event of the commission of an offence. In particular, the courts can order: • the dissolution of the company; • its temporary or permanent closure; • suspension of its business; • judicial administration of the company; and • a ban on the company's entering into contracts with any public authority. In addition, the most recent amendment to the Criminal Code also introduced a totally new sanction applicable to legal persons that, in some way, played a significant part in the commission of an offence: a financial penalty of up to a) € 300 000 or b) four times the proceeds procured or **which it was sought to procure** through the criminal offence. The fact that the intention to procure the proceeds of the offence counts as a basis for determining the level of the fine is particularly significant as it introduces the element of attempt on the part of the perpetrator (rather than the advantage actually obtained) as a key factor for determining the extent of the sanction to be imposed on the legal person. Similarly, the Criminal Code makes the relevant court responsible for imposing these sanctions on legal persons, with a view to reaching a reasonable, well-founded decision.
Conclusion	There is currently no case-law in these matters. The law does not introduce formal criminal liability for legal persons. The above-mentioned provisions are an attempt to find an *ad hoc* solution, but do not affect the general principle of individual criminal liability set out in Article 24 of the Criminal Code.
Recommendations and comments	Since the Directive establishes no exception to the liability of legal persons and, beyond laundering offences, extends it to infringements based on the national provisions adopted pursuant to the Directive, Andorra should review its approach and, in particular, repeal Article 24 of the Criminal Code, so that criminal liability can be formally extended to legal persons.

	The range of sanctions applicable to natural persons in ALM/CFT matters should also be reviewed to ensure that they are proportionate to the seriousness of the acts being sanctioned.

8.	**Anonymous accounts**
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF R. 5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
Key elements	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	Article 49 of the LCPI expressly prohibits anonymous accounts and passbooks. Use of numbered accounts was particularly widespread in Andorra. At the time of the on-site visit no legal or regulatory provision stipulated how such accounts should be managed and, in particular, that in these cases the customer identification documents must be accessible by the ALM/CFT compliance officer, other appropriate members of staff and the competent authorities. Article 3 of the implementing regulation of the LCPI (dated 25 May 2011) now specifies that, for numbered accounts, financial institutions are required to keep documents relating to their customers' true identities at the disposal of the internal oversight bodies, the FIU and other competent authorities. The LCPI requirements apply without restriction to numbered accounts, that is to say other contracting parties' identities are checked, financial rights holders are identified and the economic background to transactions is clarified, in exactly the same way as for non-numbered accounts. In other words, all the due diligence requirements in force for non-numbered bank accounts also apply to numbered accounts. A number is used instead of the customer's name solely for a bank's internal communication purposes, and all the oversight bodies, including the AML/CFT compliance officer and the internal and external auditors, have access to the register showing the number corresponding to each name.
Conclusion	Anonymous accounts and passbooks are prohibited. Since the amendment of the RLCPI, the use of numbered accounts is now clearly regulated.
Recommendations and comments	Not applicable

9.	**Threshold (Customer Due Diligence)**
Art. 7 b) of the Directive	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions amounting to EUR 15 000 or more.
FATF R. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions above the applicable designated threshold.
Key elements	Are transactions and linked transactions of EUR 15 000 covered?
Description and Analysis	Article 49 of the LCPI provides that parties under obligation must identify their customers and their beneficial owners when establishing any business relationship.

	Article 49 bis of the LCPI confirms that parties under obligation are required to verify the identity of their customers and, if necessary, their beneficial owners before carrying out any transaction or establishing any business relationship. Article 3 of the implementing regulation of the LCPI provides for an exemption from these due diligence requirements for occasional customers of banking entities requesting the performance of transactions with a value equal to or less than €1250 (whether in one transaction or several transactions that appear related). This €1250 threshold is lower than that provided for in the FATF Recommendations and the Directive (€15 000).
Conclusion	Transactions of €15 000 or more are covered.
Recommendations and comments	The Andorran legislation implements the requirements of article 7b) of the Directive.

10.	**Beneficial owner**
Art. 3(6) of the Directive (see Annex)	The definition of 'Beneficial Owner' establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
FATF R. 5 (Glossary)	'Beneficial Owner' refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.
Key elements	Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.
Description and Analysis	The definition of "beneficial owner" under article 41 of the LCPI combines the FATF approach with that of article 3 of the Directive. The beneficial owner is "the natural persons or individuals who ultimately control the customer and/or individual on whose behalf a transaction or activity is conducted." This includes at least: - In the case of legal persons in the form of a company, the individual or individuals who ultimately control the legal person through direct or indirect ownership or control of a sufficient percentage of its shares or voting rights (for these purposes a percentage of over 25% is considered sufficient); - In the case of other legal entities, contractual fiduciary arrangements and other fiduciary structures which administer and distribute funds, the individual or individuals who control over 25% of the funds or the voting rights.
Conclusion	Not all of the Directive's requirements concerning the definition of a "beneficial owner" are covered by Andorran legislation, in particular the elements regarding persons who ultimately own the customer and criteria (6)(b)(i) and (6)(b)(ii).

Recommendations and comments	So as to transpose the definition of "beneficial owner", the definition in article 41 of the LCPI should be supplemented with the elements that are currently missing, as set out above. [91]

11.	**Financial activity on occasional or very limited basis**
Art. 2 (2) of the Directive	Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Art. 3(1) or (2) of the Directive. Art. 4 of Commission Directive 2006/70/EC further defines this provision.
FATF R. concerning financial institutions	When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially (2004 AML/CFT Methodology para 23; Glossary to the FATF 40 plus 9 Special Recs.).
Key elements	Does your country implement Art. 4 of Commission Directive 2006/70/EC?
Description and Analysis	Article 4 of Directive 2005/60/EC, which authorises the application of simplified due diligence measures or no measures at all where a financial activity is carried out on an occasional basis, has no equivalent in Andorran law, which requires that the anti-money laundering measures be applied in all cases.
Conclusion	At this stage Andorra has not considered it necessary to envisage exemptions from the anti-money laundering measures.
Recommendations and comments	Not applicable

12.	**Simplified Customer Due Diligence (CDD)**
Art. 11 of the Directive	By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures.

[91] Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011, broadened the concept of true right-holder or beneficial owner as follows:
"Article 1. Amendment of article 41
1. Article 41 g) of the Act on International Criminal Co-operation and the Fight against the Laundering of Money and Securities Deriving from International Delinquency shall be amended as follows:
"g) True right-holder or beneficial owner: individual or individuals who ultimately control the customer and/or individual on whose behalf the transaction or activity is being conducted. The beneficial owner includes at least:
- In the case of legal persons in the form of a company:
* the individual or individuals who ultimately control the legal person through direct or indirect ownership or control of a sufficient percentage of its shares or voting rights. For these purposes a percentage of over 25% will be considered sufficient.
* the individual or individuals who effectively manage it by any other means;
With the exception of companies listed on regulated stock exchanges of countries that impose reporting requirements consistent with international standards, who are deemed beneficial owners.
- In the case of other legal entities, contractual fiduciary arrangements and other fiduciary structures which administer and distribute funds:
* where the future beneficiaries have been designated, the individual or individuals benefiting from over 25% of the funds;
* where the future beneficiaries have not been designated, the category of persons for whose benefit the entity or legal arrangement was established or on whose behalf it principally acts;
* the individual or individuals who effectively manage the entity or legal arrangement by any other means."

	However the obligation to gather sufficient CDD information remains.
FATF R. 5	Although the general rule is that customers should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
Description and Analysis	Article 49 ter of the LCPI provides for a number of situations in which simplified due diligence measures may be applied. For instance, where the customer is a financial party bound by the LCPI or a credit or financial entity established in an OECD country that imposes requirements equivalent to those laid down in Andorra and is subject to supervision, none of the due diligence measures laid down in article 49 of the LCPI is compulsory. The same applies in the following cases: - Life assurance policies with annual premiums not exceeding €1000 or a single premium not exceeding €2500. - Insurance policies for pension plans, provided they do not include a surrender clause and they cannot be used as collateral for a loan. - Pensions and similar plans which include the payment of retirement benefits to employees, where the contributions are made by way of deductions from salary and the plan rules do not permit the assignment of the participation in the plan. - Electronic money when the maximum amount stored is not more than €150 if the device is not rechargeable or the total amount available in any calendar year is limited to €2500, except when the bearer requests the reimbursement of a sum of €1000 or more during the same year. - Other products or transactions involving a low risk of money laundering or terrorism financing in accordance with the FIU's technical communiqués. Article 8 of the RLCPI specifies that financial entities are also not obliged to apply the due diligence measures provided for in article 49 of the LCPI in the case of opening of global or omnibus accounts on behalf of diverse beneficial owners where the account is opened on behalf of a financial party subject to the LCPI or another credit or financial entity established or subject to supervision in an OECD country that imposes conditions equivalent to those of Andorran law. In addition, article 8 of the RLCPI stipulates that transactions can be considered to represent a low risk of money laundering or financing of terrorism where they are carried out: - by companies listed on a regulated stock exchange of a jurisdiction which imposes requirements equivalent to those of the Andorran legislation on money laundering and the financing of terrorism; - by Andorran or foreign companies under regulatory supervision that mandatorily requires the identification and verification of their beneficial owners, in Andorra or in a jurisdiction which imposes requirements equivalent to those of the Andorran legislation on money laundering and the financing of terrorism; - by institutions, bodies and other entities that form part of the Andorran public administration, acting in their own name.

	So far the FIU has issued no technical communiqué identifying other products or transactions as representing a low risk of money laundering or terrorist financing.
Conclusion	It should first be noted that the simplified due diligence measures provided for in the LCPI go well beyond the measures envisaged by the FATF (namely a simplification of measures to verify the identity of customers) since, in the cases covered by the legislation, no specific measure is required, particularly concerning transactions monitoring. The Andorran authorities stated that this did not mean that there was an exemption from the required due diligence measures, since parties under obligation were obliged to verify that the intermediary financial institution (the customer) was subject to supervision in an OECD country that had equivalent AML/CFT legislation or that there were other circumstances allowing the application of simplified due diligence measures.[92] Moreover, the Andorran legislation provides for the application of simplified due diligence measures to transactions carried out "by Andorran or foreign companies under regulatory supervision that mandatorily requires the identification and verification of their beneficial owners, in Andorra or in a jurisdiction which imposes requirements equivalent to those of the Andorran legislation on money laundering and the financing of terrorism." The evaluators were unable to determine precisely what was covered by this provision, which goes beyond the cases permitted by criterion 9 of Recommendation 5. Although the evaluators were informed that so far the FIU has issued no technical communiqué identifying other products or transactions as

[92] Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011, modified article 49 ter by explaining in clearer terms that parties under obligation can limit the degree of performance of ordinary obligations in the cases concerned by simplified due diligence measures.

"1. Without prejudice to the preceding articles, parties under obligation can limit the degree of performance of the obligations under article 49 of this Act where the customer is a financial party under obligation bound by this Act or a credit or financial entity established in an OECD country that imposes requirements equivalent to those laid down in this Act and is also subject to supervision making it possible to guarantee compliance with those requirements.

2. Financial parties under obligation can also limit the degree of performance of the obligations under article 49 in the following cases:

a) Life assurance policies with annual premiums not exceeding €1000 or a single premium not exceeding €2500.

b) Insurance policies for pension plans, provided they do not include a surrender clause and they cannot be used as collateral for a loan.

c) Pensions and similar plans which include the payment of retirement benefits to employees, where the contributions are made by way of deductions from salary and the plan rules do not permit the assignment of the participation in the plan.

d) Electronic money when the maximum amount stored is not more than €150 if the device is not rechargeable or the total amount available in any calendar year is limited to €2500, except when the bearer requests the reimbursement of a sum of €1000 or more during the same year.

e) Other products or transactions involving a low risk of money laundering or terrorism financing in accordance with the FIU's technical communiqués.

At all events, each transaction file must be accompanied by a brief note stipulating and giving reasons for the application of the FIU's technical communiqué in each case.

3. In all the cases provided for in this article, parties under obligation shall be required to obtain sufficient information to confirm that the customer satisfies the requirements concerning the application of appropriate simplified due diligence measures, which entails at least ascertaining and verifying the customer's identity and monitoring the business relationship to ensure ongoing compliance with the conditions set out in this article.

4. The appropriate simplified due diligence measures shall not be applicable in the following cases:

a) Where there is a suspicion of money laundering or terrorism financing.

b) Where parties under obligation have doubts about the veracity of the documents, data or any other information previously obtained with a view to verifying compliance with the conditions set out in paragraph 3 of this article.

c) Where situations are likely to involve a high risk of money laundering or terrorism financing."

	representing a low risk of money laundering or terrorist financing, the possibility of using technical communiqués to extend the list of products or transactions representing a low risk in ALM/CFT matters could range beyond the framework envisaged by the FATF. The Andorran authorities stated that, for the cases not envisaged in the FATF table, account had been taken of Article 11 of Directive 2005/60/EC (electronic money, other products or transactions involving a low risk of money laundering or terrorism financing in accordance with the FIU's technical communiqués).
Recommendations and comments	The Andorran authorities should ensure that the simplified due diligence measures provided for in the LCPI are solely confined to a simplification of the measures to verify the identity of customers and do not involve an exemption from all due diligence measures.[93]

13.	**Politically exposed persons**
Art. 3 (8), 13 (4) of the Directive (see Annex)	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
Key elements	Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?
Description and Analysis	Article 41 of the LCPI defines politically exposed persons. The definition is supplemented by article 2 of the implementing regulation. This definition is comparable to that given when article 3(8) of Directive 2005/60/EC is taken together with article 2 of Directive 2006/70/EC. Article 49 quater (1)(c) of the LCPI determines the enhanced due diligence measures to be applied to dealings with politically exposed persons. The measures are comparable to those provided for in article 13(4) of Directive 2005/60/EC.
Conclusion	The provisions of article 2 of Directive 2006/70/EC and article 13(4) of Directive 2005/60/EC have been transposed satisfactorily.
Recommendations and comments	Not applicable

14.	**Correspondent banking relations**
Art. 13 (3) of the Directive	For correspondent banking, Art. 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
FATF R. 7	Recommendation 7 includes all jurisdictions.
Key elements	Does your country apply Art. 13(3) of the Directive?
Description and Analysis	Article 49 quater (1)(b) of the LCPI provides that enhanced due diligence measures must be applied to correspondent banking relations, regardless of the country in which the client bank is based.

[93]See the preceding footnote.

Conclusion	Andorran legislation covers all countries and does not apply the restriction provided for in article 13(3).
Recommendations and comments	Not applicable

15.	**Enhanced Customer Due Diligence (ECDD) and anonymity**
Art. 13 (6) of the Directive	The Directive requires ECDD in case of ML or TF threats that may arise from products or transactions that might favour anonymity.
FATF R. 8	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity [...].
Key elements	The scope of Art. 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?
Description and Analysis	Article 49(3) of the LCPI provides that financial institutions must adopt measures to prevent misuse of new technologies so as to avoid the false identification of the customer in non-face to face transactions. Article 49 quater of the LCPI provides for enhanced due diligence to prevent products or transactions that favour anonymity being used for money laundering or terrorist financing.
Conclusion	Article 13(6) of Directive 2005/60/EC is properly covered.
Recommendations and comments	It should be ensured that article 49(3) of the LCPI does not serve solely to prevent any false identification of the customer in non-face to face transactions but also to prevent any money laundering or terrorist financing.[94]

16.	**Third Party Reliance**
Art. 15 of the Directive	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
FATF R. 9	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.
Key elements	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
Description and Analysis	Article 50 of the LCPI provides that financial institutions and DNFBPs may delegate the performance of their due diligence obligations to third parties provided that the latter are themselves subject to the LCPI. This possibility does not therefore apply to parties based in third countries.
Conclusion	Third parties to which due diligence obligations may be delegated must be subject to the LCPI, without distinction between professional categories.

[94] Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011, modified article 49.3 of the LCPI as follows: "3. Financial parties under obligation must adopt ongoing due diligence measures relating to new technologies **so as to prevent their misuse for money laundering or terrorist financing purposes** or any action likely to lead to the false identification of the customer in transactions carried out at a distance."

Recommendations and comments	Not applicable

17.	Auditors, accountants and tax advisers
Art. 2 (1)(3)(a) of the Directive	CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.
FATF R. 12	CDD and record keeping obligations 1. do not apply to auditors and tax advisors; 2. apply to accountants when they prepare for or carry out transactions for their client concerning the following activities: • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • organisation of contributions for the creation, operation or management of companies; • creation, operation or management of legal persons or arrangements, and buying and selling of business entities (2004 AML/CFT Methodology criterion 12.1(d)).
Key elements	The scope of the Directive is wider than that of the FATF standards but does not necessarily cover all the activities of accountants as described by criterion 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
Description and Analysis	Under article 45 of the LCPI, professional external accountants, tax advisers, auditors, economists and business agents are subject to due diligence and record-keeping obligations. Nevertheless, again under the same article, these professions are not bound by these obligations with regard to information they receive or obtain from one of their clients in the course of ascertaining the legal position of the client or performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.
Conclusion	Auditors, external accountants and tax advisers are subject to due diligence and record-keeping obligations when carrying out their professional activities. There are, however, a number of circumstances in which exceptions to this rule apply.
Recommendations and comments	The exceptions provided for in article 45 of the LCPI concerning professional external accountants, tax advisers, auditors, economists and business agents should be abolished.

18.	High Value Dealers
Art. 2(1)(3)e) of the Directive	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.
FATF R. 12	The application is limited to those dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	Article 45 of the LCPI provides that the AML/CFT rules apply to the activities of sellers of high value goods, such as precious stones and metals, when payment is made in cash, for an amount equal to, or exceeding

	€30 000.
Conclusion	Although, in addition to sellers of precious metals, article 45 of the LCPI applies to persons selling goods of high value when payment is made in cash, it should be noted that the amount from which the AML/CFT obligations apply (€30 000) is much higher than that laid down in the Directive.
Recommendations and comments	The Andorran authorities should make sure that the amount from which AML/CFT rules apply to the activities of high value dealers when payment is made in cash does not exceed €15 000.[95]

21.	**Reporting obligations**
Arts. 22 and 24 of the Directive	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Art. 22). Obliged persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).
FATF R. 13	Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
Key elements	What triggers a reporting obligation? Does the legal framework address *ex ante* reporting (Art. 24 of the Directive)?
Description and Analysis	Under article 46 of the LCPI, professionals are required to report any transactions or proposed transaction concerning funds or securities about which there are suspicions of laundering or terrorist financing. Article 47 of the LCPI provides that the reporting must take place before the suspicious transaction is carried out. The FIU can then decide to block it. Article 11 of the implementing regulation of the LCPI supplements these measures by providing that reports must also be made concerning transactions that have already been executed where suspicions arise following their execution.
Conclusion	Although there is a requirement to report any transaction related to money laundering or terrorist financing before it is carried out (and the authorities are able to request the blocking of the transaction) in accordance with Article 24 (1), no indications are given on how to proceed if refusal to carry out the transaction is not possible or may prevent the prosecution of the beneficiaries of the transaction (Article 24 (2)).
Recommendations and comments	The authorities should indicate that when refusal to carry out the transaction is not possible or may prevent proceedings, the transaction must be reported to the FIU as soon as it has been executed.

19.	**Casinos**
Art. 10 of the Directive	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2 000 or more. This is not required if they are identified at entry.

[95] The amount from which high value dealers are subject to the obligations of the LCPI was reduced to €15 000 following the amendment of article 45 of the LCPI, which entered into force on 23 June 2011.

FATF R. 16	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3 000.
Key elements	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	During the on-site visit, no casino was authorised by the Andorran authorities in the Principality. There was neither Internet casino, operating in Andorra. In case where such activities would be authorised in Andorra, it would be bound by the obligations with regard to the fight against money laundering and the financing of terrorism, by application of article 45(e) of the LCPI.
Conclusion	There is no need for Andorra to consider transposing article 10 of the Directive unless the legislation on games of chance is amended and authorisations are given.
Recommendations and comments	If Andorran authorities would need to modify the legislation and to authorise the casino activity, necessary measures should be taken to respect the requirements of Article 10 of the Directive.

20. Reporting by accountants, auditors, tax advisers, notaries and other independent legal professionals via a self-regulatory body to the FIU	
Art. 23 (1) of the Directive	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which shall forward STRs to the FIU promptly and unfiltered.
FATF Recommendations	The FATF Recommendations do not provide for such an option.
Key elements	Does the country make use of the option as provided for by Art. 23 (1) of the Directive?
Description and Analysis	Article 52.3 of the LCPI provides that the FIU may designate via technical communiqués the self-regulatory body or professional association of the professions concerned. When this applies, reports must be made to the relevant self-regulatory body first, instead of the FIU. In such cases, the designated self-regulatory body must pass on the reports to the FIU promptly and transparently. Article 14 of the implementing regulation of the LCPI expands on the said article and clarifies the functions of the self-regulatory bodies, while providing that the reporting procedure in such cases would be governed by co-operation agreements between the FIU and the designated self-regulatory bodies. To date, the FIU has not issued any such technical communiqués.
Conclusion	Article 52 of the LCPI and Article 14 of the implementing regulation of the LCPI enable Andorra to transpose the possibility provided for in Article 23(1) of the Directive.
Recommendations and comments	Not applicable

22.	**Tipping off (1)**
Art. 27 of the Directive	Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
FATF R. 14	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for "tipping off", which is reflected in Art. 26 of the Directive)
Key elements	Is Art. 27 of the Directive implemented in your jurisdiction?

Description and Analysis	Article 47 of the LCPI provides that the FIU must take all appropriate measures to protect parties subject to the LCPI from any threat or hostile action arising from the execution of the obligations imposed by the LCPI. In particular, the identity of the issuer of a suspicious transaction report is kept confidential in all administrative and legal proceedings initiated subsequent to or in connection with the suspicious transaction report.
Conclusion	Article 47 transposes the obligation provided for in article 27 of the Directive.
Recommendations and comments	Not applicable

23.	**Tipping off (2)**
Art. 28 of the Directive	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where the prohibition is lifted.
FATF R. 14	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.
Key elements	Under what circumstances are the tipping off obligations applied? Are there exceptions?
Description and Analysis	Under article 48 of the LCPI, it is prohibited to inform anyone about the existence of a suspicious transaction report, procedures under way or any communication with the FIU. Article 15 of the implementing regulation of the LCPI provides for exceptions to this rule, in particular in the case of communication with a self-regulatory body designated by the FIU, communication between financial institutions belonging to the same group or communication between entities covered by article 45 a) and b) of the LCPI insofar as their activity is carried out in the same legal entity or network with shared ownership, management and supervision.
Conclusion	There is no measure transposing article 28 (5) and (6) of the Directive.
Recommendations and comments	Andorran legislation should be supplemented in order to transpose article 28 of the Directive.

24.	**Branches and subsidiaries (1)**
Art. 34 (2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.
FATF R. 15 and 22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Art. 34 (2) of the EU Directive.
Key elements	Is there an obligation as provided for by Art. 34 (2) of the Directive?
Description and Analysis	Under article 18 of the implementing regulation of the LCPI, financial institutions must communicate their internal procedures to their branches and subsidiaries located abroad.

Conclusion	Financial institutions are subject to an obligation equivalent to that provided for in article 34(2) of the Directive.
Recommendations and comments	

25.	**Branches and subsidiaries (2)**
Art. 31(3) of the Directive	The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions should take additional measures to effectively handle the risk of money laundering and terrorist financing.
FATF R. 22 and 21	Requires financial institutions to inform their competent authorities in such circumstances.
Key elements	What, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
Description and Analysis	Under Article 44 of the LCPI, financial institutions unable to apply due diligence measures at least equivalent to those provided for in Andorran legislation must notify the FIU accordingly.
Conclusion	Financial institutions are not required to take additional measures to deal effectively with the risk of money laundering or terrorist financing when they are unable to apply due diligence measures at least equivalent to those provided for in Andorran legislation.
Recommendations and comments	When they are unable to apply due diligence measures at least equivalent to those provided for in Andorran legislation, financial institutions should be required to take additional measures to deal effectively with the risk of money laundering or terrorist financing.

Supervisory Bodies	
Art. 25 (1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
FATF R.	No corresponding obligation.
Key elements	Is Art. 25(1) of the Directive implemented in your jurisdiction?
Description and Analysis	Article 23 of the implementing regulation of the LCPI explicitly requires the INAF, as the authority supervising financial parties under obligation, to notify the FIU of any acts or transactions which may involve money laundering or terrorist financing offences in terms similar to those of article 25(1) of the Directive.
Conclusion	A requirement similar to that provided for in article 25(1) of the Directive exists in Andorran law. In practice, the team was informed that a number of bilateral meetings had been held and that an annual reporting procedure was in place whereby the INAF provided information on compliance with ALM/CFT requirements by all banks and financial institutions, on the basis of external audit reports and ALM/CFT inspection reports of foreign subsidiaries.
Recommendations and comments	To ensure effective implementation of this provision, it is recommended that the exchanges of information and co-operation between the INAF and the FIU in terms of supervision be stepped up.

26.	Systems to respond to competent authorities
Art. 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF R.	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	Andorran legislation does not explicitly cover this matter. Nevertheless, the parties under obligation are required to keep relevant documents for at least five years (see comments under R. 10) and to submit all information required by the FIU quickly and in full.
Conclusion	The provisions of the LCPI and the implementing regulation of the LCPI enable Andorra to meet the requirements of article 32 of the Directive.
Recommendations and comments	Not applicable

27.	Extension to other professions and undertakings
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	As article 45 of the LCPI is not exhaustive, the professions and categories of undertakings which may be used for money laundering or terrorism financing may be regarded as parties under obligation. *"Article 45* *The obligations defined in this Law are incumbent upon financial parties under obligation and* ***other natural and legal persons who, in the exercise of their professions or business activity, undertake, control or advise on transactions involving cash or securities movements which could be used for money laundering or terrorism financing and <u>in particular</u>:"*** Article 42 also stipulates that the LCPI applies to all natural or legal persons whose business activities may channel or facilitate a money laundering operation or terrorism financing. The Andorran authorities indicated that they leave it to individual parties to determine whether they are covered by this article.

Conclusion	Under articles 42 and 45 of the LCPI, Andorran legislation provides for the extension of the obligations to professions and undertakings other than those mentioned in article 2 (1) whose activities could be used for money laundering or terrorism financing.
Recommendations and comments	The Andorran authorities should clearly indicate which activities are covered by article 42 so as to leave no room for individual interpretations in this matter.

28.	**Specific provisions concerning equivalent third countries?**
Art. 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
FATF R.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
Key elements	How, if at all, does your country address the issue of equivalent third countries?
Description and Analysis	At the time of the on-site visit, Andorran legislation (article 49 of the LCPI and article 8 of the implementing regulation of the LCPI) required the FIU to draw up a list of OECD member countries which impose requirements equivalent to those of Andorran AML/CFT legislation. The purpose of such a list is to determine the relevance of applying simplified due diligence measures in certain cases, provided that proper reasons are given in writing. Article 8 of the implementing regulation of the LCPI, as amended, now provides that the FIU may draw up such a list.
Conclusion	To date, it has not been deemed necessary to draw up a list of countries which impose requirements equivalent to those required by Andorran legislation with a view to applying simplified due diligence measures, with the result that such measures are not applied.
Recommendations and comments	In order to transpose articles 11, 16(1)(b) and 28(4),(5) of the Directive, the Andorran authorities should make sure that the equivalence of third countries is assessed in relation to the European Directive (rather than Andorran legislation) and the FIU should consider drawing up such a list.

V. TABLES

Table 1: Compliance with FATF recommendations
Table 2: Recommended action plan to improve the AML/CFT system
Table 3: Authorities' response to the evaluation (if any)

TABLE 1: ANDORRA'S COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance with the FATF Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004: Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non-compliant (NC) or could, in exceptional cases be marked as not applicable (N/A). These ratings, solely based on the essential criteria, are defined as follows:

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
The following table sets out the ratings of compliance with FATF Recommendations which apply to Andorra. It includes ratings for FATF Recommendations from the 3rd round evaluation report that were not considered during the 4th round. *These ratings are set out in italics and shaded.*	

Forty recommendations	Rating	Summary of reasons for the rating[96]
Legal system and related measures		
1. ML offence	**PC**	• Non-compliance of the offence of laundering with the conventions with regard to concealing, disguising, possessing and using assets of criminal origin. • List of predicate offences does not cover all the designated categories of offences • Immunity of self-financing • Effectiveness: (1) weak proactive approach; (2) modest results with regard to prosecuting the offence, particularly in view of the disparities between the numbers of prosecutions and convictions; (3) resources and manpower allocated to the courts and prosecution authorities not judged sufficient.
2. ML offence – mental element and corporate liability	*LC*	• *The offence of laundering has been narrowed in a number of areas, including the criminal liability of legal persons although certain accessory sanctions can be applied to legal persons (in the framework of a case against a natural person).*
3. Confiscation and provisional measures	**LC**	• No legal basis for the confiscation of funds as the subject matter of the offence in autonomous laundering cases • Effectiveness: modest results of own initiative confiscations
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	This recommendation is fully observed.
5. Customer Due Diligence	**PC**	• The following obligations have been introduced or spelled out explicitly through amendments of the RLCPI after the visit; they were too recent to be considered as fully effective: - the regulations governing the use of numbered accounts; - the regulations requiring financial institutions to apply due diligence measures to customers regardless of any exceptions or thresholds where there is a suspicion of money laundering or terrorist financing or where there are doubts about the veracity or adequacy of previously obtained customer identification data;

[96] These reasons are only required to be set out when the rating is less than compliant.

		- the regulations requiring financial institutions to obtain corroboration of the information obtained (notably concerning the business activity) from a reliable, independent source; - the broadening of the identification measures provided for by the law and regulation to customers who are trusts or legal arrangements; - the requirement to obtain information concerning the names of senior management (for legal persons) or administrators (for trusts) and the provisions governing their powers to commit the legal person or legal arrangement; - with regard to the actual beneficial owner, the definition is incomplete and should, among other, target those natural persons who are the brains behind the legal person, as well as the settlor and beneficiaries of a trust. [97] • The requirements of criterion 5.3* concerning verification by means of information and documents from reliable independent sources are not fully covered. • Lack of adequate rules concerning identification and verification of the identity of beneficiaries of professional accounts kept by lawyers. • The simplified diligence measures provided by article 49ter LCPI go far beyond what the FATF is saying since none of the diligence measures of article 49 are applicable in the situations foreseen, notably concerning the on-going monitoring of transactions. • Where identification cannot be performed, there is no requirement to consider filing an STR when the relationship has not yet been established, which leaves uncovered situations of attempted establishment of relationship which do not materialise. • The full effectiveness of the implementation of a number of measures is not established: (1) doubts remain concerning the implementation and interpretation of certain obligations by financial institutions; (2) the controls put in place are very inadequate.
6. Politically exposed persons	**LC**	• The concept of PEP is not applicable to persons who exercise or have exercised important public functions in a foreign country but who reside in Andorra. • The due diligence measures relating to politically

[97] See the footnote in the report concerning amendments to article 41 letter g) of the LCPI, which introduced an explicit reference to the decision-maker of the legal entity (i.e. the person who effectively manages the entity)

		exposed persons refer to customers and say nothing about their possible application to beneficial owners.[98] • The full effectiveness of the implementation of a number of measures is not established: there are still reservations about the adequate implementation of the obligations when initiating a business relationship and the sufficient level of approvals and concerning the very insufficient monitoring by the authorities of financial institutions' effective implementation of their obligations relating to R.6.
7. Correspondent banking	**LC**	• In the context of control assessments, financial institutions are not required to ascertain that the AML/CFT controls implemented by the respondent institution are adequate and effective. • Financial institutions are not required to ascertain that the respondent financial institution is able to provide relevant customer identification data on request. • The full effectiveness of implementation by financial institutions of obligations relating to R.7 could not be established.
8. New technologies and non-face to face business	**PC**	• The risk of money laundering through the use of new technologies is insufficiently monitored, since the obligations solely concern false identification of the customer. • The full effectiveness of implementation by financial institutions of obligations relating to R.8 could not be established.
9. Third parties and introducers	**LC**	• There is no requirement that the delegating party obtain the necessary information concerning, inter alia, elements of the customer due diligence process. • The financial institutions should not be permitted to delegate to third parties the performance of their diligence obligations concerning the monitoring of transactions. • The full effectiveness of the implementation of a number of measures is not established: delegations to third parties seem to have been put in place without reporting them to the FIU; lack of measures to verify the delegation's compliance with the legal requirements.
10. Record keeping	**LC**	• Effectiveness (1) in the light of the information provided and the recent adoption of the amendments to the RLCPI, effectiveness cannot

[98] See the amendments introduced to section 49 quater 1 c) by Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011.

		be established.
11. Unusual transactions	**LC**	• Effectiveness: (1) lack of precise instructions to parties under obligation concerning the detection of unusual or suspect transactions; (2) recordkeeping concerning numbered accounts is solely in hard copy format or in a separate electronic database, which makes it difficult to perform a full analysis of transactions and compare them with other transactions so as to detect suspicious transactions.
12. Designated non-financial businesses and professions (DNFBPs)	**PC**	• Sellers of high value goods, precious stones and metals, are bound by the LCPI solely when they perform cash transactions for an amount exceeding €30 000.[99] • Lawyers, notaries and other legal professions, accountants, tax advisors, auditors, economistas and gestorias, accountants, tax advisers, auditors, economists and business agents, are not subject to the LCPI's requirements on identification and identity verification "in respect of information they receive or obtain from one of their clients in the course of ascertaining the legal position of the client or performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings". • Recommendations 6 and 8 still do not apply to DNFBPs. • The observations and compliance ratings set out in Chapter 3 concerning Recommendations 5 to 9 to 11, and R.17, which are applicable to DNFBPs in the circumstances covered in R.12, are also applicable. • The full effectiveness of the implementation of a number of measures is not established: (1) in view of the recent adoption of the amendments to the RLCPI, which followed the visit, the effectiveness of certain measures cannot be assessed in respect of certain obligations; (2) doubts remain concerning the implementation and interpretation of certain obligations by the DNFBPs; (3) the observations regarding the lack of effectiveness of the supervisory machinery and the application of sanctions are also applicable here.
13. Suspicious transaction reporting	**PC**	• Deficiencies in the offence of money laundering

[99] See the above footnote on the amendment of the € 15 000 threshold under Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011.

		(failure to include certain behaviours and a number of predicate offences) restrict the scope of suspicious transaction reports. • Deficiencies in the offence of financing of terrorism restrict the scope of suspicious transaction reports. • The obligation to report suspicious transactions, including attempted transactions, extends only indirectly to the proceeds of crime through the definitions of the offence of money laundering and terrorist financing. • Effectiveness: (1) low number of suspicious transaction reports; (2) concerns about the quality of reports and effective implementation of the reporting obligation by the subjected entities in view of the downward trend in reports made by the banking sector and the virtual absence of reports by other parts of the financial sector.
14. Protection and no tipping off	**LC**	• Effectiveness not established: 1) despite the protection measures provided for in the legislation the identity of a person having made a suspicious transaction report was disclosed in one case, notably in the press; 2) suspicious transaction reports have been included in the case-file documents of a number of judicial proceedings.
15. Internal controls, compliance & audit	**LC**	• Training initiatives are inadequate in comparison with the needs reported by the parties under obligation. • The full effectiveness of implementation of a number of measures is not established: financial institutions have no adopted specific procedures for hiring staff or further training programmes.
16. Designated non-financial businesses and professions - R.13-15 & 21	**PC**	• The threshold applied to exclude sellers of high value goods from the AML/CFT requirements is far higher than that established by R.16. • The observations and compliance ratings set out in Chapter 3 concerning Recommendations 14 15, 21 and 17, which concern DNFBPs in respect of their suspicious transaction reporting obligation, are also applicable. • The full effectiveness of the implementation of the reporting obligation by DNFBPs is not established as their contribution and commitment in AML/CFT matters is still very limited.
17. Sanctions	**PC**	• The range of sanctions is not proportionate to the seriousness of the acts and does not include the power of monitoring authorities to withdraw, restrict or suspend the prior authorisation (or

		licence) held by the institution. • Effectiveness: (1) No sanctions imposed in recent years; (2) The lack of on-site inspections in 2009 and 2010 and the supervisory authorities' inadequate resources raise doubts about the effectiveness of the system of sanctions.
18. Shell banks	**C**	This recommendation is fully observed.
19. Other forms of reporting	**NC**	• The failure to provide the study conducted during the preparations for promulgating Act 2/2008 precludes any finding that a study concerning the introduction of a reporting obligation concerning all transactions in excess of a certain amount has been performed.
20. Other NFBP & secure transaction techniques	**LC**	• Lack of precisions as to the natural or legal persons whose business activities may channel or facilitate a money laundering operation or terrorism financing and who should apply the LCPI. • No measure has been taken to encourage the development and use of modern and secure techniques of money management that are less vulnerable to money laundering.
21. Special attention for higher risk countries	**LC**	• In practice criteria are lacking for the identification of countries at risk in a uniform manner. • Effectiveness: (1) the establishment of general controls concerning all transactions and all entities in countries at risk raises questions; (2) in the light of the recent adoption of the amendments to the RLCPI, effectiveness cannot be established.
22. Foreign branches and subsidiaries	**LC**	• No obligation for financial institutions to pay particular attention to their branches and subsidiaries located in countries that do not or insufficiently apply the FATF Recommendations. • Problem of effectiveness due to the inadequate monitoring by the authorities of financial institutions' effective implementation of their obligations relating to R.22.
23. Regulation, supervision and monitoring	**PC**	• Supervision is based almost entirely on the review of external audit reports and the approach adopted does not seem to satisfy all the criteria in terms of planning. • The insurance sector is not subject to appropriate supervision in AML/CFT matters. • Lack of legislative or regulatory measures regarding fitness and integrity (23.3) for insurance sector companies other than financial

		institutions. • Post offices propose financial services without authorisation or licence. • In view of the information provided and the very small number of on-site inspections, effectiveness is not demonstrated.
24. Designated non-financial businesses and professions - Regulation, supervision and monitoring	**PC**	• Supervision of compliance with AML/CFT requirements by DNFBPs is inadequate. • No thorough study has been made of risks linked to DNFBPs. • The effectiveness of the controls and sanctions applicable to DNFBPs has not been established.
25. *Guidelines and feedback*	*LC*	• *Relatively little has been done to raise awareness of terrorist financing; the FIU could do more to provide laundering typologies.* • *Professional associations seem to react purely passively to AML/CFT issues; too much reliance on the FIU.*
Institutional and other measures		
26. The FIU	**LC**	• Although the legislation contains general provisions on how to write STRs, the FIU has not elaborated standardised reporting forms for the various categories of subjected entities. • There remain a number of reservations regarding certain aspects concerning the administrative autonomy of the FIU, which is not sufficiently guaranteed by the rules in force (e.g. as regards the appointment of the director and staff, their dismissal, lack of internal rules including on the duration of secondment / appointment of staff from other institutions). • The current measures do not offer satisfactory protection of the data held by the FIU[100]. • Effectiveness: the way the FIU operates raises a number of questions - 1) the human, financial and technical resources allocated to the FIU and the numerous tasks it has been assigned do not enable it to carry out satisfactorily its main functions; 2) reservations are expressed regarding the FIU's analysis function and on the methodology applied.
27. *Law enforcement authorities*	*C*	
28. *Powers of competent authorities*	*C*	
29. Supervisors	**PC**	• The FIU's failure to perform on-site inspections in 2009 and 2010 raises questions regarding the

[100] See the footnote in the report concerning the allocation of new offices in December 2011, and the assurances given by the authorities that these are now subject to reinforced security measures.

		effectiveness of the system of supervision and the application of the powers of compulsion and of sanction conferred by law.
30. Resources, integrity and training[101]	**PC (consolidated rating)**	<u>FIU</u> • Some reservations remain regarding the structure of the FIU and on the regulatory framework to fully guarantee its administrative independence and autonomy; • The FIU's human resources, equipment and premises at the time of the on-site visit were not sufficient to enable the FIU to successfully perform its tasks; • Training of FIU members is of an ad hoc nature and would appear to be insufficient <u>Customs</u> • It has not been shown that the customs services have sufficient operational independence and autonomy, and there are still questions about the adequacy of resources, especially where the customs services are required to fully implement the criteria set out in Special Recommendation IX. <u>Supervisory authority</u> • The FIU's resources for supervision purposes (staff, training, etc.) are clearly inadequate.
31. National co-operation	**PC**	• Co-operation in general policy and co-ordination matters through the Standing Committee, which did not hold regular meetings in 2009 and 2010, is not sufficiently satisfactory. • The level of consultation/coordination between the FIU and the INAF in matters of oversight is inadequate. • There is no co-operation between the FIU and the customs authorities for monitoring cross-border transportations of currency since there is no AML/CFT policy in this matter.
32. Statistics[102]	**LC (consolidated rating)**	• The arrangements to review the overall effectiveness of Andorra's AML/CFT system are not considered to have fully attained their objective of enabling a regular review of the AML/CFT system's effectiveness. • Minor differences in the statistics received concerning STRs (FIU). • Given the lack of a detection mechanism and corresponding measures, Andorra has no

[101] The analysis in respect of Recommendation 30 took into account the recommendations rated in this report. Account was also taken of the conclusions in the 3rd mutual evaluation report concerning Recommendation 27.
[102] The analysis in respect of Recommendation 32 took into account the recommendations rated in this report. Account was also taken of the conclusions in the 3rd mutual evaluation report concerning Recommendation 39.

		statistics concerning declarations of cross-border movements of cash and bearer securities, as required by R.32. • Statistics on requests for mutual legal assistance were not available.
33. Legal persons – beneficial owners	**PC**	• Despite the Andorran authorities' efforts to improve the system of registration of legal persons, a number of problems subsist such as the issue of name-lenders or the non-conversion of bearer shares following the expiry of the time-limit laid down in the legislation. • The possibility for the competent authorities to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership (managers, settlors, partners) and control of legal persons is not guaranteed. • The system of sanctions does not seem sufficiently dissuasive to guarantee the effective implementation of the legal and regulatory requirements, including as regards the updating of information recorded in the Companies Register.
34. Legal arrangements – beneficial owners	*NA*	
International co-operation		
35. Conventions	**PC**	• Ratification of the Palermo Convention approved by the General Council but not yet deposited with the United Nations at the time of the evaluation103 • Deficiencies in the implementation of certain provisions of the Vienna Convention and the Palermo Convention
36. Mutual legal assistance (MLA)[104]:	**LC**	• The effectiveness of mutual legal assistance may be impaired by the deficiencies noted concerning establishment of the money laundering offence.
37. Dual criminality	*LC*	• *Unlike in other countries, tax evasion is generally not an offence, but Andorra tries to be flexible so as to meet dual criminality requirements.*
38. MLA on confiscation and freezing	**LC**	• Doubts as to the legal basis for confiscation on request of laundered assets or assets of an equivalent value • Restrictions in the way in which the offence of laundering is established may affect the legal

[103] See above.
[104] The analysis in respect of Recommendation 36 took into account the recommendations rated in this report. Account was also taken of the conclusions in the 3rd mutual evaluation report concerning Recommendation 28.

		feasibility of confiscation on request (dual criminality principle)
39. Extradition	*LC*	• *Additional measures may be necessary to speed up the processing of requests in view of the diplomatic authorities' workload*
40. Other forms of co-operation	**LC**	• For lack of machinery to detect cross-border transportation of currency or bearer instruments, the Andorran authorities are not able to co-operate as fully as possible at an international level. • The legislative framework in place does not seem to cover correctly the exchange of information and international co-operation with foreign supervisory authorities in matters of insurance (non-banking entities) and DNFBPs • The effectiveness of international co-operation in supervisory matters is not established.
Nine Special Recommendations	**Rating**	**Summary of reasons for the rating**
SR.I Implement UN instruments	**NC**	• Failure to implement UN Resolutions 1267 and 1373. • Deficiencies in the implementation of the Convention for the Suppression of the Financing of Terrorism.
SR.II Criminalise terrorist financing	**PC**	• No offence as such of financing offences provided for in the CFT treaties. • Generic definition of terrorist acts not consistent with that of the CFT. • Immunity of self-financing of an individual. • No formal criminal liability of legal persons in connection with terrorism financing.
SR.III Freeze and confiscate terrorist assets	**NC**	• No legal framework for the implementation of Resolutions 1267, 1373 and following. • No machinery for reviewing lists submitted by other states under Resolution 1373. • Failure to carry out obligations arising from Resolutions 1267, 1373 and following (instructions, removal from lists, unfreezing of funds, access to funds, third party rights, definition of funds, etc.).
SR.IV. Suspicious transaction reporting	**PC**	• Deficiencies in the offence of financing of terrorism restricting the scope of suspicious transaction reports. • Effectiveness: concerns about (1) the quality of reports and (2) adequate knowledge of the scope of the reporting obligation by the parties under obligation, giving rise to reservations about the

		effective implementation of the reporting obligation.
SR V International co-operation[105]	**LC (consolidated rating)**	• The deficiencies noted in the establishment of the offence of financing of terrorism affect the possibility of rendering mutual legal assistance (dual criminality) • The deficiencies noted in respect of Recommendation 40 also apply to SR.V.
SR VI. AML requirements for money/value transfer services	**PC**	• Money and value transfer services are proposed by the Spanish and French post offices without any formal legal framework. • The earlier recommendations concerning the supervisory machinery, proportionality of sanctions and their effectiveness also apply in this context.
SR VII. Rules applicable to electronic transfers	**LC**	• Verification of identity is not provided for by law in the case of transfers for an amount up to €1250 performed by occasional customers. • Provision should be made for the lack of originator information to be regarded as giving rise to suspicions with a view to filing a suspicious transaction report with the FIU. • Effectiveness: (1) there are no preventive controls to detect transfers lacking the required accompanying information; (2) in the light of the information provided, effectiveness cannot be established.
SR.VIII. Non-profit organisations	**PC**	• The legal framework governing the requirements in respect of financial transparency and record keeping and updating is not fully satisfactory, in particular as there is no possibility of imposing sanctions. • Andorra has not performed any specific review to identify any weaknesses in this sector that could give rise to terrorist activities. • No awareness-raising measures have been taken in respect of NPOs regarding the risks of their being misused for terrorist purposes and the protective measures available. • Effectiveness of implementation not established: (1) very limited involvement of the competent authorities in the implementation of SR VIII; (2) it is not clear to what extent the registers of associations and foundations are kept up to date in practice; (3) partial oversight exercised by the authorities regarding this sector.

[105] The analysis in respect of Special Recommendation V took into account the recommendations rated in this report. Account was also taken of the conclusions in the 3rd mutual evaluation report concerning Recommendation 37 and 39.

SR.IX. Cross Border Declaration & Disclosure	**NC**	• Andorra has still not implemented measures for the detection of cross-border transportation of cash and bearer securities, including a system of declaration or reporting, nor has it implemented the other criteria of SR IX.

TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT system	Recommended action (in order of priority)
Legal system and related institutional measures	
Criminalisation of Money Laundering (R.1)	• Article 409 of the Criminal Code should be modified and supplemented to cover all aspects of laundering referred to in the conventions, particularly by making it an offence simply to conceal, disguise, possess and use criminal assets • The list of predicate offences should be extended to cover at least all the designated categories of offences, by adding the missing offences - participation in an organised criminal group and racketeering, smuggling, migrant smuggling without aggravating circumstances, counterfeiting and piracy of products without aggravating circumstances, environmental crime without aggravating circumstances, forgery other than counterfeit money or identity cards, fraud, other than aggravated fraud, and insider trading and market manipulation – and by reducing the minimum sentence for any predicate offence, or simply by adopting an "all offences" approach. • The immunity of self-laundering should be abolished.
Criminalisation of Terrorist Financing (SR.II)	• The offence of financing terrorism should be modified to include the financing of unlawful acts specified as such in the treaties appended to the CFT • The general definition of terrorist acts should be supplemented by the notion of intimidating a population, or compelling a government or an international organisation to do or to abstain from doing any act • The immunity of self-laundering of an individual should be abolished. • Criminal liability should be introduced for legal persons, at least in the context of CFT • Article 24 of the Criminal Code should be repealed, so that criminal liability can be formally extended to legal persons.
Confiscation, freezing and seizure of proceeds of crime (R.3)	• The Criminal Code should be amended to permit the confiscation of laundered money in the event of prosecution for laundering as an autonomous offence and confiscation by equivalence should apply to instruments and the subject matter of the offence. • Andorra should ensure that the prosecution authorities make greater efforts to take the initiative to increase effectiveness in the application of interim and confiscation measures.
Freezing of funds used to finance terrorism (SR.III)	Andorra should: • Establish legal arrangements to ensure the automatic freezing of funds controlled fully or jointly by listed persons or bodies, as well as funds derived from or generated by funds owned or

AML/CFT system	Recommended action (in order of priority)
	controlled by listed persons, the funds of bodies belonging to or controlled, directly or indirectly, by listed persons and the funds of persons or bodies acting on their behalf or under their instruction, in accordance with Resolution 1267 • Establish domestic machinery for drawing up their own lists in accordance with Resolution 1373 and introduce procedures for deciding on lists presented by other states • Ensure that financial institutions and other persons or bodies that might hold terrorist funds are clearly informed of their obligations regarding preventive freezing in accordance with United Nations resolutions • Establish effective publicly-known procedures for examining requests for de-listing by the persons concerned and the unfreezing of the funds and other assets of de-listed persons and bodies • Establish effective publicly-known procedures for unblocking, as rapidly as possible, the funds and other assets or persons or bodies inadvertently affected by freezing arrangements, after verification that the person or body concerned is not a designated person • Establish appropriate procedures to enable persons or bodies whose funds or other assets have been frozen to challenge this measure in the courts • Introduce provisions to protect the rights of third parties acting in good faith, in accordance with Article 70 of the Criminal Code • Introduce a specific and effective system for monitoring compliance with United Nations resolutions
The Financial Intelligence Unit and its functions (R.26)	• The FIU should step up its awareness-raising and guidance activities with the parties under obligation, by drafting guidelines, recommendations and other guidance relating to the obligation to report. • The FIU should take additional measures to ensure appropriate protection for the information and data that it holds. • The Andorran authorities should review the entire status of the FIU to ensure that it has sufficient independence and autonomy to successfully carry out its tasks, by means of clear and precise regulations such as to ensure that this institution is not subject to any undue influence or interference.
Cross border declaration or disclosure (SR IX)	• The Andorran authorities should take, as a matter of urgency, the necessary measures to implement Special Recommendation IX in its entirety.
Preventive measures - Financial institutions	
Risk of money laundering or terrorist financing	• Andorra should conduct a global study of the money laundering and terrorist financing risks specific to Andorra so as to ensure that the risk-based approach adopted is truly

AML/CFT system	Recommended action (in order of priority)
	consistent with the risks identified.
Duty of vigilance, including stronger or reduced identification measures (R.5 to 8)	***Recommendation 5*** • The Andorran authorities should expressly prohibit the keeping of accounts in fictitious names. • The due diligence requirements in respect of cross-border transfers of amounts between €1000 and 1250, the limit beyond which customer identification is clearly obligatory, should be clarified. • Although there is indeed an obligation to identify the true right-holder, financial institutions should also be required to verify this information using relevant information or data obtained from a reliable source such that the undertaking would have sufficient knowledge of the identity of the beneficial owner. • Although the issue of omnibus accounts seems to be properly addressed by authorising this type of account solely for the benefit of financial undertakings subject to AML/CFT requirements, the Andorran authorities should pay particular attention to the situation of lawyers' professional accounts, so that financial undertakings are able clearly to identify the real beneficial owner of each transaction. • The Andorran authorities should supplement the definition of beneficial owner of a legal person in section 41 of the LCPI so that it also covers the natural persons who comprise the mind and management of the company and the definition of the beneficial owner of a trust so that it also covers the settlor and the beneficiaries. [106.] • Financial institutions should be obliged to obtain information on the intended nature of the relationship with a customer. • The Andorran authorities should envisage extending the list of customers considered as high risk, in particular to companies having nominee shareholders. • The Andorran authorities should ensure that the simplified due diligence measures provided for in the LCPI are confined to a simplification of measures to verify the identity of customers, without constituting an exemption from all due diligence measures, and that these simplified due diligence measures are indeed restricted to the case provided for in the FAT Recommendations (which would seem to exclude "Andorran or foreign companies under regulatory supervision that mandatorily requires the identification and verification of their beneficial owners, in Andorra or in a jurisdiction which imposes requirements equivalent to those of the Andorran

[106] See the above footnote on the amendments to g) of section 41 of the LCPI introducing an express reference to the brains behind a legal person (that is the person who provides its effective leadership).

AML/CFT system	Recommended action (in order of priority)
	legislation on money laundering and the financing of terrorism").[107] • To assist financial institutions in applying the due diligence measures provided for in the legislation the Andorran authorities should draft a list of countries which impose requirements equivalent to those required by Andorran legislation on the prevention of money laundering and financing of terrorism.[108] • The Andorran authorities should introduce an obligation to consider filing a suspicious transaction report if the relationship has not already been initiated. • The Andorran authorities should clearly specify that there is an obligation to end the business relationship if the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. ***Recommendation 6*** • The Andorran authorities should ensure that financial institutions have procedures in place to determine whether a customer is a politically exposed person.[109] • They should also ensure that, in practice, authorisation to establish a business relationship with a politically exposed person is always given by the financial institution's senior management. • The Andorran authorities should envisage signing, ratifying and transposing into domestic law the United Nations Convention against Corruption of 2003. ***Recommendation 7*** • Concerning correspondent banking relationships, Andorran financial institutions should be required to ascertain that the ALM/CFT controls implemented by the respondent institution are adequate and effective and that it is able to provide relevant customer identification data upon request. ***Recommendation 8*** • Financial institutions should also be required to take measures to prevent the misuse of new technologies in money laundering or terrorist financing schemes. [110.]
Third parties and business generators (R.9)	• The Andorran authorities should ensure that financial institutions cannot delegate to third parties the performance of their diligence obligations concerning the monitoring of transactions

[107] Law 4/2011 of 25 May 2011, amending the LCPI and in force since 23 June 2011, amended Article 49.ter, explaining more clearly that the subjects of obligations may limit the degree of implementing of ordinary obligations in the cases provided for for simplified CDD obligations.
[108] It should be recalled that article 78 of the RLCPI, as amended on 25 May 2011, now provides that the FIU may (and no longer must) draft a list countries which impose equivalent requirements.
[109] See the above footnote. (Act of 2011)
[110] See the above footnote on the amendments made to section 49.3 of the LCPI, in force since 23 June 2011.

AML/CFT system	Recommended action (in order of priority)
	• The authorities should also ensure that, when they rely on a third party, financial institutions are required to obtain immediately the necessary information concerning, inter alia, elements of the customer due diligence process. • The authorities should take appropriate measures to verify the implementation of delegations by financial institutions and, where necessary, sanction failures to document and report delegations within the legal time limits.
Secrecy or confidentiality of financial institutions (R.4)	None
Record keeping and wire transfer rules (R.10 & SR.VII)	***Recommendation 10*** • In view of the different time limits for retaining documents in the various pieces of legislation, the authorities should consider taking steps to harmonise the standards in this area. More extensive supervisory measures concerning compliance with the recommendation in question would also be desirable. ***Special Recommendation VII*** • The Andorran authorities should envisage introducing amendments to the legislation so as to avoid any misunderstandings concerning the effective scope of the standards in the specific field of wire transfers, particularly as regards the application threshold and the exceptions. • Although banks stated that they applied the bulk of the obligations under SR.VII, provision should be made for the performance of specific preventive procedures by intermediaries and for the introduction of controls by the competent supervisory authorities.
Monitoring of transactions and business relationships (R11 & 21)	***Recommendation 11*** • The FIU should give more detailed instructions to parties under obligation concerning the detection of unusual or suspect transactions, promoting specific controls in addition to the automatic controls performed by the software used by financial intermediaries. • Regarding transactions linked to numbered accounts, the competent authorities should ensure that financial institutions have implemented appropriate procedures enabling them to detect all complex, unusual or suspect transactions carried out on these accounts and to compare them with other transactions on non-numbered accounts. **Recommendation 21** • The FIU should clarify the criteria to be used to identify countries which do not or insufficiently apply the FATF Recommendations and specify, via the technical communiqués provided for in article 9.4 of the RLCPI as amended, the appropriate counter-measures to be implemented. • The authorities should also reflect on the decision to apply very broad obligations in respect of these countries (for all transactions with all parties) without classifying the risks in

AML/CFT system	Recommended action (in order of priority)
	relation to the financial institutions concerned and to transactions without a lawful or economic purpose.
Suspicious transactions and other reporting (R.13, 14, 19& SR.IV)	***Recommendation 13 and Special Recommendation IV*** • The Andorran authorities should introduce the necessary legislative amendments to ensure that the reporting obligation is not restricted on account of the existing inadequacies regarding the offences of money laundering and terrorism financing and that it directly covers suspicions concerning the proceeds of crime. • The Andorran authorities should seek to identify possible reasons for the lack of reports or the very low quantity of reports made by a number of undertakings and, if appropriate, take the necessary measures to ensure that all undertakings effectively implement the reporting obligation. • The Andorran authorities should also do more to raise awareness among financial sector professionals and take appropriate measures to ensure the quality of the reports made (in this connection see also the recommendations and comments in section 2.5). • In particular, in view of the recent introduction of the reporting obligation concerning financing of terrorism, there is a need for awareness-raising efforts focusing on this obligation so as to ensure that this new obligation is well understood by the financial sector. ***Recommendation 14*** • The Andorran authorities should ensure that the protection measures provided for in the legislation are effectively applied so that the identity of persons who have made a suspicious transaction report is not disclosed (notably in the press) and suspicious transaction reports are not included in the case-file documents of judicial proceedings. ***Recommendation 19*** • Consideration should be given to the feasibility and utility of a system whereby financial institutions would report all cash transactions above a certain amount.
Internal controls, compliance and foreign branches (R.15 & 22)	***Recommendation 15*** • Although the changes to the legislation are positive steps, the Andorran authorities still need to make additional efforts to ensure that financial institutions establish appropriate procedures. • The authorities should also ensure that financial institutions implement in an appropriate manner the obligations introduced in the legislation in respect of the requirements of R.15, in particular concerning the establishment by financial institutions of procedures for hiring staff, further training programmes and so on. ***Recommendation 22*** • To supplement the existing arrangements, the Andorran

AML/CFT system	Recommended action (in order of priority)
	authorities should ask financial institutions to pay particular attention to their branches and subsidiaries located in countries that do not or insufficiently apply the FATF Recommendations. • In its capacity is AML/CFT supervisory authority the FIU should also adopt a proactive policy so as to establish direct co-operation and the exchange of information with the ALM/CFT supervisory authorities in countries where Andorran financial institutions' branches and subsidiaries are located, without necessarily going through the INAF.
Shell banks (R. 18)	None
Supervisory and oversight system - Competent authorities and self-regulation organisations: (R. 17, 23 and 29).	***Recommendation 17*** • The Andorran authorities should review the range of sanctions applicable in ALM/CFT matters to ensure that they are proportionate to the seriousness of the acts being sanctioned and that they include the power of oversight authorities to withdraw, restrict or suspend the prior authorisation (or licence) held by a financial institution. • The FIU and the Government should also take the necessary steps to ensure that sanctions for breaches of the ALM/CFT requirements are effectively applied throughout the financial sector. ***Recommendation 23*** • As a matter of priority the Andorran authorities should reinforce ALM/CFT supervision of financial institutions, notably by establishing an appropriate supervision policy including a structural plan for the regular performance of on-site ALM/CFT compliance inspections, using an appropriate methodology with a view to verifying that the financial sector effectively implements the requirements of the ALM/CFT legislation, and performing regular, effective monitoring of the findings of other means of control such as external audit reports. • The authorities should ensure that the insurance sector is subject to appropriate supervision in ALM/CFT matters. • The legislation and regulations applicable to insurance companies should be amended so as to introduce measures to prevent criminals or their accomplices from taking control of establishments, in particular by laying down clear requirements regarding the fitness and integrity of their management. • The Andorran authorities should review the implementation of the requirements of R.23 in respect of the financial services proposed by post offices. ***Recommendation 29*** • Although the IFU is empowered to inspect financial institutions, including on-site inspections, and to implement sanctions, for lack of sufficient, appropriate resources assigned for this purpose these powers have not been fully

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	utilised It is essential that the Andorran authorities take all the necessary measures to address this situation as a matter of urgency.
Money or value transfer services (SR.VI)	• No competent authority has been designated and no specific structure for licensing or registering money or value transfer operators exists at present. The Andorran authorities should review these aspects, as already recommended, so as to settle the issue of the offer of funds transfer services by foreign post offices without any form of authorisation, which was already raised in the previous evaluation round. • The earlier recommendations concerning the supervisory machinery, proportionality of sanctions and their effectiveness also apply in this context and should be fully implemented by the authorities.
Preventive measures – non-financial businesses and professions	
Duty of diligence and keeping of documents (R. 12)	The Andorran authorities should ensure that: • sellers of high value goods are subject to the LCPI obligations regarding identification of customers and verification of their identity when they carry out transactions with their customers for an amount equal to or exceeding € 15 000; • the exceptions laid down in article 45 of the LCPI related to the requirements on identification and identity verification, do not apply to lawyers, notaries and other legal professions, professional external accountants, tax advisers, auditors, economists and business agents; • DNFBPs are required to implement specific due diligence measures in respect of their customers who are politically exposed persons; • DNFBPs are required to implement specific due diligence measures concerning the use of new technologies and the risks associated with relationships which do not require the customer's physical presence. • In case of a future authorisation of casino, including Internet casino, authorities should take additional measures to ensure those activities comply with all the obligations, as provided for in R.12 • The recommendations set out in Chapter 3 concerning the measures to be taken in respect of the requirements of Recommendations 5 to 9 and 11, as well as R.17, are also applicable to DNFBPs and should be implemented by the Andorran authorities.
Suspicious transaction reporting (R.16)	• The threshold beyond which ALM/CFT obligations (in particular suspicious transaction reporting) apply to sellers of high value goods should be reduced to €15 000, as established under R.16. [111] • The authorities should raise awareness among DNFBPs (even

[111] See the above footnote concerning the amendment of this threshold.

AML/CFT system	Recommended action (in order of priority)
	through training) of the need for a greater effort as regards their contribution to the fight against money laundering and terrorism financing and to the reporting mechanism. • The recommendations set out in Chapter 3 concerning the measures to be taken in respect of the requirements of Recommendations 14, 15, 21 and 17, are also applicable to DNFBPs and should be implemented by the Andorran authorities in respect of DNFBPs' suspicious transaction reporting obligation.
Regulation, supervision and monitoring (R 24)	• The Andorran authorities should first study the real risks of laundering or financing of terrorism with regard to each non-financial profession. The outcome of this study should provide food for thought regarding improvements in the means of communication used by the FIU in respect of DNFBPs (an FIU web-site for example). • In view of the many tasks already assigned to the FIU, the role that might be played by professional associations and firms including in supervisory matters should be taken into consideration. • The recommendations set out in Chapter 3 concerning the measures to be taken in respect of the obligation to establish an effective system of monitoring and supervision should be implemented by the Andorran authorities so as to ensure effective compliance with the ALM/CFT requirements by DNFBPs.
Other non-financial businesses and professions (R.20)	• The Andorran authorities should clearly indicate which activities are covered by article 42 so as to leave no room for individual interpretations in this matter. • In view of the specific situation in Andorra (no means of detecting cross-border transportation of currency (RS.IX), no study of the feasibility and utility of implementing a system whereby financial institutions would report all cash transactions above a certain amount to a national central agency (R.19)) the Andorran authorities should envisage introducing a limit on cash payments.
Legal persons and arrangements & non-profit organisations	
Legal persons – Access to beneficial ownership and control information (R.33)	• Andorra should ensure that use of name-lending is stamped out. • Andorra should conduct a study on de facto companies and, if necessary, taking additional measures to limit the risk of their use for money laundering or terrorist financing. • Andorra should ensure that the competent authorities can obtain information on the beneficial ownership and control of legal persons in a timely fashion by introducing obligations so that updated information is reported without delay and duly registered and dissuasive sanctions become applicable and are applied where appropriate. • Andorra should ensure that the various legal and regulatory

AML/CFT system	Recommended action (in order of priority)
	requirements intended to ensure transparency are effectively applied, notably by allowing the competent authorities to take appropriate steps in the event of non-compliance and by amending the system of applicable sanctions so that they are sufficiently dissuasive.
Non-profit organisations (SR.VIII)	• A formal assessment of the risk of misuse of this sector for terrorism financing should be carried out, in particular in view of the relatively relaxed regime applicable to associations and the limited oversight exercised regarding them. • The authorities should also review the suitability of the legal framework relating to non-profit organisations to ensure that it meets financial transparency requirements, ranging beyond the specific measures provided for where an organisation is in receipt of public subsidies, and requirements concerning the updating of identification data in the event of any change in the founders or persons managing the activities of NPOs, including identification of the main managers, governing board members or directors. Dissuasive penalties should be established to sanction non-compliance with these requirements. • It would also be desirable to involve the Government legal office in charge of the Associations and Foundations Registers in the implementation of the requirements of SR.VIII. • Measures should be taken to ensure that non-registered NPOs cannot carry out financial transactions in their own name through the financial system. • Effective monitoring of NPOs' compliance with their legal obligations should also be established.
National and international co-operation	
National co-operation and coordination (R.31)	***Recommendation 31*** • It is essential that the Standing Committee on Money Laundering and Terrorism Financing continue its action, while actively involving the representatives of the institutions competent in ALM/CFT matters therein, so as to play a more effective inter-institutional coordination role. • Additional efforts are needed to improve inter-institutional co-operation, in particular by reinforcing consultation and co-ordination of supervision between the FIU and the INAF in their respective fields of competence and between the FIU and the customs authorities with a view to implementing SR. IX. • Lastly, the authorities should pursue their dialogue with the undertakings subject to ALM/CFT measures.
UN conventions and special resolutions (R. 35 & SR. I)	***Recommendation 35*** • Andorra should implement the evaluators' recommendations set out in section 2 of this report concerning the offence of money laundering and terrorist financing and should improve

AML/CFT system	Recommended action (in order of priority)
	implementation of the provisions of the Palermo Convention against Transnational Organised Crime[112] and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. ***Special Recommendation I*** • Andorra should improve its implementation of the provisions of the Convention for the Suppression of the Financing of Terrorism. • Andorra should implement the UN Security Council Resolutions, adopting legislation, regulations and other measures as necessary.
Mutual legal assistance (R. 32, 36, 38, SR. V)	***Recommendation 36 and SR.V*** • Andorra should ensure that the principle of dual criminality does not affect effectiveness - above all with regard to coercive measures - on account of the deficiencies noted regarding establishment of the offences of ALM and CFT, which should be remedied. ***Recommendation 38 and SR.V*** • Andorra should address the deficiencies noted regarding the confiscation of the corpus delicti of laundering (predicate offences, criminal behaviours, self-laundering) and regarding financing of terrorism (establishment of the offence, self-financing), so as to avoid situations where the principle of dual criminality causes problems with the execution of mutual legal assistance. • Andorra should make express provision for the confiscation of assets of an equivalent value in article 38 of the LCPI.
Other forms of international cooperation (R. 32 and 40, SR.V)	• Andorra should ensure that the customs authorities have the resources and an appropriate legal framework to be able to provide the broadest possible co-operation to their counterparts in ALM/CFT matters, in particular concerning cross-border transportation of currency and bearer instruments. • The Andorran authorities should ensure that the INAF continues to establish effective contacts with its foreign counterparts (in particular those of neighbouring countries) so as to establish a clear, effective mechanism for direct, rapid and constructive information exchange. • In particular, the applicable legislative and regulatory framework should also be reviewed to ensure that the existing arrangements are sufficiently clear and precise and, if need be, to supplement them so that they permit the Andorran supervisory authorities rapidly to provide the broadest possible assistance to foreign supervisory authorities not just as regards the exchange of information on financial sector institutions, but also concerning the insurance sector and

[112] The Palermo Convention was ratified after the on-site visit (ratification deposited on 22 September 2011, entered into force on 21 October 2011).

AML/CFT system	Recommended action (in order of priority)
	DNFBPs. • The Andorran authorities should make additional efforts to ensure that international co-operation and information exchange with foreign supervisory authorities are reinforced.
Other issues	
Resources (R.30)	• To enable the FIU to fulfil its tasks appropriately, the Andorran authorities should take the necessary steps to ensure that it has adequate technical resources and qualified and sufficient staff, and ensure that the latter are given regular and relevant training in the field of anti-money laundering and combating the financing of terrorism. • With regard to the structure and members of the FIU, further clarification should be provided concerning the rules governing recruitment, appointment and dismissal. • Following the adoption and implementation of these measures, it is also recommended that the authorities analyse the impact of the measures on the resources (human, financial, technical, training, etc.) of the competent departments and the staff responsible for implementing SR.IX on the ground, and to take any required remedial action in order to ensure that the competent authorities appointed are able to carry out their tasks fully and effectively, and in complete independence. • As already mentioned, the Andorran authorities must ensure that the FIU has sufficient resources to perform its supervisory role in ALM/CFT matters. • The FIU urgently needs to hire the staff needed to implement an appropriate ALM/CFT supervision policy and to ensure that the persons assigned to these functions have the requisite qualities and skills. • The FIU must also ensure that its staff, in particular those assigned to supervisory functions, receives appropriate training in performing ALM/CFT supervision.
Statistics (R.32)	• Andorra should ensure that the effectiveness of its ALM/CFT system is reviewed on a regular basis, including consultation among all the authorities concerned, and on the basis of well-defined quantitative and qualitative criteria. • The FIU should ensure that the annual statistics it compiles and publishes cover in a full and detailed way all the statistics which will make it possible to assess the effectiveness of ALM/CFT measures. • Andorra should introduce a system enabling the keeping annual statistics on declarations made regarding the cross-border transportation of currency and bearer negotiable instruments. • It is recommended for authorities to keep detailed statistics on requests of mutual assistance made to foreign authorities.