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

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3rd REGULAR FOLLOW-UP

4th ROUND MUTUAL EVALUATION OF ANDORRA

SEPTEMBER 2015

Andorra is a member of MONEYVAL. This progress report was adopted at MONEYVAL's 48th Plenary meeting (Strasbourg, 14-18 September 2015). For further information on the examination and adoption of this report, please refer to the Meeting Report of the 48th plenary at http://www.coe.int/moneyval.

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This report, submitted by Andorra under the regular follow-up process provides an overview of the measures that Andorra has taken to address the major deficiencies relating to Recommendations rated NC or PC since its last mutual evaluation. The progress shown indicates that sufficient action has been taken to address those major deficiencies, and in particular those related to Recommendations 1, 5, 13, 23 and 35, and Special Recommendations I, II, III and IV. It should be noted that the original rating does not take into account the subsequent progress made by the State or territory.

Mutual Evaluation of Andorra: 3rd follow-up report

Application to move from regular follow-up to biennial updates

Note by the Secretariat

1. INTRODUCTION

1. The purpose of this paper is to introduce Andorra's updated follow-up information report to the Plenary concerning the progress that it has made to remedy the deficiencies identified in the mutual evaluation report on the fourth assessment visit (MER) on selected FATF Recommendations.

2. The 4th round on-site visit to Andorra took place from 20 to 26 March 2011. MONEYVAL adopted the mutual evaluation report (MER) of Andorra under the fourth round of assessment visits at its 38th Plenary meeting (March 2012). As a result of the evaluation process of Andorra, four FATF Recommendations were evaluated as "compliant", 22 as "largely compliant", 18 as "partially compliant", four as "non-compliant" and one was "not applicable".

Recommendations rated PC
Core Recommendations[1]: R.1, SR.II, R.5, R.13, SR.IV
Key Recommendations[2]: R.23, R.35
Other Recommendations: R.8, R.12, R.16, R.17, R.24, R.29, R.30, R.31, R.33, SR.VI, SR.VIII
Recommendations rated NC
Key Recommendations: SR.I, SR.III
Other Recommendations: R.19, SR.IX

3. Andorra reported back under regular follow-up (paragraph 48 of the Rules of Procedures in force at that time) to the Plenary at its 44th Plenary meeting (31st March 2014 – 4 April 2014). The Plenary considered at that time that Andorra was making satisfactory progress, but needed further time before it could be considered for removal from the regular follow-up process. Andorra was requested to submit a further report on the progress achieved by April 2015.

4. The Andorran delegation has written to the executive secretary in February 2015 seeking to postpone the consideration of Andorra's exit from regular follow up from April to December 2015. In its response to the authorities, it was however stressed that given that the 5th round evaluation visit had been tentatively scheduled in the 4th quarter of 2016, the 4th round follow-up process should be terminated, as set out by the rules of procedure, at the latest 1 year before the visit. Thus, the authorities were encouraged to take all necessary action with a view to be in a position to exit the regular follow-up by September 2015 and were requested to provide an interim report at the April 2015 Plenary.

5. Andorra submitted a second follow-up report on 2 March 2015 for consideration by MONEYVAL at its 47th Plenary meeting (14 – 17 April 2015). Under Rule 13 paragraph 19,

1 The Core Recommendations as defined in the FATF procedures are: R.1, SR.II, R.5, R.10, R.13 and SR.IV.

2 The key Recommendations as defined in the FATF procedures are: R.3, R.4, R.23, R.26, R.35, R.36, R.40, SR.I, SR.III and SR.V.

routine interim follow up reports need not as a matter of course be discussed by the Plenary but may be made available as an information paper.

6. However, the measures reported in the interim report, which was reviewed by the secretariat, appeared to indicate a lack of adequate progress in respect of a number of important Recommendations, for which corrective measures should have been at an advanced stage of implementation. The Secretariat therefore prepared a written analysis of the report submitted by Andorra with regard to the most significant areas where lack of adequate progress was identified. The analysis highlighted that, despite the progress made, there remained a number of important areas for which it could not be concluded that satisfactory steps had been taken to remedy fully the identified deficiencies. Considering that three years had elapsed since the adoption of the 4th round MER and the fact that Andorra should have been in the position to request removal from regular follow-up, the Plenary decided to subject Andorra to enhanced follow-up (without the application of CEPs). This process focused particularly on selected areas, such as the criminalisation of the money laundering offence and the supervisory and oversight system of financial institutions and DNFBPs. Andorra was invited to present a further interim report at MONEYVAL's 48th Plenary meeting in September 2015.

7. Andorra submitted its third interim follow-up report on 20 July 2015, presenting the changes undertaken since February 2015, together with a request to exit the regular follow-up process.

8. As prescribed by the mutual evaluation procedures (Rule 13(2) paragraph 17), Andorra should apply to be removed from the follow-up process when it considers that all the recommendations set out below are at the level of or at a level essentially equivalent to a C or LC:

- money laundering and terrorist financing offences (R.1 & SR.II);
- freezing and confiscation (R.3 and SR.III);
- financial institution secrecy (R.4) and customer due diligence (R.5);
- record-keeping (R.10);
- suspicious transaction reporting and the FIU (R.13, 26 & SR.IV);
- financial sector supervision (R.23); and
- international co-operation (R.35, 36 and 40; and SR.I & V).

9. The procedure is a paper based desk review, and by its nature is less detailed and thorough than a mutual evaluation report. The analysis focuses on the recommendations that were rated NC/PC, which means that only a part of the AML/CFT system is reviewed. This analysis essentially consists of looking into the main laws, regulations and other material to verify the technical compliance of domestic legislation with the FATF standards. In assessing whether sufficient progress had been made, effectiveness is taken into account to the extent possible in a paper based desk review and primarily through a consideration of data provided by the country. It is also important to note that these conclusions do not prejudge the results of future assessments, as they are based on information which was not verified through an onsite process and is not, in every case, as comprehensive as would exist during a mutual evaluation.

10. A separate paper is circulated on Andorra's progress under the enhanced follow-up process and the areas which are under focus in this process.

2. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY ON PROGRESS MADE SINCE THE 4TH ROUND MER

Core Recommendations

11. *Recommendation 1:* Andorra has taken a number of steps to enhance compliance with the requirement set under Recommendation 1, including by amending the legislation to resolve the technical deficiencies identified in the MER. The physical elements of money laundering have been brought more into line with the Vienna and Palermo Conventions. The predicate offences appear to be fully covered. Overall, on the technical level, major improvements have been made. As regards the effectiveness of the implementation of the legislative framework, it appears that the situation remains unchanged since the time of the 4th round evaluation. In this respect, it was welcomed that steps have been taken to enhance the institutional capacities of the judiciary. Overall effectiveness will have to be demonstrated within the context of an on-site visit. It can be nevertheless be concluded that sufficient steps have been taken in order for R.1 to be considered essentially equivalent to largely compliant.

12. *Special Recommendation II:* Since the adoption of the 4th round mutual evaluation report, Andorra has taken a number of steps to enhance compliance with the requirement set under Special Recommendation II. Overall, the current provisions of the CC in this respect appear to be fully compliant with the requirements of the TF Convention. Criminal liability of legal persons has not been introduced; nevertheless, as discussed in the 4th round MER, the Andorran CC foresees a broad range of measures applicable to legal entities following their involvement in criminal activities, including in cases of terrorist financing. Based on this desk based review, it is considered that Andorra has taken the necessary steps to bring compliance with Special Recommendation II up to a level equivalent to largely compliant.

13. *Recommendation 5:* The Andorran authorities have addressed the majority of the deficiencies identified under R.5 and have put in place a comprehensive legal framework with regard to CDD measures. Overall effectiveness will have to be demonstrated within the context of an on-site visit. It can be nevertheless be concluded that the measures taken have brought Recommendation 5 to a level of compliance essentially equivalent to LC.

14. With regard to *Recommendation 13 and Special Recommendation IV:* the amendments to the Criminal Code and to the LCPI appear to address several technical deficiencies identified in the 4th round MER and have increased the level of compliance to a level essentially equivalent to LC.

Key recommendations

15. *Recommendation 23:* Several important steps have been taken by the authorities to address the identified deficiencies under Recommendation 23 and the large majority of technical issues have been addressed. A number of proactive initiatives aimed at increasing the overall effectiveness of the supervision of FIs have been undertaken and the number of inspections has slightly increased. Overall effectiveness will have to be demonstrated within the context of an on-site visit. It can be nevertheless concluded that the level of implementation of Recommendation 23 has been brought to a level essentially equivalent to LC.

16. Concerning *Recommendation 35 and Special Recommendation I:* the amendments to the Criminal Code address many of the technical deficiencies identified in the 4th round report with regard to the implementation of the relevant international conventions. A comprehensive framework was introduced implementing the UN regime by the amendments to the LCPI. Both Recommendations are now considered to be implemented at a level essentially equivalent to LC.

17. *Special Recommendation III:* Andorra introduced a comprehensive framework with the view to implementing the UNSC Resolutions 1267(1999) and 1373(2001). The system in place broadly complies with international requirements and comprises all the necessary elements as required by Special Recommendation III. It is considered that the steps taken by the authorities brought the implementation of Special Recommendation III to a level equivalent to Largely Compliant.

Conclusion

18. It is noted with approval that since the on-site visit in March 2011, Andorra has taken positive action to remedy the most important deficiencies, including in respect of certain aspects of effectiveness. The progress made in respect of the identified deficiencies related to the key and core recommendations is detailed in the analysis below. In addition, Andorra has reported progress also in addressing deficiencies related to the non-core and non-key recommendations rated PC or NC, as shown in their report to MONEYVAL.

19. The mutual evaluation follow-up procedures indicate that for a country to have taken sufficient action to be considered for removal from the process, it must have an effective AML/CFT system in force under which it has implemented all core and key recommendations at a level essentially equivalent to C or LC, taking into account that there would be no re-rating.

20. Andorra has achieved satisfactory progress in respect of all Core and Key Recommendations, though some deficiencies remain on the technical side, as detailed below. Most of the measures which have been reported have recently entered into force. Furthermore, several additional measures are under way or planned in order to strengthen the effectiveness of the system.

21. **Taking into consideration that the 5th round evaluation visit of Andorra has been scheduled in the 4th quarter of 2016, pursuant to Rule 13(2) 13 of the Rules of Procedure, MONEYVAL decided to discontinue Andorra's reporting under the 4th round follow-up process and to take note that any outstanding issues should be considered during the 5th round assessment by the evaluation team when conducting their scoping exercise.**

3. OVERVIEW OF ANDORRA'S PROGRESS

22. Andorra has taken action to address the deficiencies identified in the 4th round assessment and strengthen preventative measures in the financial sector. The updated legal framework addresses many of the legal shortcomings described in the report, particularly in relation to preventative measures in the financial sector. A number of steps were reported to enhance the effectiveness of their implementation.

23. Some of the key points of progress reported by Andorra are as follows:

Legislative developments:

24. It is to be mentioned in this context that the Andorran Parliament approved on 24 November 2011 the Monetary Agreement with the EU, according to which Andorra shall adopt all appropriate measures in order to implement a number of EU legal acts, including all the key directives and decisions related to ML. The Andorran authorities reported that the respective legal acts have already been implemented into Andorran legislation and their transposition was validated by the European Commission.

25. The following changes were made to the relevant legislation in force:

- Amendments to the Law on international cooperation in criminal matters and the fight against money laundering and against the financing of terrorism, of 29 December 2000 ("LCPI"):
  - Law 4/2011, of 25 May, amending the LCPI (published in the Official Gazette on 22 June 2011 and entered into force on 23 June 2011) ;
  - Law 20/2013, of 10 October, amending the LCPI (published in the Official Gazette on 30 October 2013 and entered into force on 31 October 2013);
  - Law 4/2014, of 27 March, amending the LCPI (published in the Official Gazette on 23 April 2014 and entered into force on 24 April 2014);
  - Law 2/2015, of 15 January, amending the LCPI (published in the Official Gazette on 11 February 2015 and entered into force on 12 February 2015);
  - Law, of 16 July, amending the LCPI.
- Amendments to the LCPI Regulations:
  - Decree of 18 May 2011, amending the LCPI Regulations (published in the Official Gazette on 25 May 2011 and entered into force on the same day);
  - Decree of 20 November 2013, amending the LCPI Regulations (published in the Official Gazette on 4 December 2013 and entered into force on 5 December 2013);
- Amendments to the Criminal Code ("CP"):
  - Qualified Law 18/2012, of 11 October, amending the Criminal Code (published in the Official Gazette on 14 November 2012 and entered into force on 15 November 2012);
  - Qualified Law 18/2013, of 10 October, amending the Criminal Code (published in the Official Gazette on 30 October 2013 and entered into force on 31 October 2013);
  - Qualified Law 40/2014, of 11 December, amending the Criminal Code (published in the Official Gazette on 14 January 2015 and entered into force on 15 January 2015);
  - Qualified Law, of 16 July, amending the Criminal Code.
- Relevant amendments to the Criminal Procedure Code ("CPP"):

- Qualified Law 19/2012, of 11 October, amending the Criminal Procedure Code (published in the Official Gazette on 14 November 2012 and entered into force on 15 November 2012);
- Qualified Law 19/2013, of 30 October, amending the Criminal Procedure Code (published in the Official Gazette on 30 October 2013 and entered into force on 31 October 2013);
- Qualified Law 40/2014, of 11 December, amending the Criminal Code and Criminal Procedure Code (published in the Official Gazette on 14 January 2015 and entered into force on 15 January 2015).

– Amendments to the Foreign Investment Law and its secondary regulations:

- Law 10/2012, of 21 June, on foreign investment in the Principality of Andorra (published in the Official Gazette on 18 July 2012 and entered into force on 19 July 2012): fully liberalises foreign investment, whilst maintaining the requirement of a prior authorisation issued by the UIF, and prohibits investments from countries considered non-cooperative in the prevention of money laundering and terrorism financing.
- Decree, of 28 August 2012, amending the Regulations implementing Law 10/2012, of 21 June, on foreign investment in the Principality of Andorra (published in the Official Gazette on 12 September 2012 and entered into force on 13 September 2012).

– Other relevant legislative developments:

- Decree, of 20 November 2013, approving regulations concerning the declaration of cross-border movements of cash (published in the Official Gazette of 4 December 2013 and entered into force on 28 December 2013).
- Law 28/2013, of 19 December, amending Law 20/2007, of 18 October, on public limited companies and limited liability companies, amended by Law 4/2008, of 15 May, and by Law 93/2010 (published in the Official Gazette on 15 January 2014 and will enter into force on 15 February 2014).
- Qualified Law 28/2014, of 28 July, amending the Qualified Law of Justice (in force since 13 May 2015): creates an investigative section within the Justice Administration to mainly deal with economic and other relevant crimes.
- Law 37/2014, of 11 December, on gambling regulations.
- Law 8/2015, of 2 April, on urgent measures for recovery and resolution of banking entities, based on Directive 2014/59/EU (hereinafter, the Banking Resolution Law): this law allows the creation of a "bridge bank" into which the *"legitimate banking business"* of Banca Privada d'Andorra ("BPA")[3] would be transferred after rigorous AML/CFT screening will be undertaken by Andorran authorities in collaboration with specialised audit teams.
- Law, of 16 July of 2015, amending the Law regulating the activity of insurance companies of 11 May 1989: introduces fit and proper criteria for natural and legal persons engaged in private insurance activities.

3 BPA is an Andorran Bank that was identified as an institution of primary Money laundering concern by FinCEN on 10th Marc 2015. Subsequently, the Andorra authorities took over control of the bank, which is currently under a resolution process conducted by the AREB, the Andorran authority in charge of banking recovery and resolution processes.

Other progress:

- Andorra is in the process of developing its National Risk Assessment, it this respect, the following steps have been taken:
  - On 14 May 2014, the Government of Andorra agreed to initiate all necessary actions to enter into an arrangement with the World Bank in order to have its assistance in the NRA;
  - On 3 June 2015, the Government of Andorra approved the work plan for the National Risk Assessment;
  - An initial workshop with the World Bank is scheduled from 29 September 2015 to 1 October 2015.

4. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE CORE RECOMMENDATIONS RATED PC

26. This section sets out the Secretariat's detailed analysis of the progress which Andorra has made in relation to the Core Recommendations rated PC.

Recommendation 1 - Money laundering offence (rated PC)

Deficiency 1: *non-compliance of the offence of laundering with the conventions with regard to concealing, disguising, possessing and using assets of criminal origin.*

Recommended action 1: article 409 CP should be amended and completed to cover all the aspects of money laundering regulated in the Conventions, namely, criminalising the mere concealment, disguising, possession and use of criminal proceeds.

Measures adopted and implemented: This deficiency has been addressed and the recommendation was implemented.

27. Andorra adopted in March 2011 and October 2013 amendments to the CC, which addressed some but not all of the recommendations formulated in the 4th round MER. On 16 July 2015, the CC was further amended by Law 10/2015, which addressed specifically the ML offence. The current wording of the new Article 409 reads as follows:

"1. Any individual who converts or transfers funds which are the proceeds, directly or indirectly, of a criminal activity punishable with a minimum term of imprisonment exceeding six months, or from the offences of

- *prostitution, articles 150 to 154 bis of the Criminal Code;*
- *illicit trafficking in organs, tissue, cells or human gametes, article 121 of Criminal Code;*
- *illicit trafficking in human beings and minors, articles 121 bis, 134 bis, 157 bis and 164 of Criminal Code;*
- *fraud, embezzlement and unfair administration, articles 208 to 215 of Criminal Code;*
- *patent and trademark infringements, articles 229 to 331 of Criminal Code;*
- *insider trading, article 247 bis of Criminal Code;*
- *smuggling, article 245 of Criminal Code;*
- *market abuse, article 247 ter of Criminal Code;*
- *illicit trafficking in clandestine migrants, article 252 of Criminal Code;*
- *illicit trafficking in weapons and explosives, articles 264 to 267 of Criminal Code,*

- *illicit trafficking in harmful substances, article 273 of Criminal Code;*
- *illicit trafficking in narcotic drugs and psychotropic substances, articles 281 to 285 of Criminal Code;*
- *environment and natural resources crime, articles 289 to 293 of the Criminal Code;*
- *illicit trafficking in protected or endangered species of wild fauna and flora, articles 294 and 296 of Criminal Code;*
- *illicit association, articles 359 and 360 of Criminal Code;*
- *fraud committed by public officer and illegal exactions, articles 378 and 379 of Criminal Code;*
- *corruption and influence peddling, articles 380 to 386 bis of Criminal Code; or*
- *forgery of documents, articles 435 to 441 of Criminal Code;*

knowing their origin, for the purpose of concealing or disguising such illicit origin or assisting any person who is involved in the commission of the offence to evade the legal consequences of such conduct, shall be punished with a one to five year prison sentence and a fine up to three times the value of such funds.

2. Any individual who commits any conduct listed in the above paragraph with gross negligence shall be punished with a prison sentence of up to one year.

3. The same penalties set out in paragraph 1 shall be imposed on any individual who intentionally:

a) acquires, possesses, or uses funds knowing, at the time of receipt, that they are proceeds, directly or indirectly, of any of the predicate offences listed in paragraph 1.

b) conceals or disguises the true nature, source, location, movement or ownership of or rights with respect to funds knowing that such funds are proceeds, directly or indirectly, of any of the predicate offences listed in paragraph 1.

4. The definition of funds shall be understood according to paragraph 3 of article 366 bis of this Code.

5. The attempt, the conspiracy and the incitement to commit such a crime shall be punishable."

28. In addition, paragraph 3 of Article 366*bis* of the CC defines funds as *"assets of every kind, whether tangible or intangible, movable or immovable, acquired whatsoever, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit".*

29. The current wording of the ML offence therefore covers all the acts required by the Palermo and Vienna Conventions.

Deficiency 2: the list of predicate offences does not cover all the designated categories of offences.

Recommended action 2: the list of predicate offences should be extended to cover at least all of the designated categories of offences, adding the missing offences -participation in an organised criminal group and racketeering, smuggling, human trafficking for forced labour without aggravating circumstances, counterfeiting and piracy of products without aggravating circumstances, environmental crimes without aggravating circumstances, forgery (other than counterfeiting currency and cards), fraud (other than aggravated fraud), insider trading and market manipulation, and lowering the minimum threshold for predicate offences - or simply an all-crime approach should be adopted.

Measures adopted and implemented: This deficiency has been addressed and the recommendation was implemented.

30. As regards predicate offences, Andorra continues to apply a combination of the threshold approach (minimum imprisonment exceeding 6 months), together with a list-based approach (see the wording of Article 409 above). The above mentioned amendments to the CC broadened the scope of predicate criminality by including an explicit reference to a number of other offences, as well they criminalised some other required acts, which were not considered as criminal offences at the time of the 4th round assessment (such as market manipulation and insider trading).

31. The table below presents the FATF designated offences and their current incrimination in Andorra's legislation.

Designated categories of offences based on the FATF Methodology	Predicate offences in Andorran legislation in force in September 2015
Participation in an organised criminal group and racketeering (*)	Illicit association (Articles 359 and 360 of the CC)
Terrorism, including terrorist financing	Articles 362 – 367 of the CC
Human trafficking and migrant smuggling. Sexual exploitation, including sexual exploitation of children (*)	Sexual exploitation (Art. 152 of the CC), Slavery (Art. 134 of the CC), Sexual exploitation of children (Art. 154 of the CC), Illicit trafficking in clandestine migrants, (Art. 252 of the CC), Illicit trafficking in human beings and minors (Articles 121*bis*, 134*bis*, 157*bis* and 164 of the CC)
Illicit trafficking in narcotic drugs and psychotropic substances	Article 282ff of the CC
Illicit arms trafficking	Article 264ff of the CC
Illicit trafficking in stolen and other goods	Article 409 of the CC, Illicit trafficking in organs, tissue, cells or human gametes (Article 121 of the CC), Illicit trafficking in weapons and explosives (Articles 264 to 267 of the CC), Illicit trafficking in harmful substances (Art. 273 of the CC)
Corruption and bribery	Bribery and trading in influence (Articles 380 and following of the CC), Fraud committed by public officer and illegal exactions (Articles 378 and 379 of the CC), Influence peddling (Articles 386 and 386*bis* of the CC)
Fraud and embezzlement(*)	Fraud, embezzlement and unfair administration (Articles 208 to 215 of the CC)
Counterfeiting currency	Article 431ff of the CC
Counterfeiting and piracy of products (*)	Offences against intellectual and industrial property (Articles 229 to 231 of the CC)
Environmental crimes (*)	Environmental and natural resources crime (Articles 289 to 293 of the CC), Illicit trafficking in protected or endangered species of wild fauna and flora (Articles 294 to 296 of the CC)
Murder, grievous bodily injury	Article 102 of the CC, Article 115ff of the CC
Kidnapping, illegal restraint and hostage-taking	Article 135 of the CC
Robbery and theft	Article 202 of the CC
Smuggling (*)	Smuggling (Article 245 of the CC)
Extortion	Article 207 of the CC

Designated categories of offences based on the FATF Methodology	Predicate offences in Andorran legislation in force in September 2015
Forgery (*)	Counterfeiting currency and uttering of counterfeit currency (Articles 431 and following of the CC), Forgery of documents (Articles 435 to 441 of the CC)
Piracy	Article 455 of the cC
Insider trading and market manipulation (*)	Insider trading and market abuse (Articles 247*bis* and 247*ter* of the CC)

(*) Offences in respect of which the evaluation team at the time of the 4th round assessment formulated reservations

Deficiency 3: *immunity of self-laundering*

Recommended action 3: the immunity of self-laundering should be abolished

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation fully implemented.

32. At the time of the 4th round assessment, the evaluation team identified that the ML offence fully excluded its application for self-laundering. The amendments to the CC of July 2015 removed the contested provision and self-laundering is currently criminalised with regard to all the acts covered by the ML offence. For further detail on the current wording of the ML offence, the reader is referred to the analysis under Deficiency 1.

*Deficiency 4***:** *effectiveness: (1) weak proactive approach, (2) modest results with regard to prosecuting the offence, particularly in view of the disparities between the number of prosecutions and convictions, and (3) resources and manpower allocated to the courts and prosecution authorities not judged sufficient.*

Measures adopted and implemented: This deficiency has been partially addressed.

33. The 4th round MER raised concerns in respect of the large discrepancies in the numbers of investigations and prosecutions, compared to the almost complete lack of convictions. Overall, there were 79 laundering prosecutions between 2006 and 2010, whereas there have only been final convictions in 10 cases (of which 4 cases involved foreign judgments enforced in Andorra), with two acquittals. According to the authorities, these modest results were a consequence of a lack of resources and manpower, and the length of criminal proceedings.

34. The table below presents the data provided by the authorities covering the period since the adoption of the MER.

	ML investigations carried out by LEAs independently		**FIU cases**	**Reports disseminated by the FIU to LEAs**	**Prosecutions initiated independently by law enforcement**		**Prosecutions initiated on the bases of FIU cases (cases/persons)**	**Convictions - first instance (cases/persons)**	**Convictions final (cases/persons**	**Number of foreign judgments enforced in Andorra**
	cases	Persons (natural/legal)			cases	Persons (natural/legal)				
2011	**2**	**11/9**	**82**	**21**	**8**	**24/11**	**11/86**	**-**	**-**	**3**
2012	**5**	**15/4**	**71**	**14**	**6**	**22/2**	**5/23**	**1/1**	**-**	**3**
2013	**2**	**5/-**	**74**	**16**	**3**	**9/-**	**6/34**	**1/3**	**-**	**2**
2014	**Information unavailable**		**83**	**25**	**3**	**6/2**	**25/198**	**2/3**	**-**	**0**
2015[4]	**3**	**26/4**	**59**	**7**	**2**	**10/-**	**5/46**	**1/3**	**-**	**0**

4 Until 30 June 2015

35. The overall picture of results achieved after almost four years do not appear to show major improvements. The number of cases where prosecutions were initiated independently by law enforcement authorities continues to decrease, though it is acknowledged that cases appear to be more complex, when considering the increase in the number of persons (both natural and legal) which are being prosecuted. The number of cases prosecuted as a result of FIU cases has increased in 2014. However, there are very few convictions achieved since 2010, and the figures remain disproportionate to the number of prosecutions.

36. It remains difficult to accept that these figures would reflect a low level of domestic criminality, as the main ML risks in Andorra are connected to financial flows originating abroad (the reader is referred for more detailed information on ML risks and vulnerabilities in Andorra to the 4th round MER). The concerns previously expressed in the 4th round evaluation in respect of the ML investigations and prosecutions and possible bottlenecks in the system are thus reiterated.

37. On 13 May 2015, the Qualified Law 28/2014, of 28 of July, amending the Qualified Law of Justice entered into force. This Law introduces structural changes in the organisation of the courts, establishing a new investigative section, comprising two judges, which will be responsible only for economic and other serious offences. The authorities reported that this development is aimed at ensuring a higher specialisation and expertise of the judges and increase the effectiveness of the system. In addition, according to the authorities, together with the amendments to the wording of the ML offence, it is expected that this would lead to an increase in the number of convictions for ML in the future.

38. The changes introduced to the CC address the technical deficiencies identified in the 4th round MER. As regards the concerns formulated by the evaluation team in respect of the effective application of the ML offence and the effectiveness of the system, Andorra has initiated some changes which are likely to have a positive impact in the future. For the time being, from the information provided for the purposes of this assessment and given the limitations of a desk-based review, it is not possible to conclude that there are substantial improvements as far as effectiveness issues are concerned. Effective implementation shall be reviewed in further detail at the time of the 5th round onsite visit.

Overall conclusion

39. Since the adoption of the 4th round mutual evaluation report, Andorra has taken a number of steps to enhance compliance with the requirement set under Recommendation 1, including by amending the legislation to resolve the technical deficiencies identified in the MER. The physical elements of money laundering have been brought more into line with the Vienna and Palermo Conventions. The categories of predicate offences appear to be covered. Overall, on the technical level, major improvements have been made. As regards the effectiveness of the implementation of the legislative framework, it appears that the situation remains unchanged since the time of the 4th round evaluation. In this respect, it was welcomed that steps have been taken to enhance the institutional capacities of the judiciary. As has been stated in the analysis above, the full assessment of the extent of effectiveness will have to be assessed in the context of the next on-site visit. Based on this desk based review, R.1 can be considered essentially equivalent to LC.

Special Recommendation II – Criminalisation of terrorist financing (rated PC)

40. At the time of the 4th round assessment, Andorra criminalised financing of terrorism as a separate criminal offence in Article 366bis of the CC, referring to a list of actions considered as “terrorist acts” included in Article 362 of the CC. The evaluation team identified in this

respect a number of issues, where the wording of the offence was not compliant with the requirements of the TF Convention. Firstly, the annex offences to the TF Convention were covered by the TF offence only subject to an additional purposive element. In addition, the generic offence of TF, as set forth in Article 2 of the TF Convention, did not include all the elements foreseen by the international standard. Finally, the application of the TF offence was restricted by explicitly excluding its application to self-financing.

41. The Andorran CC has been amended on several occasions since the adoption of the 4th round MER with the view of addressing the above mentioned deficiencies, as can be observed from the analysis below. In addition, it is to be noted that the penalties available for terrorism financing were increased by Qualified Law 40/2014, amending article 366*bis* of the Criminal Code, as follows:

- General offence of FT is now punishable with a penalty from 2 to 8 years of imprisonment (the former penalty was from 2 to 5 years of imprisonment);

- In case of aggravating circumstances, FT is now punishable with a penalty from 3 to 10 years of imprisonment (the former penalty was from 3 to 8 years of imprisonment).

Deficiency 1: *no offence as such of financing offences provided for in the CFT treaties.*

Recommended action 1: The offence of financing terrorism should be modified to include the financing of unlawful acts specified as such in the treaties appended to the TF Convention.

Measures adopted and implemented: The deficiency has been fully addressed and the recommendation fully implemented.

42. Andorra adopted the Qualified Law 18/2012, of 11 October 2012, amending the Criminal Code (which entered into force on 15 November 2012). This Law amended the wording of paragraph 1 of Article 366bis of the CC in the following manner:

"Article 366 bis. Terrorist financing

1. Any person who performs acts of terrorist financing shall be punished with penalties of imprisonment from two to five years.

An attempt to commit and the conspiracy to commit shall be punishable.

2. For the purpose of this Article, it shall be understood by financing any action that, by any means, directly or indirectly, unlawfully and intentionally, consists of the provision or collection of funds with the intention of using them in whole or in part, in the Principality or abroad:

- By a terrorist group or a terrorist.

- To commit one or more terrorist acts."[5]

43. In addition, the Law amended and extended the definition of terrorist act contained in Article 362 of the Criminal Code; this provision being the reference as to which actions the TF offence applies. Article 362 of the CC currently reads as follows:

*"**Article 362. Terrorism definition***

1. Terrorist acts are:

a) Any act constituting an infringement within the framework and according to the definition contained in the following treaties:

- Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 16 December 1970).

5 It is to be noted that the last part of paragraph 2 of Article 366bis of the CC in the original version reads: *"with the intention that they should be used or knowing that they are to be used"*, which is fully compliant with the requirements of SR.II.

- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal, 23 September 1971).

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the UN General Assembly on 14 December 1973

- Convention against the Taking of Hostages, adopted by the UN General Assembly on 17 December 1979.

- Convention on the Physical Protection of Nuclear Material (Vienna, 26 October 1979).

- Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 24 February 1988).

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988).

- Protocol on the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (Rome, 10 March 1988).

- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.

c) To the extent that they relate to an individual or collective project aimed at subverting the constitutional order or seriously attempting against public order and peace through intimidation and terror, the following offences:

- Voluntary attacks against the life and the safety of persons.

- Illegal arrest, kidnapping, threats or coercion.

- Thefts, extortions, damages, havoc, fires, and the IT infringements defined in this Code.

- The deposit of arms or ammunition, possession or storage of explosive, inflammable, incendiary or asphyxiating substances or devices, or their components, as well as manufacturing, trading, transporting or supplying them in any way.

2. It is considered a terrorist:

- The individual who commits or attempts to commit, as author or accomplice any terrorist act.

- The individual who belongs, acts in the service or collaborates with a terrorist group.

3. Terrorist group is the group of people organized for acts of terrorism."

44. As can be observed from the amended wording of the relevant provisions of the CC, the annex offences of the TF Convention have been included in the CC with a direct reference to the respective conventions, and the TF offence refers to them directly, eliminating therefore the purposive element which triggered concerns at the time of the 4th round assessment.

Deficiency 2: generic definition of terrorist acts not consistent with that of the TF Convention.

Recommended action 2: 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.

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation was fully implemented.

45. The amendments to the CC by Qualified Law 18/2012, of 11 October 2012, included an additional paragraph in Article 362 of the Criminal Code (current Article 362(1)b of the CC), broadening the definition of terrorist acts to "*Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act".* It is considered that the current wording of the paragraph is fully compliant with the requirements of Article 2(1)b of the TF Convention. The original acts qualified as terrorist acts for the purposes of the TF offence (now Article 362(1)c of the CC) remain as such, going beyond the requirements of the TF Convention.

Deficiency 3: *immunity of self-financing of an individual.*

Recommended action 3: the immunity of self-financing of an individual should be abolished.

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation fully implemented.

46. As noted in the analysis under Deficiency 1, following the amendments to the CC, the provision impeding the criminalisation of self-financing has been removed from the current wording of the TF offence.

Deficiency no. 4: *no formal criminal liability of legal persons in connection with terrorism financing.*

Recommended action no. 4: criminal liability should be introduced for legal persons, at least in the context of TF.

Recommended action no. 5: Article 24 of the CC should be repealed, so that criminal liability can be formally extended to legal persons.

Measures adopted and implemented: This deficiency has not been addressed and the recommendations are not implemented.

47. Andorra has not introduced any legislative changes in this respect since the 4th round assessment. It is to be noted, however, that the evaluation team raised the lack of criminal corporate liability as a technical issue. This is due to the fact that the Andorran CC foresees a number of measures applicable to legal entities in case of their involvement in criminal activities, including financing of terrorism. The evaluators considered the range of applicable measures as largely sufficient and proportionate and raised this deficiency merely as a pure technical incompliance with the requirements of the TF Convention. For further detail on the measures applicable to legal persons on the basis of Andorran legislation, the reader is referred to the analysis of Special Recommendation II in the 4th round MER (page 45 and following, paragraphs 105 and following).

Effectiveness

48. There have been no investigations, prosecutions or convictions for terrorism financing in Andorra in the period under assessment.

49. No further information was provided for the purposes of this assessment with regard to the effectiveness of the CFT framework.

Overall conclusion

50. Since the adoption of the 4th round mutual evaluation report, Andorra has taken steps to enhance compliance with the requirement set under Special Recommendation II. Overall, the current provisions of the CC in this respect appear to be in line with the requirements of the TF Convention. Formal criminal liability of legal persons has not been introduced; nevertheless, as noted in the 4th round MER, the Andorran CC foresees a broad range of measures applicable to legal entities following their involvement in criminal activities, including terrorist financing. **Based on this desk based review, it is considered that Andorra has taken the necessary steps to bring compliance with Special Recommendation II up to a level equivalent to largely compliant**.

Recommendation 5 - Customer due diligence (rated PC)

Deficiency no. 1: 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.*

Measures adopted and implemented: This deficiency has not been addressed.

51. The 3rd round MER pointed out a number of shortcomings in relation to the preventive measures in place with regard to the requirements of the international standards in this respect. Andorran authorities remedied a number of these deficiencies by introducing several legislative changes, which however entered into force only a short time before the 4th round assessment visit. As a result, Deficiency no. 1 was formulated by the evaluation team not as a shortcoming of the framework in place, but with the view of stressing the difficulty to assess the application of the newly introduced provisions in practice, given the short period of time they have been in force.

52. This is an issue of effectiveness, which cannot be fully analysed in the context of this desk-based review. The implementation of these provisions shall be subject to increased focus during the next on-site visit. It is however to be noted that, given the significance of these changes, it would have been recommendable for the authorities to undertake awareness raising activities in order to ensure a full understanding by the obliged entities of their obligations emanating from the newly introduced regulation.

Deficiency 2: *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*

Recommended action no. 5: the Andorran authorities should complete the definition of beneficial owner of a legal person of article 41 of the LCPI to include any individual

exercising actual management control over the company and the definition of beneficial owner of a trust, in order to cover both the settlor and the beneficiaries.

Measures adopted and implemented: The deficiency has been largely addressed and the recommendation largely implemented.

53. The LCPI was amended by the Law 4/2011, which entered into force on 23 June 2011. These amendments modified the definition of beneficial owner set out in article 41(g) of the LCPI, which currently reads as follows:

"g) Beneficial owner: individual or individuals who ultimately control the customer and/or individuals on whose behalf a transaction or activity is being conducted. The beneficial owner includes, at least:

In the case of legal persons that take 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, over 25% will be considered sufficient.*

- *the individual or individuals who, by any other means, exercise actual management control over the company*

These provisions shall not apply to companies listed on a regulated market that imposes disclosure requirements consistent with international standards, which will be considered beneficial owners.

In the case of other legal entities, contractual fiduciary arrangements and other fiduciary structures that administer and distribute funds:

- *Where the future beneficiaries have already been determined, the individual or individuals who control over 25% of the funds.*

- *Where the future beneficiaries have yet to be determined, the class of persons in whose main interest the entity or legal arrangement is set up or operates.*

- *Individual or individuals who, by any other means, exercise actual management control of the entity or legal arrangement."*

54. The amended wording of the definition of beneficial owner therefore covers all the persons who own significant controlling interests and who exercise effective control over the company. In addition, beneficiaries and persons controlling trusts are also included. It is to be noted that the definition does not explicitly include settlors of trust, which would not be covered unless they would *"exercise actual management control of the entity or legal arrangement"*.

55. With regard to the ownership of significant shares, the legislation directly provides guidance to obligated entities on the application of the requirements, setting a minimal threshold of 25% of shares or voting rights. Information has not been provided on whether additional guidance was provided to the obligated entities on identification of persons who exercise control of legal entities or arrangements.

Deficiency no. 3: *the requirements of criterion 5.3* concerning verification by means of information and documents from reliable independent sources are not fully covered.*

Recommended action no. 3: although there is an obligation to identify the beneficial owner, financial institutions should verify this information using data obtained from reliable sources so that the professional has satisfactory knowledge of the identity of the beneficial owner

Measures adopted and implemented: This deficiency has not been addressed and this recommendation has not been implemented.

56. The evaluation team has emphasised in the 4th round MER that despite the fact that the legislation requires financial institutions to verify the identity of the customer and beneficial owner, it permits as one of the possible manners for undertaking this verification to be by "*Contacts with the company by telephone, post or email"*. In particular the verification by telephone has not been considered by the evaluators as sufficient to be considered as a "reliable and independent source". No changes were made in this respect since the time of the 4th round assessment.

Deficiency no. 4: *lack of adequate rules concerning identification and verification of the identity of beneficiaries of professional accounts kept by lawyers.*

Recommended action no. 4: although the issue of omnibus accounts is properly addressed given that they are only authorised for use by financial institutions subject to AML/CFT legislation, the Andorran authorities should pay particular attention to accounts opened by lawyers so that financial institutions are able to clearly identify the beneficial owner of each transaction.

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation was implemented.

57. The authorities clarified that that lawyers do not hold funds on their own accounts, but would as a matter of practice always open a specific account for this purpose. Notwithstanding, in May 2013, the UIF issued a Technical Communique CT-02/2013, through which it requested all registered lawyers to submit a questionnaire in this respect with the aim of reviewing the practices of lawyers in this context. As a result of this exercise, it has been confirmed that lawyers open separate accounts for their individual business relationships.

58. In addition, to ensure consistency of this approach, the UIF cooperated with the Andorran Bar Association in this respect in order to establish a common approach. Consequently, the Andorran Bar Association issued a communiqué addressed to all its members reminding them that lawyers cannot use their personal or professional bank accounts to deposit money for the incorporation of companies or the provision of funds.

Deficiency no. 5: *the simplified diligence measures provided by article 49 ter of the 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.*

Recommended action no. 8: the Andorran authorities should ensure that the simplified customer due diligence measures set out by the LCPI only entail a simplification of customer due diligence measures and not an exemption from any due diligence measure, and that the simplified measures only apply to the cases identified in the FATF Recommendations (it seems to exclude "Andorran or foreign companies subject to an administrative control regime from the obligation of identifying and verifying their beneficial owners, either in Andorra or in a jurisdiction that imposes requirements equivalent to those laid down in the Andorran legislation on the prevention of money laundering and terrorism financing").

Measures adopted and implemented: The deficiency was fully addressed and the recommendation was fully implemented.

59. The Law 4/2011 amending the LCPI, modifies the wording of Article 49 *ter* of the LCPI. Following these amendments, the application of simplified CDD measures may entail merely "reducing" the CDD measures foreseen by the LCPI, but does not exempt them from being applied completely, as was the case at the time of the 4th round evaluation. In addition, a further paragraph was added, setting minimal CDD measures to be applied in all circumstances. The current wording of Article 49 *ter* is as follows:

"Article 49 ter ("simplified customer due diligence")

1. Notwithstanding the requirements of previous articles, the parties under obligation may reduce the customer due diligence measures established by Article 49(1)(c), (d), and (e) and Article 49 bis (1) of this Law where the customer is a financial party under obligation or a credit financial entity in an EU Member State or in an equivalent country.

[...]

4. In all the cases described in this article, the parties under obligation shall obtain sufficient information to confirm that the customer meets the conditions for the application of simplified customer due diligence measures, which implies, at a minimum, identifying and verifying the customer ID and monitoring the business relationship to ensure continuous compliance with the requirements for the implementation of this article".

60. Following the amendments to the LCPI, the Regulations of LCPI were harmonised with the text of the amended Law by Decree of 18 May 2011. This amendment modifies the wording of Article 8 of the Regulation in order to mirror the text of the LCPI (CDD measures may be reduced in the context when simplified CDD may be applied). In addition, the possibility to extend the application of simplified CDD measures to "Andorran or foreign companies subject to an administrative control regime", which was an object of concern for the evaluators at the time of the 4th round assessment, was also deleted.

Deficiency no. 6: *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.*

Recommended action no. 10: *the Andorran authorities should include the obligation to consider making a suspicious transaction report in those cases where a business relationship has not been established.*

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation has been fully implemented.

61. The amendments to the LCPI introduced by Law 20/2013 modified the wording of Article 49bis of the LCPI. Consequently, obligated entities are required to consider filing an STR even in cases where the relationship has not been established or transaction has not been carried out due to the fact that it was not possible to undertake the CDD measures required (identification of the customer or beneficial owner). The current wording of paragraph 5, which introduces this obligation, reads as follows:

> *"5. In the event that the customer and beneficial owners cannot be identified in accordance with article 49, the financial parties under obligation cannot establish a business relationship or carry out transactions and must consider making a report to the UIF.*
>
> *In the case of relationships that have already started, the business relationship must be terminated and consideration given to making a report to the UIF."*

Deficiency no. 7: *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.*

Measures adopted and implemented: This deficiency has been partially addressed.

62. The effectiveness of the implementation of preventive measures, as well as of the supervisory framework in place is discussed under Deficiency no. 1 of Recommendation 5 and in the analysis under Recommendation 23. For further detailed information, the reader is therefore referred therein.

Recommended action no. 1: the Andorran authorities should expressly prohibit the use of anonymous accounts.

Measures adopted and implemented: This recommendation has been fully implemented.

63. The LCPI was amended by the Law 20/2013, which broadened the wording of paragraph 4 of Article 49 of the LCPI with the view of including the explicit prohibition also of accounts with fictitious names. The current wording states that *"anonymous accounts and passbooks and accounts and passbooks with fictitious names are prohibited".* A violation of this provision is considered a very serious infringement of the AML/CFT framework under paragraph 6 Article 57 ter.

64. The authorities did not provide any information about the measures taken since the adoption of the amendments in order to ensure full implementation thereof by financial institutions.

Recommended action no. 2: Customer due diligence measures should be clarified in cross-border transfers of funds ranging from EUR 1,000 to EUR 1,250, amounts at which customer identification is clearly compulsory.

Measures adopted and implemented: This recommendation has been fully implemented.

65. At the time of the 4th round assessment, the evaluation team concluded that the threshold set by the Andorran legislation for identification of occasional customers was compliant with the FATF Standards. Nevertheless, they pointed out that the LCPI and the LCPI Regulation set slightly differing thresholds, which could lead to inconsistent application by the obligated entities. The text of the LCPI Regulation was amended by a Decree of 20 November 2013, harmonising the threshold set therein with the one from the LCPI.

Recommended action no. 6: Financial institutions should be obliged to obtain information about the intended nature of the business relationship.

Measures adopted and implemented: This recommendation has been fully implemented.

66. The Law 20/2013 amending the LCPI also broadened the provision in Article 49(1)(d), concerning customer due diligence measures. This article now requires obligated entities to: [...] *d) obtain information on the purpose and intended nature of the business relationship".*

Recommended action no. 7: the Andorran authorities should broaden the list of high-risk customers, in particular to include companies which capital is held by agents.

Measures adopted and implemented: This recommendation has not been implemented.

67. No changes have been made in this respect.

Recommended action no. 9: for the purposes of assisting financial institutions in the implementation of the customer due diligence measures, the Andorran authorities should

publish a list of countries imposing equivalent measures to those laid down by the Andorran legislation on the prevention of money laundering and terrorism financing.

Measures adopted and implemented: This recommendation has been fully implemented.

68. The UIF shall, on the basis of Article 49 *ter* of the LCPI, *"keep on its website an up-to-date list of the states and territories deemed to be equivalent countries for the purposes of this Law".* The authorities reported that, in compliance with this legal mandate, the UIF has published the list of states and territories deemed to be equivalent countries on its website.

Recommended action no. 11: the Andorran authorities should clearly specify the obligation to terminate a business relationship if the financial institution has doubts about the veracity or adequacy of the customer data previously obtained.

Measures adopted and implemented: This recommendation has not been implemented.

69. The evaluation team pointed out that paragraph 5 of article 49 *bis* of the LCPI merely requires a relationship to be terminated in the case when a customer cannot be identified, but does not require a termination of a relationship in case of doubts about the veracity or adequacy of previously obtained information. No changes were reported in this respect.

Overall conclusion

70. The Andorran authorities have taken significant steps to address the deficiencies identified under Recommendation 5 in the 4th round MER. Pursuant to the amendments of the LCPI, a number of the remaining technical shortcomings with regard to applicable CDD measures was remedied, as can be observed above in the description of the introduced legislative changes. As regards technical compliance, it can be concluded that, apart from some remaining issues (as described in the analysis above), the shortcomings identified have been largely remedied. Given the limitation of a desk-based review, effectiveness of the implementation of the framework in practice remains to be demonstrated in the context of an on-site visit. **In conclusion, from a desk-based review, it is assessed that Andorra has brought Recommendation 5 to a level essentially equivalent to largely compliant.**

Recommendation 13 - Suspicious transaction reporting– rated PC

Deficiency no. 1: *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.*

Recommended action no. 1: the Andorran authorities should introduce the necessary amendments to ensure that the reporting obligation is not narrowed because of the existing deficiencies in the criminalisation of money laundering and terrorism financing and that the obligation also covers suspicions regarding criminal proceeds.

Measures adopted and implemented: The deficiency has been fully addressed and the recommendation largely implemented.

71. The remaining technical deficiencies of the ML offence have been fully addressed. For further information, the reader is referred to the analysis under Recommendation 1.

Deficiency no. 2: *deficiencies in the offence of financing of terrorism restrict the scope of suspicious transaction reports.*

Recommended action no. 1: the Andorran authorities should introduce the necessary amendments to ensure that the reporting obligation is not narrowed because of the existing

deficiencies in the criminalisation of money laundering and terrorism financing and that the obligation also covers suspicions regarding criminal proceeds.

Measures adopted and implemented: The deficiency has been fully addressed and the recommendation largely implemented.

72. The remaining technical deficiencies of the TF offence have been fully addressed. For further information, the reader is referred to the analysis under Special Recommendation II.

Deficiency no. 3: *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.*

Recommended action no. 1: the Andorran authorities should introduce the necessary amendments to ensure that the reporting obligation is not narrowed because of the existing deficiencies in the criminalisation of money laundering and terrorism financing and that the obligation directly covers suspicions regarding criminal proceeds.

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation largely implemented.

73. The reporting obligation was modified through amendments of the LCPI, adopted on 16 July 2015. Currently, the provision of Article 46 of the LCPI reads as follows:

> *"The parties under obligation must report to the UIF any transaction or planned transaction relating to funds that they suspect or in relation to which there are reasonable grounds to suspect that are proceeds from a criminal activity that may entail money laundering or relate to the financing of terrorism. The report must be accompanied by all the necessary documentation."*

74. The obligation in its amended wording, however, does not include a direct explicit reference to proceeds of crime, as *"proceeds of criminal activity that may entail ML"* continues to subject the reporting obligation to a nexus with the ML offence. Notwithstanding, it is to be noted that given that all the technical deficiencies of the ML offence were remedied, as described in the analysis above, it is considered that the lack of a direct link to proceeds of crime does not limit the implementation of the reporting obligation in practice.

Deficiency no. 4: *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.*

Recommended action no. 2: the Andorran authorities should investigate possible reasons for the absence or low number of STRs made by professionals and, where appropriate, take the necessary measures to ensure that all professionals effectively implement the reporting obligations.

Recommended action no. 3: the Andorran authorities should raise awareness among professionals in the financial sector and take the appropriate measures to ensure the quality of the STRs made.

Measures adopted and implemented: This deficiency has been partially addressed and the recommendations partially implemented.

75. The statistics provided by the authorities show that the numbers of filed STRs in the past years are increasing in a modest, but stable fashion. The table below shows the numbers of STRs filed by obliged entities in the period under assessment:

2010	2011	2012	2013	2014	2015 (Jan – June)
22	21	25	31	36	23

76. No reports were filed on suspicions related to TF. Also, as has been identified by the evaluation team during the 4th round assessment, STRs are filed almost exclusively by the banking sector.

77. Since the time of the adoption of the 4th round MER, the UIF has undertaken the following measures aimed at increasing the quality of STRs:

- Issuance of an Informative Note, of 11 January 2011, containing instructions for making suspicious transaction reports (keeping of data and UIF contact persons details confidential, reminder of the legal mandate on not tipping off, etc.)
- Issuance of Technical Communiqué CT-1/2011, of 11 January 2011, concerning the financial information to be reported to the UIF (details of cash deposits, confirmation of IBAN, registration of safe deposit boxes, etc.)
- Preparation and publication of an STR template, the use of which is obligatory for the filing of an STR to the UIF. The template is publicly available on the UIF website.
- Preparation and publication of instructions on how to file an STR. These instructions are a compilation of the previous instructions and they focus on certain aspects of the STR template. The instructions are publicly available on the UIF website.

78. It appears that the authorities have adopted a pro-active approach and a number of steps have been taken with the view of assisting the obliged entities in understanding the requirements and practical procedures of their reporting obligation. Given the limitations of a desk-based review, effectiveness shall be fully reviewed during the next on-site visit.

Recommended action no. 4: given the recent introduction of the reporting obligation for terrorist financing, awareness must be raised to ensure the financial sector properly understands the new obligation.

Measures adopted and implemented: This recommendation has been partially implemented.

79. According to the statistics provided by the authorities, no TF related STR was filed by the reporting entities in the period under assessment.

80. In order to raise awareness of obligated entities with regard to their obligation to report suspicious transactions related to TF, the UIF issues on 16 May 2011 a Technical Communique in this respect. This document, amongst others, sets out indicators for the identification of transactions which could be related to terrorism financing. Furthermore, the authorities reported that a specific section related to the prevention and fight against TF has been included in the trainings provided by the UIF for reporting entities in 2014. Nevertheless, from the information provided, it appears that all the trainings provided to reporting entities in the period under assessment were addressed only to the DNFBP sector.

81. Finally, the authorities expressed their opinion that the lack of reporting with regard to suspicions of TF is not caused by lack of awareness, but it is due to the low level of TF risk in the country. It is to be emphasised in this respect that the authorities should ensure that this consideration does not decrease the efforts undertaken in respect of ensuring the effective implementation of preventive measures.

Overall conclusion

82. It is considered that the scope of the reporting obligation as it is in place at the time of this assessment is technically broadly in line with the FATF Standards. Given the limited scope of a desk-based review, effectiveness of implementation of the framework in practice will be subject to a full review within the scope of the next on-site visit. It can be concluded that, from this desk-based review, **Andorran authorities have brought Recommendation 13 to a level equivalent to a Largely Compliant.**

Special Recommendation IV- Suspicious transaction reporting (rated PC)

*Deficiency no. 1***:** *deficiencies in the offence of financing of terrorism restricting the scope of suspicious transaction reports.*

Recommended action no. 1: the Andorran authorities should introduce the necessary amendments to ensure that the reporting obligation is not narrowed because of the deficiencies in the criminalisation of money laundering and terrorism financing and that the obligation also covers suspicions regarding criminal proceeds.

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation fully implemented.

83. Following the amendments to the CC, it is considered that the TF offence has been brought fully in line with international requirements. For detailed information in this respect, the reader is referred to the analysis under Special Recommendation II.

*Deficiency 2***:** *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.*

Recommended action no. 2: The Andorran authorities should investigate possible reasons for the absence of STRs or the low number of STRs made by professionals and, where appropriate, take the necessary measures to ensure that all professionals effectively comply with the reporting obligation.

Recommended action no. 3: The Andorran authorities should raise awareness among professionals in the financial sector and take the appropriate measures to ensure the quality of the STRs that are made (see also the recommendations and comments made in section 2.5).

Recommended action no. 4: In particular, and given the recent introduction of the reporting obligation for terrorist financing, awareness must be raised in order to ensure the financial sector properly understands the new obligation.

Measures adopted and implemented: This deficiency has been partially addressed and the recommendations have been partially implemented.

84. The reader is referred for further information provided by the authorities on the measures taken with the aim to increase effectiveness of implementation of the reporting obligation of TF related STRs by obliged entities to the description of Recommended action no. 4 under Recommendation 13 above. It is to be reiterated that the scope of this desk-based review is limited and effectiveness shall be assessed in full detail within the next on-site visit.

Overall conclusion

85. It is considered that the scope of the obligation to report TF related STRs as it is in place at the time of this assessment is technically broadly in line with the FATF Standards. Given the limited scope of a desk-based review, effectiveness of implementation of the framework in practice will be subject to a full review within the scope of the next on-site visit. **It can be concluded that, from this desk-based review, Special Recommendation IV is at a level equivalent to a Largely Compliant.**

5. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE KEY RECOMMENDATIONS RATED PC

Recommendation 23 - Regulation, supervision and monitoring (rated PC)

Deficiency 1: s*upervision 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.*

Recommended actions: *the Andorran authorities should give priority to strengthening AML/CFT supervision with regard to financial institutions, in particular by implementing an adapted control policy, including structured planning with regular AML/CFT on-site inspections, applying an adapted methodology to ensure that the financial sector effectively implements the AML/CFT legal requirements, and conducting regular and effective monitoring of the findings of other control measures, such as the external audit reports.*

Measures adopted and implemented: This deficiency has been partially addressed and the recommendation partially implemented.

86. This deficiency was formulated by the evaluators at the time of the 4th round evaluation based on a number of reasons. Firstly, no on-site visits had been undertaken by the supervisory authorities in the years 2008 and 2009 and supervisory actions in respect of AML/CFT obligations consisted purely of a review of external audit reports. Doubts about the effectiveness of this practice were reinforced by the fact that no sanctions had been applied in the reference period of the evaluation .The lack of on-site visits in 2009 and 2010 was in part due to the fact that the authority responsible for AML/CFT supervision of all obliged entities, that is the Andorran FIU, was staffed with only four persons, including the director, and lacked experts with a financial background.

87. The FIU remained responsible for the AML/CFT supervision of all obliged entities. The number of FIU staff has increased and is now composed of 8 persons, two of them being appointed to a newly established Supervisory Unit. In June 2015, a call for further two staff members was published, one of whom will be assigned to the Supervisory Unit

88. The table below presents the number of inspections of FIs undertaken by the FIU and the sanctions applied since the time of the on-site visit.

Year	Number of on-site inspections	Number of infringements identified/sanctions applied
2011	0	0
2012	2 banks	0
2013	1 bank	4 (total of 195.000 EUR)
2014	2 banks, 4 investment institutions, 2 insurance companies, 1 post office	3 (total of 152.000 EUR)
2015 (until June)	1 bank	0

89. The increase of staff and the FIU's reorganisation enabled it to commence undertaking on-site inspections and complement the practice of relying on audit firms for the purpose of AML/CFT inspections. This is a welcome development and indicates that the authorities are undertaking efforts to strengthen their supervisory action on AML/CFT issues. The FIU required in October 2012 all the FIs to report the total number of accounts opened during the previous year with a breakdown by a number of different categories (resident/non-resident, natural/legal person, etc.). On the basis of the information received, a sample of FIs was selected, for which external audit reports were prepared. Based on a review of these reports, on-site inspections were undertaken when a breach was encountered. The authorities reported that, since 2014, on-site inspections are undertaken not only as a result of previously identified breaches, but also based on an annual supervisory plan.

90. Serious concerns were also raised by the evaluators in relation to the effectiveness of supervision. No on-site visits had been undertaken by the supervisory authorities in the years 2008 and 2009 and supervisory actions in respect of AML/CFT obligations consisted purely of a review of external audit reports. Doubts about the effectiveness of this practice were reinforced by the fact that no sanctions had been applied in the reference period of the evaluation. The absence of on-site visits in 2009 and 2010 was in part due to the fact that the authority responsible for AML/CFT supervision of all obliged entities, that is the Andorran FIU, was staffed with only four persons (including the director) and lacked experts with a financial background.

91. The analysis of the scope and depth of such inspections and their effectiveness is limited in the context of a desk-based review. It remains to be ascertained whether the allocation of supervisory resources and the plan of inspections reflect an adequate response to the ML/FT risks of the sectors involved, and whether the FIU, as a supervisory authority, has made full use of its powers in this context. While the number of on-site inspections has increased, it remains modest, and AML/CFT supervision seems to continue to occur predominantly as a result of reviews of external audit reports. There remain questions as to whether the risk-based approach applied is adequate to the situation, as numerous FIs have not been inspected for several years (other than through external auditing reports).

92. Finally, despite the increase of staff in the FIU, concerns remain regarding the adequacy of resources available for the purposes of supervision, including in respect of AML/CFT supervisory training.

Deficiency 2: *the insurance sector is not subject to appropriate supervision in AML/CFT matters.*

Recommended actions: the authorities should ensure that the insurance sector is subject to adapted AML/CFT supervision.

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation largely implemented.

93. The authorities stressed in this respect that the majority of insurance companies operating in Andorra are part of Andorran banking groups and are therefore subject to internal controls and supervision carried out by the banking institutions themselves. With regard to the insurance companies providing life insurance, but that are not part of any banking institution, the authorities reported that the following measures have been taken:

- The number of audit samples has been increased and, having reviewed the external audit reports, the UIF has followed it up by requesting additional information or issuing informative notes pointing out the deficiencies detected and areas of improvement.

- Given that one of the main deficiencies detected by the UIF has been the lack of annual training programs offered by obliged entities, the UIF organised a training course for the insurance sector.
- The supervisory department of UIF conducted two on-site inspections of insurance companies in 2014. Although during the inspections no breach of AML/CFT obligations was detected, a report containing recommendations was sent to both insurance companies.
- Misdemeanour proceedings were initiated and a sanction applied with regard to an insurance company, which did not file its annual audit report.

94. Considering the measures described above, together with the overall efforts undertaken by the authorities with the view of enhancing the effectiveness of supervision of FIs in Andorra, it can be concluded that some positive steps have been taken. Nevertheless, concerns remain with regard to the supervision of insurance companies, which form part of banking groups, in particular as from the information provided, it appears that the authorities rely on the undertaking of supervision in this respect on the banking institutions.

95. Given the limitations of the desk based review, full assessment of the effectiveness of supervision of the insurance sector shall be undertaken within the scope of the next on-site visit.

Deficiency 3: *lack of legislative or regulatory measures regarding fitness and integrity (23.3) for insurance sector companies other than financial institutions.*

Recommended actions: *the legal framework concerning the insurance sector should be amended to introduce legal provisions aimed at preventing criminals or their accomplices from taking control of institutions, and specifically to require directors to meet fit and proper criteria.*

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation fully implemented.

96. The Parliament of Andorra approved on 16 July 2015 amendments to the Law regulating the activity of insurance companies of 11 May 1989. These amendments introduce fit and proper criteria for directors, senior managers or other persons who effectively manage insurance companies, including a clean criminal record and relevant professional experience and reputation. These requirements are governed by the new Article 8*bis* of the Law, which reads as follows:

"1. The holders of authorisations to carry out private insurance activities in the Principality of Andorra must be persons of acknowledged business and professional integrity.

In the case of entities, in order to carry out private insurance activities in the Principality of Andorra, the members of the board of directors, senior management and, if appropriate, other persons who by any means effectively manage the authorised entities, must be persons of acknowledged business and professional integrity.

The majority of the members of the board of directors, including the natural persons who legally represent the legal person, must be persons with the appropriate knowledge to perform the functions inherent to their posts, with appropriate professional experience.

2. Persons of acknowledged business and professional integrity are those who have a good personal and professional reputation, with a public image that corresponds to that of good managers and any other relevant persons who, in any case and at least, must meet the following requirements:

i) do not have a criminal record for crimes of forgery, disloyalty in the custody of documents, breaches of secrets, embezzlement, revelation and disclosure of secrets, or crimes against property;

ii) do not have a criminal record for other wilful crimes;

iii) are not and have not been disqualified from holding public, administrative or management positions in financial entities in Andorra or abroad;

iv) have not been declared bankrupt or in a situation of judicial settlement, or if they have been, those who have overcome such judicial proceedings.

3. Those persons who have satisfactorily performed administration, management or control functions in insurance entities or intermediaries, or functions with similar responsibilities in other public or private entities of a significant size, are considered to have the appropriate professional experience to manage companies authorised to carry out private insurance activities.

The insurance intermediaries who, as natural persons, have suitable general, commercial and professional knowledge to be able to communicate precisely all relevant information on insurance services are considered to have appropriate professional experience.

…

5. The entities authorised to carry out private insurance activities in the Principality of Andorra must seek prior authorisation from the Ministry of Finance for the following:

(i) changes in the shareholding structure of the company that result in any shareholder acquiring, increasing or reducing a stake of five per cent or more in the incorporated entity, or that, irrespective of the stake held, mean that a shareholder will be represented on the board of directors of the entity;

(ii) changes to and appointments of the members of the management bodies, the general management or, if appropriate, of other persons who, by any means, effectively manage entities authorised to carry out private insurance activities in the Principality of Andorra;

(iii) changes to and appointments of the members of the management bodies, the general management or, if appropriate, of other persons who, by any means, effectively manage an entity that forms part of a group, with responsibilities affecting the group that are different from those of the parent company;

(iv) any significant change in the entities or in the companies in which they have controlling shareholdings that differs from the circumstances in which an authorisation granted by the Ministry of Finance or a foreign supervisory authority.

If discovered or notified changes do not comply with the provisions in force, the Ministry of Finance will take appropriate measures to bring the detected breach to an end. "

97. As to its practical implementation, the authorities reported that *"the Ministry of Finance, as prudential supervisor" has already access to this information"*. It remains, however, unclear whether this information has been reviewed in respect of all the insurance businesses and whether any breaches were encountered.

Deficiency 4: post offices propose financial services without authorisation or licence.

Recommended actions: *the Andorran authorities should review the implementation of the R.23 requirements regarding financial services offered by post offices.*

Measures adopted and implemented: This deficiency has not been addressed and the recommendation has not been implemented.

98. The authorities clarified that the post offices operating on the territory of Andorra are only branches of the French and Spanish post offices, undertaking their activities pursuant to an agreement from the year 1930. Both institutions are therefore subject to regulation in their respective countries.

99. In order to ensure compliance with the current Andorran regulation of provision of financial services and the related AML/CFT obligations, the functioning and services

provided by the post office are currently being assessed by the Andorran Ministry of Finance and the INAF. This review is going to be the basis for updating the aforementioned agreements with France and Spain, which are in the process of being reviewed jointly by the respective authorities of involved countries.

100. In addition, one on-site inspection was undertaken by the UIF of a post office in 2014 and no breaches of AML/CFT obligations were identified.

101. For the time being, this deficiency has not therefore been remedied, steps are however undertaken with the view of doing so and it is considered that its practical implications are marginal.

Deficiency 5: in view of the information provided and the very small number of on-site inspections, effectiveness is not demonstrated.

Measures adopted and implemented: This deficiency has been partially addressed.

102. The reader is referred for further information in this respect to the analysis under Deficiency no. 1. It is to be noted that, given the limitations of a desk based review, a full assessment of the effectiveness of the supervisory framework in Andorra shall be undertaken within the scope of the next on-site visit.

Overall conclusion

103. As can be seen from the analysis above, one of the identified technical deficiencies has been fully addressed and steps are being taken in order to remedy also the last remaining minor technical shortcoming. It can be therefore considered that Andorra has brought its supervisory framework on the technical side broadly in line with international requirements. Despite the fact that certain progress has been demonstrated on the effectiveness side, in particular the number of inspections has increased since the 4th round evaluation and sanctions have been applied, a full assessment of effectiveness of supervision will have to be undertaken within the scope of the next on-site visit. **From this desk-based review, it is therefore considered that Andorra has taken sufficient steps in order to consider Recommendation 23 as essentially equivalent to Largely Compliant.**

Recommendation 35 – Conventions (rated PC)

Deficiency no. 1: *ratification of the Palermo Convention approved by the General Council but not yet deposited with the United Nations at the time of the evaluation.*

Measures adopted and implemented: This deficiency was fully addressed.

104. At the time of the 4th round on-site visit, Andorra had not yet ratified the Palermo Convention. It was pointed out by the evaluation team that the ratification instrument entered into force on 21 October 2011, exceeding therefore the two month period after the on-site visit. Currently, the Palermo Convention is, therefore, already ratified by Andorra.

Deficiency no. 2: deficiencies in the implementation of certain provisions of the Vienna Convention and the Palermo Convention.

Recommended action no. 1: *improve the implementation of the provisions of the Palermo Convention on Transnational Organised Crime and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.*

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation largely implemented.

105. The evaluation team formulated a number of shortcomings with regard to the implementation of the provisions of the Vienna Convention. In this respect, the authorities

reported a number of measures which have been put in place in order to bring the legislative framework in line with the international requirements, in particular the following:

- The technical shortcomings of the incrimination of ML have been fully addressed by the amendments to the CC (for further detail, the reader is referred to the analysis under Recommendation 1);
- Deficiencies in the implementation of Article 5 of the Vienna Convention concerning the confiscation of criminal proceeds (in particular *"lack of a legal basis for the confiscation of money as criminal proceeds from autonomous money laundering offences"*) were also remedied by the amendment to Article 411(1) of the CC[6];
- Shortcomings formulated by the evaluators with regard to Andorra's ability to provide MLA were mainly related to the restrictive incrimination of ML and have therefore also been remedied, as stated above.

106. In the 4th round MER, the evaluators were not in the position to formulate any conclusions on the 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) due to lack of information. Information was not provided in this respect for the purposes of this assessment either.

Recommended action no. 3: Andorra should implement the recommendations of the evaluation team made in section 2 of the 4th mutual evaluation report on the criminalisation of money laundering and terrorism financing.

Measures adopted and implemented: This recommendation was largely implemented.

107. Substantial amendments have been made to the CC. As a result, on the technical side, it appears that the provisions criminalising ML and TF are currently fully in line with international requirements. For further information in this respect, the reader is referred to the analysis under Recommendation 1 and Special Recommendation II.

Overall conclusion

108. The progress made with regard to other recommendations (in particular Recommendation 1 and Special Recommendation II) has positively cascaded on the compliance of Andorra's implementation of the requirements of the Vienna and Palermo Conventions. It can be concluded that Recommendation 35 is at a level equivalent to Largely Compliant.

6. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE KEY RECOMMENDATIONS RATED NC

Special Recommendation I - Implementation of United Nations instruments (rated NC)

Deficiency 1: *failure to implement UN Resolutions 1267 and 1373.*

Recommended actions: *Andorra should implement the UN Security Council Resolutions by adopting laws, regulations and other measures as necessary.*

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation fully implemented.

6 "In addition, the Court must impose one or some of the following measures: 1. Confiscation of the criminal proceeds. Money, assets or securities that are the proceeds of a money laundering offence are deemed to be criminal proceeds for the purposes of confiscation and confiscation by equivalent regulated in article 70."

109. Following the amendments to the LCPI, it is considered that a comprehensive framework implementing the UNSCRs 1267 and 1373 has been introduced. For further information in this respect, the reader is referred to the analysis under Special Recommendation III.

Deficiency 2: deficiencies in the implementation of the Convention for the Suppression of the Financing of Terrorism.

Recommended actions: Andorra should improve the implementation of the provisions of the UN Convention for the Suppression of the Financing of Terrorism.

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation fully implemented.

110. It is considered that the amendments to the CC brought the provisions implementing the TF Convention fully in line with the international requirements. The reader is referred for further information in this respect to the analysis under Special Recommendation II.

Overall conclusion

111. Andorran authorities introduced a number of amendments to its criminal legislation, as well as to the LCPI. Pursuant to these changes, a comprehensive framework implementing the UNSCRs 1267 and 1373 was introduced in Andorran legal system, as well as the provisions criminalising financing of terrorism have been brought in line with the requirements of the TF Convention. **It is therefore considered that Special Recommendation I is at a level equivalent to Largely Compliant.**

Special Recommendation III - Freezing and confiscating terrorist assets (rated NC)

Deficiency no. 1: *no legal framework for the implementation of Resolutions 1267, 1373 and following.*

Recommended action no. 1: create a legal mechanism ensuring the automatic freezing of funds controlled in full by or in conjunction with listed persons or entities, as well as funds derived or generated from property owned or controlled directly or indirectly by such listed persons or entities, and the funds of entities owned or controlled directly or indirectly by such listed persons, as well as funds of persons and entities acting on behalf of or according to the instructions of such persons and entities, according to Resolution 1267.

Recommended action no. 2: 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.

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation largely implemented.

112. The authorities implemented the framework under the UN sanctions regime into the Andorran legislation with Law 4/2014, of 27 March, amending the LCPI. According to Article 68 of the LCPI, the Permanent Committee for the prevention of and fight against terrorism and the financing of terrorism and the prevention of the proliferation of weapons of mass destruction and their funding shall prepare and publish on the UIF website a *"list of names and circumstances of persons and entities deemed to have links with terrorist activities, the financing of terrorism, or financing of the proliferation of weapons of mass destruction"*. The persons included on the list shall be the following:

- persons or entities listed by the corresponding UN committee (Article 68(2) of the LCPI)
- persons or entities designated by the Andorran state (Article 68(1,4) of the LCPI)

- persons or entities based on a request submitted by a foreign state (Article 68(3) of the LCPI)

113. Whilst the inclusion of persons or entities on the list is subject to consideration of the Permanent Committee, according to paragraph 2 of Article 68, the persons or entities listed by the UN Sanctions Committee shall be included under any circumstances.

114. Following the inclusion of a person or entity on the list established by the Permanent Committee, pursuant to Article 69 of the LCPI, the following measures may be applied:

"a) Freezing all funds and financial assets owned, or directly or indirectly controlled, by the persons or entities referred to in section 3, whether these funds and assets are owned in full or in conjunction with others, and including funds derived from the above;

b) Banning the persons and entities referred to in paragraph 3 from directly or indirectly accessing any funds, financial assets, financial services, or other related services;

c) Placing restrictions on commercial activity, including restrictions on imports and exports and arms embargoes;

d) Placing restrictions on financial activities of any nature, including assessment, support, and procurement services;

e) Any other restrictions, including technical assistance, flight bans and restrictions on admission and transit;

f) Diplomatic sanctions, the suspension of cooperation, and boycotting sports events in case of countries included in the list adopted by the corresponding committee of the UN".

115. Paragraph 3 of Article 69 states that the selected restrictive measures would apply to: (i) the persons and entities included on the list; (ii) any entity that is either owned or directly or indirectly controlled by any person or entity on the list; (iii) any person or entity acting on behalf or under the instructions of a person or entity on the list; and (iv) countries included in the lists adopted by the corresponding committee of the UN in relation to diplomatic sanctions, suspensions of cooperation and boycott of sport events.

116. The practical implications and procedures to be applied by obliged entities are governed in detail in Article 71 of the LCPI. Amongst other, this article sets the obligation for the restrictive measures to be directly implemented by parties under obligation *"immediately as from their publication on the UIF website"*.

117. This general legislative framework is implemented in practice through the Resolution of the Permanent Committee no. 1/2014, of 25 July 2014. This Resolution contains a list of UN resolutions, stating that the persons listed by the respective UN committees on the basis of the included resolutions (one of which is UNSCR 1267(1999)) and their subsequent resolutions are to be automatically considered as listed by Andorra. As a result, Article 2 of the Resolution no. 1/2014 foresees a number of restrictive measures to be taken with regard to the persons and entities considered as listed, amongst which also the freezing of funds and prohibition of enabling the disposal of any funds by such persons or entities. The list drawn by the UN 1267 Sanctions Committee is therefore directly applicable in Andorra and is available on the website of the UIF, with an automatic link which ensures that the version on the UIF is the last updated version issued by the UN Sanction Committee.

118. The UIF foresees also the possibility to include on the list countries based on a designation directly by Andorran authorities, as described above. This would be done by a specific resolution of the Permanent Committee. This has, however, not yet happened in practice and it is not clear whether the authorities have any mechanisms in place for continuous consideration of whether there are persons or entities in the regard of which such measures should be undertaken. No information was provided as to whether the authorities consult foreign lists (such as the EU or OFAC list). As concerns the implementation of requests by foreign states, this issue is discussed below under Deficiency no. 2.

Deficiency no. 2: *no machinery for reviewing lists submitted by other states under Resolution 1373.*

Recommended action no. 2: develop a national mechanism for preparing its own lists in accordance with Resolution 1373 and implementing decision procedures on the basis of the lists submitted by other countries.

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation fully implemented.

119. Paragraph 3 of Article 68 of the LCPI authorises the Permanent Committee to consider and, if appropriate, give effect to requests sent by other countries to include a person on the list. The Permanent Committee has discretion in this respect to assess whether there are reasonable grounds to justify the inclusion of persons and entities in the lists. Should it conclude that there are reasonable grounds for such inclusion, it would issue a specific resolution in this matter.

120. For the time being, there are no persons or entities included on the Andorran list on the basis of a foreign request. The authorities did not provide information as to whether any such request has been made since the adoption of the amendments to the LCPI.

Deficiency no. 3: 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.)

Measures adopted and implemented: This deficiency has been fully addressed.

121. For further information in this respect, the reader is referred to the analysis under the Recommended actions no. 3 to 8 below.

Recommended action no. 3: ensure that financial institutions and other persons or entities who may hold terrorist funds are clearly instructed as to their obligations as regards the preventive freezing of funds in accordance with UN Resolutions.

Measures adopted and implemented: The recommendation was largely implemented.

122. In accordance with Article 70 of the LCPI, the lists of designated persons and entities must be made available to the public on the UIF's website[7]. As has been described above, the Resolution no. 1/2014 is publicly available on the website of the UIF, together with links to up-to-date versions of all the relevant lists to which the Resolution applies.

123. In addition, according to paragraph 4 of Article 70 of the LCPI, the Permanent Committee has the obligation to provide *"financial entities, insurance entities authorised to operate in the life insurance area, remittance entities and notaries with the names of persons or entities in the list and clear instructions with the specific measures that must be taken, whether by email or by any other means that provides proof of receipt",* according to article 70(4) of the LCPI. The authorities reported that, on the basis of this legal provision, guidance has been sent to financial institutions, insurance entities authorised to operate in the life insurance area, remittance entities and notaries, providing them with clear instructions with the specific measures that must be taken. It is to be stressed in this respect that the provisions, as well as the actions of the UIF in practice in this respect, do not cover all the DNFBP sectors.

124. The authorities stated that the list was also provided to the obliged entities by e-mail. Nevertheless, it is not clear whether this is the case with every up-date of the list by the UN or whether this was done only at the time of the establishment of the framework. It is appreciated that Andorra applies directly the UN list, as this avoids possible delays. Nevertheless, in this context, the links on the website of the UIF are direct links to the UN lists. Should the UIF not provide obliged entities with an informative email on every up-date,

7 http://uifand.ad/index.php/mesures-restrictives

it would require in practice that every reporting entity has to go through all the relevant lists covered by the Resolution 1/2014 in order to identify whether any changes took place, and should this be the case, review the list to identify with regard to which person or entity was the list amended. This could potentially lead to negative effectiveness implications.

125. Finally, on 31 October 2014, the Permanent Committee held a meeting for the adoption of special measures regarding the so called "Islamic State in Iraq and the Levant". In this regard, the UN list regarding IS was implemented and a special warning was sent to financial institutions, entities authorised to provide life insurance, remittance entities and notaries.

Recommended action no. 4: implement effective procedures, which are made known to the public, to analyse requests to remove persons [and entities] from the lists and to unfreeze the funds and other property of persons or entities that have been removed from the lists.

Measures adopted and implemented: This recommendation was fully implemented.

126. Following the amendments, Article 73 of the LCPI provides for the removal of persons or entities from the lists. Article 73 ("*Removal from the lists*") reads as follows:

"1. The Permanent Committee shall evaluate and resolve any reasonable requests for removal from the list made by the parties concerned within fifteen days.

2. If approval is given for a person or entity to be removed from the list, the Permanent Committee will take the appropriate actions and notify the administrative services and parties involved in order to release the funds and financial assets affected by the UIFAND measures.

When registration on the list arises due to a resolution drawn up by the United Nations Security Council or one of its committees, the Permanent Committee is not eligible to hear the case and the applicant will be informed of the resources available to them in order to be removed from the list of the Committee concerned. These resources include in particular:

a) The option to do this directly in accordance with established procedures, of which the applicant must be informed; and

b) The option to do so indirectly via the Permanent Committee, which must then address the United Nations Security Council or one of its committees and notify them of the request to be removed from the list.

3. Permanent Committee resolutions are administrative in nature and can be appealed before the Government. Once the period of 15 days referred to in section 1 of this article has elapsed, the request for removal from the list must be understood as having been rejected, allowing the applicant to appeal before the Government the decision."

Recommended action no. 5: implement effective procedures, which are made known to the public, to unfreeze without delay the funds or other property of persons or entities who are inadvertently affected by freeze, once it has been verified that the person or entity should not be on the list.

Measures adopted and implemented: The recommendation was fully implemented.

127. According to Article 74 of the LCPI, the Permanent Committee may lift or modify the applied restrictive measures. The paragraph ("L*ifting and modification of restrictive measures*") reads as follows:

"1.The Permanent Committee must evaluate and hand down a decision in relation to the following within fifteen days:

a) Requests made by the parties concerned to lift or modify the action taken; and

b) Requests from bona fide third parties affected by the actions taken, either because they bear a similarity to the person or entity concerned in terms of their name or otherwise, or for any other reason that constitutes grounds to lift or modify the measures.

2. If the adopted measures are lifted, whether in full or in part, or if they are modified, the Permanent Committee will carry out the necessary procedures to release the funds and financial assets affected and notify the administrative services and parties affected via the UIFAND.

3. The Permanent Committee may authorise, upon request, all or part of the frozen funds and financial assets to be used by the persons or entities listed or by family members in order to meet their basic needs, including the cost of food, medication, housing, health care, and legal assistance. The Permanent Committee may also authorise the use of funds and financial assets to cover the cost of taxes, fees, compulsory insurance premiums and bank account maintenance charges, as well as any expenses necessary to maintain and administer the frozen assets and any other justifiable extraordinary expense.

4. When the adopted measures arise from compliance with a resolution drawn up by the United Nations Security Council or one of its committees, the Permanent Committee may not lift or modify the action taken without having confirmed that the corresponding procedures are in accordance with the applicable resolutions.

5. Permanent Committee resolutions are administrative in nature and can be appealed before the Government. Once the period of 15 days referred to in section 1 of this article has lapsed, the request for removal from the list must be understood as having been rejected, allowing the applicant to appeal before the Government the decision".

Recommended action no. 6: implement appropriate measures to allow persons or entities whose funds or other property has been frozen to challenge these measures before a court.

Measures adopted and implemented: This recommendation has been fully implemented.

128. As described above, pursuant to the provisions of the LCPI, the applied restrictive measures may be disputed with the Permanent Committee. This applies both to decisions on the actual listing/delisting, as well as decisions on requests for the lifting or modification of applied restrictive measures (these can also be disputed by bona fide third parties affected by the restrictive measures in question). The decision of the Permanent Committee in this respect can be appealed before the Government of Andorra.

129. Following the administrative appeal before the Andorran Government, the applicant may request a further review by the Courts of Justice pursuant to Article 127 of the Administration Code, this being regulated by the law regulating administrative procedure. According to Article 125 of the Administration Code, the prior appeal before the Government of Andorra is a prerequisite for the access to the Administrative Court of Justice.

Recommended action no. 7: introduce provisions ensuring the rights of bona fide third parties are protected, in line with article 70 of the Criminal Code.

Measures adopted and implemented: This recommendation has been fully implemented.

130. As described above, paragraph 1 of Article 74 of the LCPI ("*Lifting and modifying restrictive measures*") allows bona fide third parties to request the lifting or modification of restrictive measures adopted when such persons may be "*affected by the actions taken, either because they bear a similarity to the person or entity concerned, in terms of name or otherwise, or for any other reason that constitutes grounds to lift or modify the measures".*

131. The request by the affected third party is assessed by the Permanent Committee and is subject to possible review by the Government and the Administrative Court of Justice, following the procedures as described above.

Recommended action no. 8: introduce a specific and effective monitoring to ensure compliance with obligations under the UN resolutions.

Measures adopted and implemented: This recommendation is fully implemented.

132. The provisions of the LCPI attribute the UIF a general power to supervise the implementation of the LCPI by all obliged entities; the specific powers of the UIF being set in Article 53 and following. Given the inclusion of the framework implementing the UN sanctioning regime directly in the LCPI, the authority of the UIF to supervise its implementation covers also the provisions in this respect.

133. In addition, in order to fully implement these new requirements in the Andorran AML/CFT regime, the amendments to the LCPI also extended the list of sanctionable violations of the LCPI set in Article 57*ter* of the LCPI (as in the version currently in force, of 16 July 2015) to *"the failure to comply with the obligation to report and adopt the restrictive measures referred to in articles 69 and 72 of the LCPI"*. This violation is considered a very serious infringement and a legal person can be sanctioned for such breach pursuant to Article 58 of the LCPI (as in the version currently in force, of 16 July 2015) with:

"a) A fine ranging from EUR 90,001 to EUR 1,000,000.

b) A temporary or permanent restriction on specific types of transactions.

c) The withdrawal or modification of the corresponding activity authorisation.

The sanction provided for in subsection a) shall be imposed in all cases and may be simultaneously imposed with either one or both of the sanctions provided for in subsections b) and c).

[…]

4. In addition to the sanction to be imposed on the party under obligation for the commission of the infringement, one or more of the following penalties may be imposed on those persons holding senior management office if the breach is attributable to their wilful misconduct or negligence:

a) In the case of very serious infringements: a fine ranging from EUR 25,001 to EUR 300,000 and/or a minimum temporary suspension from office of six months or permanent suspension from office.

b) In the case of serious infringements: a fine ranging from EUR 3,001 to EUR 25,000 and/or a temporary suspension from office of one to six months.

c) In the case of minor infringements: a written warning and/or a fine ranging from EUR 300 to EUR 3,000."

134. As regards to parties under obligation which are natural persons, Article 58 *bis* of the LCPI (as in the version currently in force, of 16 July 2015) sets out that "*very serious infringements are sanctioned with:*

a) A fine ranging from EUR 25,001 to EUR 300,000.

b) A minimum temporary suspension of six months or permanent suspension.

c) A temporary or permanent restriction on specific types of transactions.

d) The withdrawal or modification of the corresponding activity authorisation.

The penalty provided for in subsection a) shall be imposed in all cases and may be simultaneously imposed with one or two or all of the penalties provided for in subsections b), c) and d)".

135. In practice, supervision of obligated entities in respect of the application of the framework foreseen for the implementation of the UN sanctioning regime is undertaken within the general AML/CFT supervision. The reader is therefore referred in this respect to the analysis under Recommendation 23.

Effectiveness

136. The authorities reported that, for the time being, no persons or entities designated on the list have been detected. The foreseen restrictive measures have therefore not yet been applied in practice in Andorra.

Overall conclusion

137. Andorran authorities introduced a comprehensive framework with the view of implementing the UNSC Resolutions 1267(1999) and 1373(2001). The system put in place complies with international requirements and comprises all the necessary elements as required by Special Recommendation III. In order to complement the framework put in place, the authorities are encouraged to further develop the established channels ensuring the communication of the requirements of the framework to obliged entities and to put in place mechanisms for a periodic review of the actual situation for the purposes of domestic listings. In practice, as no listed persons or entities were identified in Andorra, the legislative provisions have not yet been applied in practice. Overall, it is considered that the framework in place in Andorra implementing Special Recommendation III is equivalent to Largely Compliant.

MONEYVAL Secretariat