

Anti-money laundering and counter-terrorist financing measures

Andorra

2nd Enhanced Follow-up Report

Follow-up report

December 2019



The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

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Andorra: 2nd Enhanced Follow-up Report

I. INTRODUCTION

2. The mutual evaluation report (MER) of Andorra was adopted in September 2017. The report analyses the progress of Andorra in addressing the technical compliance (TC) deficiencies identified in its MER. Re-ratings are given where sufficient progress has been made. This report also analyses progress made in implementing new requirements relating to FATF Recommendations which have changed since the Andorra's 1st enhanced follow-up report was adopted: Recommendation 2. Overall, the expectation is that countries will have addressed most if not all TC deficiencies by the end of the third year from the adoption of their MER. This report does not address what progress Andorra has made to improve its effectiveness. A later follow-up assessment will analyse progress on improving effectiveness which may result in re-ratings of Immediate Outcomes at that time.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

3. The MER and the 1st enhanced follow-up report rated Andorra as follows for technical compliance:

Table 1. Technical compliance ratings, December 2019

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
LC	C	LC	C	LC	LC	C	PC	LC	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	LC	LC	LC	C	LC	LC	LC	C	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	LC	LC	LC	PC	PC	LC	PC	LC	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
PC	C	LC	LC	LC	PC	LC	LC	LC	LC

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Source: Andorra Mutual Evaluation Report, September 2017, <https://rm.coe.int/andorra-fifth-round-mutual-evaluation-report/168076613e>. Andorra 1st Enhanced Follow-up Report, December 2018, <https://rm.coe.int/committee-of-experts-on-the-evaluation-of-anti-money-laundering-measur/168092dd03>.

4. Given the results of the MER, Andorra was placed in enhanced follow-up¹. The first enhanced follow-up report submitted by Andorra was discussed at the 57th Plenary meeting in December 2018. The Plenary invited Andorra to submit a second enhanced follow-up report for the 59th MONEYVAL Plenary in December 2019.

5. The assessment of Andorra's request for technical compliance re-ratings and the preparation of this report were undertaken by the following Rapporteur teams (together with the MONEYVAL Secretariat):

- France

¹ Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up involves a more intensive process of follow-up. This is intended to be a targeted but more comprehensive report on the countries/territories' progress, with the main focus being on areas in which there have been changes, high risk areas identified in the MER or subsequently and on the priority areas for action.

- Romania

6. Section III of this report summarises Andorra's progress made in improving technical compliance. Section IV sets out the conclusion and a table showing which Recommendations have been re-rated.

III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

7. This section summarises the progress made by Andorra to improve its technical compliance by:

- a) Addressing the technical compliance deficiencies identified in the MER, and
- b) Implementing new requirements where the FATF Recommendations have changed since the MER was adopted, considering the progress made, at the 1st enhanced follow-up report (R.2).

3.1. Progress to address technical compliance deficiencies identified in the MER

8. Andorra has made progress to address the technical compliance deficiencies identified in the MER. As a result of this progress, Andorra has been re-rated on Recommendations 25, 26 and 28.

Recommendation 8 (Originally rated PC – no re-rating)

9. In its 5th round MER, Andorra was rated PC with R.8, based on a number of deficiencies. Andorra conducted a review of the NPO sector in December 2016 within the framework of the NRA. However, the NPO sector risk assessment appeared to place overreliance on the findings of the 2014 FATF typology report "Risk of terrorist abuse in NPOs", with little evidence that other sources of information to identify NPOs likely to be at risk of FT abuse were used. Andorra's legal framework set out various provisions to promote transparency and integrity in the management of associations and foundations, but they were not specifically designed to protect the NPO sector against terrorist financing abuse. Neither specific typologies of FT through NPOs nor specific educational programmes had been undertaken to raise and deepen awareness among NPOs about the potential vulnerabilities to FT abuse and FT risks. No specific work with NPOs to develop and refine best practices to address FT risks and vulnerabilities had been undertaken. No specific measures were taken to encourage NPOs to use regulated financial channels. No steps were taken to promote effective supervision and monitoring of NPOs at risk of FT abuse. There was no mandatory monitoring (nor an independent audit system) for associations. In addition, only NPOs receiving public subsidies had a reporting obligation to the authority that awarded subsidies regarding the use made thereof and could be audited by the Court of Auditors. The monitoring of foundations did not encompass risk-based measures applied and was not directly related to compliance with the requirements of R.8. No mechanisms existed in Andorra to promote co-operation, co-ordination and information sharing between all levels of authorities or organisations that had relevant information on NPOs. Finally, given that Andorra had never dealt with a case of FT involving NPOs and the lack of specific training on FT issues, it was not clear whether the LEAs had sufficient expertise and capability to examine NPOs suspected to be at risk of FT abuse.

10. **C.8.1** - Andorra is planning to identify the subset of NPOs vulnerable to FT abuse as a part of the NRA (by the end of 2019 or the beginning of 2020). In addition, it has initiated amendments to the AML/CFT Law aimed at aligning the NPO definition with the FATF standards, and strengthening requirements applied to the at-risk NPOs. The deficiency remains until the process is concluded.

11. **C.8.2** - Andorra has taken several measures to increase the level of compliance with c.8.2. However, major deficiencies still remain (in particular in relation to the absence of clear policies to promote integrity and public confidence in the management of NPOs).

(a) In order to promote accountability, integrity and public confidence of NPOs, amendments to the AML/CFT Law were adopted (Law 14/2017, in force since July 2017). In particular, boards of directors (including personnel with management responsibilities) of associations, foundations and other NPOs should ensure that NPOs are not abused to transfer funds or resources to persons or entities related to terrorist groups or organisations. In accordance with these amendments to the AML/CFT Law, associations, foundations and other NPOs are required to keep records of the identity of all persons that receive funds from the association for ten years. Additionally, pursuant to the third and fourth final provisions of the AML/CFT Law that amend the laws of associations and foundations, these organisations have to keep a register of members, a register of beneficial owners, a minutes book, an inventory book and the relevant accounting books, in accordance with their activities. All these steps could be considered as measures to promote accountability. The Decree of 5 September 2018, approving the Regulation on the register and access to the information related to beneficial ownership on the legal entities' register, establishes the obligation for all legal entities (including associations and foundations) to submit the information on their beneficial ownership to the corresponding registers. Nevertheless, it appears that Andorra has not taken any steps to promote integrity and public confidence of NPOs.

(b) Andorra took certain steps to raise and deepen the awareness among NPOs, and the donor community about the potential vulnerabilities of NPOs to FT abuse and FT risks. This includes issuing a best practice document by the FIU of Andorra (UIFAND) that was published on its website. Andorra updated a FT typologies and red flags document in December 2018 and made it publicly available. In general, it can be concluded that Andorra provided only limited outreach to the NPO sector and no specific educational programmes were provided so far.

(c) Andorra has issued the *Informative Note* addressed to the NPO sector that provides for a non-binding recommendation for NPOs. In particular, under sub-title "*Knowledge of the risk of the NPO's activity*", the NPOs are encouraged to increase their awareness of risks, threats, vulnerabilities and mitigation techniques. However, this is not fully in line with the requirement of criterion 8.2(c) as there are no references or examples of best practices.

12. **C.8.3** - As noted under c.8.1(a), Andorra did not identify a subset of NPOs vulnerable to FT risk. Consequently, no risk-based approach to supervision and monitoring of NPOs is yet being applied. In addition, Andorra has not taken any steps to demonstrate that measures foreseen in para. 6(b) of the INR.8 apply to NPOs which are at risk of FT abuse.

13. **C.8.4** - Andorra demonstrated no progress with respect to the deficiency as identified in the MER.

14. **C.8.5** - Andorra demonstrated sufficient progress to meet the requirements of the sub-criteria c.8.5 (a) and (b).

(a) Andorra has amended the laws that establish the necessary mechanisms to cooperate, coordinate and share information between all levels of authorities or organisations that have relevant information on NPOs. One of the mechanisms to cooperate and coordinate is the Permanent committee on the Prevention of ML/FT (PC). According to the article 63(1) of the AML/CFT Law, representative of the Register of Associations and the Register of Foundations have to attend the PC meeting when NPO's relevant topics are discussed. With respect to the exchange of information, the UIFAND is empowered to request and receive the necessary information to fulfil its functions.

(b) Since the adoption of the 1st FUR, the LEAs took part in three trainings on FT matters that were also covering the abuse of NPOs. Andorran authorities reported that those trainings were attended by the representatives of the General Prosecutor Office, judicial authorities, Police Department and the UIFAND.

15. In light of the above, deficiencies remain which are not just of a minor nature. **Therefore, the rating for R.8 remains partially compliant.**

Recommendation 25 (Originally rated PC – re-rated as LC)

16. In its 5th round MER, Andorra was rated PC with R.25, based on the following deficiencies:

17. **C.25.1** (sub-criterion (c)). A person acting in a professional or business capacity as a trustee of a foreign law trust would be an obliged person under the AML/CFT Act and subject to its requirements on CDD and record-keeping. However, deficiencies identified under c.10.11 (where some deficiencies had been identified in the legal provisions regarding identification of the settlor, protector (if any) and beneficiaries) were considered to have a negative impact on the accuracy and completeness of the information which is held and applied to R.22.

18. The deficiencies in relation to c.10.11 and c.22.2 have meanwhile been remedied (see the 1st enhanced follow-up report). As a consequence, criterion 25.1 is re-rated as met.

19. **C.25.2** - The factors underlying c.10.7 (and c.22.1) and deficiencies highlighted thereunder had an impact on the level of compliance with c.25.2. The requirement to keep information on the trust (and parties to it) up to date did also not extend to the holding of basic information on regulated agents of (and service providers to) the trust.

20. **C.10.7** is now met (following the amendments to the AML/CFT law, see the 1st enhanced follow-up report). Trusts, companies, associations, foundations or similar structures are considered as obliged entities under the AML/CFT Law and would therefore be required to keep information on the trust. Article 9(1) of the AML/CFT Law requires obliged entities to adopt measures to ensure that the documents, data or information held are kept up-to-date and are appropriate, verifying the existing documentation, especially for high-risk customers. However, minor shortcomings still remain, as the definition of trust and company service providers in the Article 3(4) of the AML/CFT Law is still narrower than required by the standard (c.22.1 (e)). Andorra is in the process of amending the AML/CFT Law to apply the requirements of c.22.1 (e)). However, these amendments are not in force yet. In light of the above, c.25.2 is re-rated as mostly met.

21. **C.25.3** – The MER noted that there was no obligation in place for the trustees to declare their status to a FI or other DNFBP if they are acting in that capacity professionally or non-professionally.

22. The obligation on the trustees to declare their status to a FI or other DNFBP if they are acting in that capacity professionally or non-professionally is now established in Article 14 of the Regulation of the Register of Trust Service Providers and Similar Legal Instruments (in force since February 2019). Article 16 of that Regulation establishes the sanctioning regime for non-compliance with any of its provisions. Andorra now meets c.25.3.

23. **C.25.4** - The former AML/CFT Act included provisions relating to client secrecy. There were no provisions in the Act allowing a trustee to provide information on a trust to FIs or DNFBPs, as the duty of secrecy applied. The effect of this was that the trustees were prevented from providing information where it was not possible to do so by mutual agreement.

24. The analysis of the 1st enhanced follow-up report concluded that this shortcoming had been remedied. Following amendments to the AML/CFT Law, the latter no longer contains provisions requiring directors, managers and employees of reporting entities to maintain client secrecy.

25. **C.25.5** – The MER states that the legislation did not permit LEAs to set deadlines for information to be provided by reporting entities, thereby potentially impacting the timeliness of the provision of information (this issue was also discussed under c.31.3 in the MER).

26. In response to this, the authorities advised that in practice deadlines could be established, but there is still no clear legal provision on this matter. Given that the response of the authorities is more of an effectiveness issue, it cannot be considered that this technical shortcoming has yet been rectified.

27. **C.25.6** – Criterion 25.6 is rated in the MER as mostly met due to the shortcomings identified under c.27.3, R.37 and R.40 which have an impact on the international cooperation arrangements and UIFAND's ability to request information. Other than the tax authorities, it is not evident that any Andorran authorities would hold information about foreign law trusts administered in Andorra.

28. Access to the Register of Trust Service Providers and Similar Legal Instruments has now been granted to all competent authorities. As per Article 12 of the Regulation of the Register of Trust Service Providers and Similar Legal Instruments, all competent authorities (the tax administration, the Ministry of Finance, the UIFAND, the legal authorities, the Public Prosecutor and any other competent authority) can access the information held in the Register.

29. The shortcomings identified at c.27.3 have been remedied. In accordance with Article 55(2) of the AML/CFT Law, the UIFAND is granted appropriate powers to monitor AML/CFT compliance and request any information or documents from the supervised entities in the exercise of its functions. Minor shortcomings under R.37 and R.40 have been remedied (tobacco smuggling, and tax evasion have been criminalised as predicate offences). C.25.6 re-rated as met.

30. **C.25.7** - Another shortcoming noted in the MER was the fact that there were no sanctions in place for a person resident in Andorra acting as a trustee in a non-professional capacity, although a person acting as a professional trustee of a foreign trust is subject to sufficiently proportionate and dissuasive sanctions for failing to comply with CDD and record-keeping requirements. However, no amendments were introduced in the legislation to address this deficiency. The amendments to the AML/CFT Law to include non-professional trustees into the list of reporting entities making them accountable for AML/CFT breaches have not yet entered into force. The criterion remains partly met.

31. **Andorra has addressed some of the most important deficiencies noted in the MER, including C.25.1, C.25.3, C.25.6 (re-rated as met); C.25.4 has been re-rated as met (as per analysis of 1st enhanced Follow up report); C.25.2 (re-rated as mostly met); C.25.5 and C.25.7 remain partly met. On that basis, R.25 is re-rated as largely compliant.**

Recommendation 26 (Originally rated PC – re-rated as LC)

32. In its 5th round MER, Andorra was rated PC with R.26 based on the following deficiencies:

33. **C.26.1**- The MER noted the following minor deficiencies under c.26.1:

- (1) There was no authority designated for registration/licensing and supervision of the two foreign post offices.
- (2) Article 41 of the AML/CFT Act defined financial parties which are under an obligation to comply with the AML/CFT Act. These conformed to the FATF's definition of a FI with the exception of: (i) an exemption for reinsurance, a sector that does not exist in Andorra; and (3) The exclusion of some prescribed activities that were not provided to third parties. Whilst an exemption for own account activities was consistent with the FATF requirements, an exempted entity could still be conducting, as a business, investment or non-bank credit activities

for its shareholders or group if it was in receipt of a fee or some form of remuneration or benefit for acting. Consequently, it would be considered a FI within the FATF definition but not subject to supervision under c.26.1.

34. Andorran authorities took the following actions to remedy deficiencies:

- (1) As per Article 2.1(e) of the AML/CFT Law, the UIFAND is responsible for AML/CFT supervision of two foreign post offices. According to Article 4(1)(f) of the Law on Payment Services and Electronic Money (8/2018), the two foreign post offices are authorised to provide payment services.
- (2) The AML/CFT Law has been amended to include reinsurance companies into the list of obliged entities subject to AML/CFT requirements (Article 2(1)(b)).
- (3) As noted in the MER, an exemption for own account activities is consistent with the FATF requirements. In addition, certain provisions in the laws governing activities of financial sector might be seen as additional safeguards: e.g. the provision of financial services without the corresponding administrative authorisation and registration constitutes a very serious infringement under Article 15 of the Law regulating the Financial System's Disciplinary Regime.

35. On the basis of the above, C.26.1 is re-rated as met.

36. **C.26.2** – The MER noted the following minor deficiencies under c.26.2:

(1) MVTs were offered by one of the two foreign post offices and postal account services were offered by the second one. Neither post office was licensed or in any way authorised or registered in Andorra to provide financial services.

(2) There was no provision in Law 7/2013 requiring a director (either a corporate or individual) or manager of a bank to be resident in Andorra to ensure that there is effective management of the bank (and so a “physical presence” as defined by the FATF).

37. Andorra took the following actions to remedy deficiencies:

- (1) Two foreign post offices have been granted the right to provide payment services. While they are exempted from the authorisation process, they are bound to be registered (see Article 4(1)(f) and 7(c) of the Law 8/2018).
- (2) Banks are required to establish the administration and effective management on Andorran territory (see Article 11 of the Law on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra).

38. **C.26.2** re-rated as met.

39. **C.26.3** – The following shortcomings were identified in the MER that resulted in a partly met rating:

(1) There was no express “business or professional repute” criterion applying to individuals occupying shareholder roles set out in the laws or published documents.

(2) It was not clear whether an application could always be rejected in the circumstances set out at c.26.3.

(3) Supervisors did not have a direct power to: (i) remove a particular shareholder or to freeze a particular shareholder's rights; or (ii) permanently remove a director or senior manager from their post (except in the case of a bank).

40. Andorra has taken the following steps to remedy deficiencies:

(1) The business and professional repute criteria can be found in a published document (*"The Businesses and Professional Integrity Form"*). The fit and proper criteria include, among others, information on professional experience, education and non-conviction. In addition, the form requires an applicant to provide a certificate(s) of criminal record issued in the Principality of Andorra and certificate(s) of criminal record issued in foreign countries.

(2) The criteria for rejection are set out in the following articles: (i) Article 27 of the Law 8/2013 (amended by the *Law 17/2019*) grants the power for the Andorran Financial Authority (AFA, previously - INAF) to reject an application if the documentation is incomplete and where the applicant does not comply with the laws in force or may negatively affect the stability or the reputation of the Andorran financial system or the relevant entity, as well as the elements that constitute technical, economical or professional guarantees of the entity or its group, or any other assessment criterion; (ii) Article 17 of the Law 35/2010 stipulates that the AFA must refuse the authorisation if, considering the need to guarantee sound, prudent management by the entity operating within the financial system, the AFA is not satisfied with the suitability of the shareholders or partners who directly or indirectly own qualifying holdings. Following the steps taken, Andorra now has legal framework in place to reject an application in the circumstances set out at c.26.3. However, there remains a deficiency in that close associates of criminals occupying shareholding or management roles are not explicitly covered by legal and regulatory measures. The country reported that in practice the licencing checks carried out by the AFA include cooperation with national competent authorities (the FIU), foreign competent authorities, as well as verification checks using various databases (FIU database, private databases, open sources, etc.). These checks aim to reject not only criminals but also their associates from holding significant interest or management position.

(3) Article 12 of the Law 35/2018 on solvency, liquidity and the prudential supervision of banking entities and investment entities (fourth final provision; amendment to the Law regulating the financial system's disciplinary regime²) sets out precautionary measures which consist of restricting the field of action of entities operating in the financial system; prohibiting certain types of operations; ordering the provisional suspension of persons who, by holding administrative or general management positions, de jure or de facto, or being in charge of control functions in the entities appear as alleged responsible parties for very serious offences; suspending of voting rights attached to the shares of shareholders. Articles 15 and 16 of the Law regulating the financial system's disciplinary regime provides list of "serious" and "very serious" offences that also include non-compliance with the licencing requirements. Sanctions include: temporary or permanent ban on carrying out functions in entities operating in the financial system, financial holding companies and mixed financial holding companies, for members of the board of directors and the general management or any other natural or legal person considered responsible; suspension of voting rights of the shareholder or shareholders responsible for the offences and/or nullity of the votes cast or the possibility of nullifying them; a temporary restriction on the field of action of the entity operating in the financial system and/or the appointment of provisional administrators; withdrawal of the authorisation or licence of the entity operating in the financial system or a temporary or permanent prohibition on carrying out specific activities; temporary or permanent ban on providing payment services.

41. **C.26.3** is re-rated as mostly met.

42. **C.26.4** – The following deficiencies were identified in the MER which resulted in a partly met rating:

² Applicable to all types of financial institutions operating in Andorra.

(1) INAF was not able to take appropriate action to modify, reverse or otherwise address a change in control that had taken place without the necessary notification to, or approval from it (essential criterion 5 of Core Basel Principle 6);

(2) consolidated group supervision (combination of the INAF and the UIFAND) was quite limited (Basel principle 12).

(3) Two foreign post offices were not licenced to provide financial services.

(4) There were no relevant provisions in the Insurance Law regarding consolidated supervision by the Ministry of Finance.

(5) Not all relevant International Association of Insurance Supervisors (IAIS) Principles were applied.

(6) No information was provided on the methodology the UIFAND applied to take account of ML and FT risks in the postal sector.

43. On the basis of the response provided by the Andorran authorities, the following conclusions were drawn in relation to the aforementioned deficiencies under c.26.4:

(1) The AFA has been granted adequate rights to address a change in control that has taken place without the necessary notification and approval. According to the Article 15(d) and 15(g) of the Law regulating the Financial System's Disciplinary Regime, carrying out any unauthorised activities and actions constitutes a serious breach which can result in suspension of voting rights of the shareholders or invalidation of the votes (see Article 18(1)(f), 18(2)(f) of that law). For more information, please also see c.26.3.

(2) As per Article 3(4) of the Law on the Andorran National Institute of Finance 10/2013 (as amended on 17 July 2019), the AFA carries out consolidated group supervision. For more information, please also see c.26.6.

(3) Two foreign post offices are registered and authorised to provide payment services. For more information, please see c. 26.2.

(4) According to the amendments to the Law on the Andorran National Institute of Finance 10/2013 (amended by the Law 12/2018), AFA was appointed as the supervisory authority for the insurance and reinsurance entities. As per Article 3(4) of the Law on the Andorran National Institute of Finance 10/2013 (as amended on 17 July 2019), the AFA carries out consolidated group supervision.

(5) There is a good level of compliance with the IAIS Principles. The regulatory framework was strengthened by introducing amendments to the following laws: (i) Law 12/2017 on regulation and supervision of private insurance and reinsurance; (ii) Regulations developing Law 12/2017; (iii) Regulations of 27 December 2017 regarding insurance enterprises accounting; and (iv) Law 12/2018 amending Law 10/2013 on Andorran Finance Institute (now AFA). Regulatory framework is largely in line with the IAIS Principles. The assessment of the regulatory framework against the IAIS Principles was conducted by an independent external audit agency. The conclusions are as follows: Andorra is compliant with the Principles 1, 5-9, 18, 24; minor shortcomings identified in relation to compliance with the Principles 3, 4, 10; shortcomings in relation to compliance with the Principles 23 and 25 (coordination of supervisory arrangements for consolidated group wide supervision purposes) still remain. However, Andorra took actions to increase compliance with IAIS principles 23 and 25, in particular: (i) the article 13(2) of the Law 12/2017 establishes that AFA shall cooperate with other foreign insurance supervisors in order to exercise its functions; (ii) the AFA has recently (October 2019) joined the International Association of Insurance Supervisors.

(6) Supervisory arrangements discussed at c.26.5 and c.26.6 (see below) are equally applicable to post office supervision.

On that basis, C.26.4 is now re-rated as mostly met.

44. **C.26.5** – The following deficiencies were identified in the MER that resulted in a partly met rating:

(1) Following Andorra's first NRA in December 2016, a number of action plans had been developed, but information on how these would influence the UIFAND's supervisory approach had not been provided.

(2) It was not clear what methodology was applied by the UIFAND to take the account of: (i) particular ML/FT risks in each FI (and group) (e.g. taking account of customer base and products and services offered); and (ii) the characteristics of FIs or groups, and consequently to determine the frequency and intensity of its on-site supervision.

45. Andorra has taken several actions to remedy supervision-related shortcomings, including amendments to the AML/CFT Law and development of a formal risk based supervisory model.

46. In accordance with Article 51(3) of the AML/CFT Law (14/2017), the UIFAND determines the frequency and intensity of supervisory actions on the basis of the risk profiles of supervised entities and ML/FT risks present in the country. When conducting its offsite and onsite supervision, the UIFAND takes into account all relevant information on the specific domestic and international risks associated with customers, products and services of the supervised entities. In addition, the *Manual of internal procedures of the supervision division of the UIFAND* has been approved in May 2019, which: (i) sets out general principles of the risk assessment (takes into account the following criteria: client, product/service, distribution channel, transaction and geographical risk); (ii) establishes frequency and intensity of future supervisory actions in accordance with the identified risks, (iii) provides the list of criteria that trigger the review of the risk profile of the supervised entity; and (iv) provides that the adequacy and suitability of the internal control environment and mitigating measure will be taken into account to calculate the residual risk exposure of the supervised entity once inherent risk is established. The UIFAND is currently in the process of designing a more in-depth risk scoring methodology and starting data collection exercise that would enable to risk assess the supervised entities. However, the manual does not specify how the characteristics of the group will be taken into account to determine the frequency and intensity of the UIFAND's supervisory actions.

47. The legislative and regulatory framework is now largely in line with c.26.5. Some further work is still on-going (i.e. a technical risk scoring model has not yet been finalised). However, this is an issue of effectiveness rather than technical compliance. C.26.5 re-rated as mostly met.

48. **C.26.6** – The MER notes that no information had been provided at the time of the onsite visit on what steps were taken by the UIFAND to re-assess the risk should the information be received indicating a major development in the management or operation of a FI or group. This resulted in a mostly met rating.

49. The authorities reported that the cooperation and information exchange framework between the UIFAND and the AFA (as prudential supervisor) has been established (a MoU is in place since 2012). AFA's supervisory model includes the following components of prudential requirements: capital, liquidity, operational risk, internal governance and risk management (including a review of AML/CFT audit reports), as well as on-going assessment of the fitness and propriety of qualified shareholders, board members and key function holders. Authorities reported that the UIFAND and the AFA have regular supervisory meetings to facilitate information exchange. They also cooperate

during the licencing stage (assessment of fitness and propriety), share information on onsite inspections' findings and carry out joint inspections.

50. However, there are no explicit provisions in the UIFAND's supervisory manual to reassess the risks should the information received indicate a major development in the management or operation of the FI or group. The criterion c.26.5 remains mostly met.

51. Andorra has addressed a large number of deficiencies noted in the MER. The country meets c.26.1, c.26.2 and mostly meets c.26.3-c.26.6. **Therefore, R.26 is rated largely compliant.**

Recommendation 28 (Originally rated PC – re-rated as LC)

52. In its 5th round MER, Andorra was rated PC with R.28 based on the following deficiencies.

53. **C.28.1** – This criterion was rated as partly met in the MER due to the fact that it was not clear whether the existence of a criminal record could be taken into account at the time of a casino application (and on a continuing basis), and there were no provisions within the Gambling Law defining: (i) beneficial ownership; (ii) what would be considered a significant or controlling interest; or (iii) what was meant by commercial and professional integrity (explaining whether it covered an individual's personal and business reputation and association with a criminal).

54. Andorran authorities clarified that, although there are no provisions within Gambling Law 37/2014 specifying beneficial ownership, in practice the definition of the beneficial owner that is set out in the Article 3(3) of the AML/CFT Law would apply³. Article 11 of Gambling Law 37/2014 establishes that, in order to obtain a casino licence, the applicant must establish an Andorran company. Consequently, casinos have to comply with the obligations set out in Article 21bis of the Companies Act, according to which all legal entities established in Andorra are required to provide information on their beneficial ownership to the Companies Register⁴ under the terms specified in Article 3(3) of the AML/CFT Law.

55. Article 11(1) of Gambling Law 37/2014 establishes that the applicant must demonstrate commercial and professional integrity by demonstrating the absence of a conviction. Integrity requirements are applicable for the shareholders, board members, company attorney, managers/directors. Article 5 requires that the owner has to communicate every change in the ownership structure to the Gambling Authority and to the UIFAND. However, it is not clear whether the non-conviction records can be taken into account on a continuing basis. There are no provisions in Gambling Law 37/2014 that would cover association with the criminal.

56. In light of the above and taking into account that Andorra complies with the requirements of sub-criteria 28.1(a) and 28.1(c), and the fact that the sector is not material (as there are no licenced casinos operating in Andorra), the criterion 28.1 re-rated as mostly met.

³ I.e. a shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership.

⁴ The UIFAND has also issued the guidance on *beneficial ownership* for the purpose to guide the reporting entities and other authorities (e.g. registers of legal entities), if relevant, towards proper application of beneficial ownership identification requirements.

57. **C.28.2** – This criterion was rated as mostly met in the MER as the definition of DNFBPs did not cover: (i) arranging for another person to act as trustee; and (ii) acting as, or arranging for another person to act as, a nominee shareholder.

58. The amendments to the AML/CFT Law that rectify this deficiency have not yet entered into force.

59. **C.28.3** – This criterion was rated as partly met in the MER due to the limitations of off-site supervision and the absence of a DNFBP register.

60. In relation to the absence of a DNFBPs register, Andorra took some further actions which address the technical shortcoming to a large extent. For the purpose of updating the data in the register of the UIFAND, the authority issued the technical communiqué CT-04/2018 which requires DNFBPs to communicate to the UIFAND basic information (register number, address, contact details), activities, composition of internal control body and other information. Moreover, DNFBPs are required to report any subsequent changes within a maximum period of fifteen days. Technical communiqués, issued by the UIFAND, are mandatory (Article 55(2)(a) of the AML/CFT Law). Failure to comply with the technical communiqués issued by the UIFAND constitutes a serious infringement (Article 72(14) of the AML/CFT Law). Since 2019, the UIFAND requests on an annual basis a detailed up-to-date copy of the Company Registry in order to cross-check this information against its internal records. In addition, the UIFAND requests information from professional associations. The supervision-related shortcomings are discussed under c. 28.5.

61. On that basis, C.28.3 is re-rated as mostly met.

62. **C.28.4** – This criterion was rated as *not met* in the MER mainly due to the weak market entry measures to prevent criminals or their associates from holding managerial positions in (or being the beneficial owner of) a DNFBP. The supervisory powers to monitor compliance and issue sanctions for the AML/CFT breaches have been limited (to some extent) due to the deficiencies identified at R. 27 and R.35.

63. **Sub-criterion 28.4 (b)** – No legal amendments have been introduced since the MER to remedy the shortcomings.

64. **Sub-criterion 28.4 (a) and (c)** – In accordance with Article 55(2) of the AML/CFT Law, the UIFAND is now granted appropriate powers to monitor AML/CFT compliance and request any information or documents from supervised entities in the exercise of its functions. However, no changes have been introduced since the adoption of the MER to remedy shortcomings in relation to limited sanctioning powers of the UIFAND. According to Article 55(2) and 88 of the AML/CFT Law, the UIFAND has the power to impose sanctions for “minor” AML/CFT infringements. However, the Government of Andorra is empowered to apply sanctions for “serious” and “very serious” AML/CFT breaches. Andorra reported that two sanctioning proceedings have been initiated for serious AML/CFT infringements in 2018.

65. Although the UIFAND has appropriate powers to monitor AML/CFT compliance, technical shortcomings in relation to the limited sanctioning powers of the UIFAND and weak market entry measures still remain. C.28.4 remains partly met.

66. **C.28.5** – This criterion was rated as *not met* in the MER due to absence of fully-fledged risk-based supervision and the problems in identifying all DNFBPs that should be subject to the supervision. In particular, the MER notes that supervision was carried out on a limited risk-sensitive

basis and it was not clear how the protocol takes account of the diversity and number of DNFBPs, or adequacy of internal controls, policies and procedures of DNFBPs.

67. Andorra has taken several actions to remedy supervision-related shortcomings, including amendments to the AML/CFT Law and development of a formal risk-based supervisory model. In accordance with Article 51(3) of the AML/CFT Law, the UIFAND determines the frequency and intensity of supervisory actions on the basis of the risk profiles of supervised entities and ML/FT risks present in the country. When conducting its offsite and onsite supervision, the UIFAND takes into account all relevant information on the specific domestic and international risks associated with customers, products and services of the supervised entities. In addition, a *Manual of internal procedures of the supervision division of the UIFAND* has been approved by the Head of the UIFAND in May 2019 which: (i) sets out general principles of the risk assessment; (ii) establishes frequency and intensity of future supervisory actions in accordance with the identified risks, (iii) provides the list of criteria that trigger review and update of the risk profile of the supervised entity; (iv) provides that the adequacy and suitability of the internal control environment will be taken into account to calculate the residual risk exposure of the supervised entity once inherent risk is established. The UIFAND is currently in the process of designing a more in-depth risk scoring methodology and starting a data collection exercise to risk assess the supervised entities. Andorra's legislative and regulatory framework is now largely in line with c.28.5.

68. Andorra has addressed a number of important deficiencies noted in the MER. Andorra mostly meets c.28.1, c.28.2, c.28.3, c.28.5 and partly meets c. 28.4. On that basis, **R.28 is re-rated as largely compliant.**

3.2. Progress on Recommendations which have changed since adoption of the MER

69. Since the adoption of Andorra's 1st Enhanced Follow-up Report, the FATF has amended R.2. This section considers Andorra's compliance with the new requirements and progress in addressing deficiencies identified in the MER in relation to this Recommendation, where applicable.

Recommendation 2 (originally rated C, no re-rating)

70. In its 5th round MER, Andorra was rated C with R.2. In October 2018, R.2 was amended to include information sharing between competent authorities, and to emphasise that cooperation and coordination should include coordination with the relevant authorities to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules and other similar provisions (e.g. data security/localisation). These changes were also reflected in C.2.3 and C.2.5 of the 2013 Methodology, respectively.

71. **C.2.3** - Andorra has relevant mechanisms to exchange information domestically concerning the development and implementation of AML/CFT policies and activities.

72. At the policy-making level: Domestically, competent authorities exchange information concerning the development and implementation of AML/CFT policies in the framework of the PC. The Permanent Committee's main legal function is to participate, through its members, in the analysis of the situation of money laundering in the Principality of Andorra and to provide the available information, both statistical and observable in the performance of its functions (Article 64(2)(a) of the AML/CFT Law), which fulfils the requirement that the mechanism should be applied also at the policy-making level.

73. At the operational level: Articles 66 and 67 of the AML/CFT Law cover the exchange of information between the UIFAND, the judicial authorities and the AFA. In particular Articles 66 (Cooperation with judicial authorities) and 67 (Cooperation with the AFA) of the AML/CFT Law enable the FIU to exchange information with judicial authorities and the financial authority and, at the operational level. MoUs have been signed between competent authorities that also cover the issue of exchange of information. Particularly, MoUs were concluded by the FIU with the Police Department and the Andorran Financial Authority (AFA). This is confirmed by relevant provisions in these MoUs that empower the competent authorities to exchange information.

74. **C.2.5** - the competent authorities of Andorra informally cooperate and coordinate with each other to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules. This is in line with the footnote to criterion 2.5. Andorra reported that the authorities are currently working on amendments to the Law on Data Protection to align it with the EU Regulation 2016/679 (*General Data Protection Regulation, GDPR*). In addition, the Data Protection Agency works in close cooperation with the AML/CFT competent authorities (judicial authorities, police) to ensure compatibility of their legislation and the current legal data protection requirements.

75. Andorra is in line with the new requirements of R.2 (c.2.3 and c.2.5). **Andorra remains compliant with R.2.**

4. CONCLUSION

76. Overall, Andorra has made further commendable progress in addressing the TC deficiencies identified in its 5th Round MER. Andorra has been re-rated on 12 Recommendations in its 1st enhanced Follow-up Report⁵. As a result of the 2nd enhanced Follow-up Report, Andorra has been re-rated to LC on 3 further Recommendations initially rated as PC (R. 25, 26 and 28).

77. Further steps have been taken to improve compliance with the other Recommendations, including those Recommendations that have been revised since the adoption of the MER, but some gaps remain. Andorra is encouraged to continue its efforts to address the remaining deficiencies.

78. Overall, in light of the progress made by Andorra since its 1st enhanced follow-up was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

Table 2. Technical compliance with re-ratings, December 2019

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
LC	C	LC	C	LC	LC	C	PC	LC	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	LC	LC	LC	C	LC	LC	LC	C	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	LC	LC	LC	LC	LC	LC	LC	LC	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
PC	C	LC	LC	LC	PC	LC	LC	LC	LC

⁵ Recommendations 2, 3, 12, 15, 16, 22, 23, 32 and 34, initially rated as PC, were re-rated as LC or C. Recommendations 11, 20 and 21 initially rated as LC, were re-rated as C. Recommendations 7 and 18, initially rated as C and LC, remained with the same rating after being assessed against the revised standards.

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Andorra will remain in enhanced follow-up and will continue to report back to MONEYVAL on progress to strengthen its implementation of AML/CFT measures. Andorra is expected to report back at the first Plenary meeting of 2021.

GLOSSARY OF ACRONYMS

AML	Anti-money laundering
BO	Beneficial ownership
CDD	Customer due diligence
CFT	Countering the financing of terrorism
DNFBP	Designated non-financial business and professions
FI	Financial institutions
FT	Financing of terrorism
HFIU	Hungarian Financial Intelligence Unit
LC	Largely compliant
ML	Money laundering
NGOs	Non-governmental organisations
NPOs	Non-profit organisations
NRA	National risk assessment
PC	Partially compliant
PF	Proliferation financing
R	Recommendation
STR	Suspicious transaction report
TFS	Targeted financial sanctions
UNSCR	United Nations Security Council Resolutions

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December 2019

Anti-money laundering and counter-terrorist financing measures - **Andorra**

2nd Enhanced Follow-up Report

This report analyses Andorra's progress in addressing the technical compliance deficiencies identified in the FSRB assessment of their measures to combat money laundering and terrorist financing of September 2017.

The report also looks at whether Andorra has implemented new measures to meet the requirements of FATF Recommendations that changed since the 2017 assessment.