COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 23 July 2008

MONEYVAL (2007) 14

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

THIRD ROUND DETAILED ASSESSMENT REPORT ON ANDORRA[1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

Memorandum
prepared by the Secretariat
Directorate General of Human Rights and Legal Affairs

[1] Adopted by MONEYVAL at its 24th plenary meeting (10-14 September 2007).

All rights reserved. Reproduction is authorised, provided the source is acknowledged, save where otherwise stated. For any use for commercial purposes, no part of this publication may be translated, reproduced or transmitted, in any form or by any means, electronic (CD-Rom, Internet, etc) or mechanical, including photocopying, recording or any information storage or retrieval system without prior permission in writing from the MONEYVAL Secretariat, Directorate General of Human Rights and Legal Affairs, Council of Europe (F-67075 Strasbourg or dg1.moneyval@coe.int).

TABLE OF CONTENTS

LIST OF ACRONYMS USED

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

I. PREFACE

1. The evaluation of the anti-money laundering and combating the financing of terrorism (AML/CFT) regime of Andorra was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force (FATF), and the two relevant Community directives (91/308/EEC and 2001/97/EC), in accordance with the MONEYVAL terms of reference and rules of procedure. The evaluation was based on the laws, regulations and other materials supplied by Andorra during and after the on-site visit from 17 to 21 October 2005. A list of the organisations and bodies met appears in appendix I of the mutual evaluation report.

2. The evaluation team comprised Mr Dirck Merckx[2], prosecutor in the Brussels prosecution department (evaluator for legal aspects), Mr Ralph Sutter, Deputy Director of the Liechtenstein Financial Intelligence Unit (evaluator for aspects relating to the Financial Intelligence Unit and the enforcement system) and Mrs Danièle Mezzana-Ghenassia, technical adviser to the Monaco financial circuits information and monitoring department (evaluator for financial aspects). They were assisted by a member of the MONEYVAL Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations and guidelines and other systems to deter money laundering and the financing of terrorism through financial institutions and non-financial businesses and professions. They also examined the capacity, application and effectiveness of these systems.

3. The report summarises AML/CFT measures in force in Andorra at the time of the visit or immediately after. It describes and analyses these measures and makes recommendations on steps to be taken to strengthen certain aspects of the system (see table 2). It also indicates Andorra's level of compliance with the 40+9 FATF recommendations (see table 1). Compliance with the EU directives is not taken into account in table 1.

[2] M. Merckx moved to another position after the visit and did not participate in the drafting of the report.

II. EXECUTIVE SUMMARY

1. Situation concerning money laundering and terrorist funding

4. This report provides a summary of the AML/CFT measures in place in Andorra as at the date of the on-site visit under the third round, from 17 to 21 October 2005 or immediately thereafter. It describes and analyses the measures in place, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Andorra's levels of compliance with the FATF 40 + 9 Recommendations.

5. Despite its small size, today the country has a developed state institutional system.

6. Andorra forms part of the "tax haven' category, in particular because of the lack of direct taxation of income, capital and companies, and an obligation of banking secrecy which is enshrined in the Constitution and recalled in the Criminal Code and the Anti-laundering Law. It is also on the list of those who have not yet given any undertakings regarding the transparency and effective exchange of information for taxation purposes, being thus defined by the Fiscal Affairs Committee of OECD as an "uncooperative tax haven". It should nonetheless be emphasised that this does not stand in the way of information exchange and mutual assistance in the field of laundering, including that concerning taxation fraud – as long as the request is not limited to fiscal matters.

7. There is considerable flexibility in the areas concerning AML/CFT, due in particular to the existence of a money laundering prevention regime and to the fact that banking and professional secrecy obligations cannot be invoked against the Unit for Prevention of Money laundering (the FIU), the Andorran National Institute of Finance and the judicial authorities.

8. According to the Andorran authorities, smuggling offences are on the decrease whilst the level of intra-territorial offences is not (with the exception of financial or "white-collar" crimes) such as to give rise to the laundering of large amounts. In most cases, the main offences were committed abroad (drug trafficking, fraud).

9. For the Andorran authorities the number of confirmed cases of laundering is necessarily defined as those resulting in conviction or a request for judicial co-operation, or the enforcement of a request for judicial co-operation concerning the laundering of assets (two convictions and twenty letters rogatory in the last four years). By the same token, the number of suspected cases corresponds to the number under investigation or preliminary examination by the police or the FIU (i.e. 70 cases in the last four years).

10. The Andorran authorities consider that the most commonly used laundering technique is that of injecting dirty money into the economy of the Principality either directly via the banking system or indirectly through economic activity by way of setting up local corporations or through acquiring property. The representatives of the police indicated that since the introduction of limits to the anonymity of bank accounts in 1990, dirty money has arrived through various channels, and no longer just via the banks. At the time of the visit, the property market was giving rise to particular concern. From the various on-site interviews it transpired that intermediaries (national

or foreign) seem to be often involved in (suspected) laundering operations. Neither laundering nor laundering methods have been specifically studied to date and there is no specific strategy to combat it (other than the implementation of the existing dispositions of prevention or repression) or the funding of terrorism (unknown in Andorra). There have been no major changes or reforms since the last assessment of Andorra in the second MONEYVAL cycle.

2. Legal system and related institutional measures

11. The criminal nature of laundering is established by Article 409 of the Criminal Code of September 2005, which devotes a chapter (IV) to the question. Under this new Code, the system of criminal law against the laundering of capital has been developed, with an extended list of offences. However, there have been retrograde steps, too, in many respects: since self-laundering, laundering by negligence and the criminal responsibility of legal persons for laundering are no longer covered. The criminalisation of laundering is worded laconically, in concise terms, whilst there is wide scope for interpretation, in the tradition of Andorran law. It is thus not surprising that some elements called for by international texts are not specifically covered. In the assessors' view, Andorran anti-laundering law would benefit from being drafted more in line with international models; this would dispel any ambiguity. Andorra has obtained two convictions for laundering, in 2001 and 2003.

12. In 2001 the Principality of Andorra signed the United Nations' Convention on the prevention of the financing of terrorism of 1999, but this Convention has not yet been ratified. The new Criminal Code outlaws the funding of terrorism through Article 366 which concerns acts of collaboration with terrorist groups. The wording of the offence gives an indication of its limitations and at present there is no explicit offence of financing terrorism. Here again it would be beneficial to spell out more specifically the various constitutive elements.

13. Mechanisms for seizure and confiscation are covered in a number of different texts. In principle, purely national measures are the subject of the Criminal Code (CC) and the Code of Criminal Procedure (CCP). Aspects regarding international mutual assistance and co-operation, both in general and specifically linked to seizure or confiscation are covered in the Law on International Criminal Co-operation, the Fight against the Laundering of Money or the Products of International Crime (LCPI). However, the new Criminal Code of February 2005 contain a number of definitive provisions amending the LCPI in its December 2000 version. Despite a legal framework for confiscation and provisional measures which neither explicitly mention a number of situations and kinds of goods nor – having regard to temporary measures – ensure their confiscation, Andorra appears to apply these provisions in an extensive manner which is to its credit. A number of actual cases of laundering were presented to demonstrate that measures have been effectively applied with regard in respect of material goods. Nonetheless, the shortcomings of the police statistics and other data (outside the context of laundering cases raised by the preventive system) are a blot on an otherwise positive record[3].

14. At the date of the visit, Andorra had not yet adopted any specific legislative measures implementing the requirements of Resolution 1267 (and of those which extended the length of application – R. 1333(2000), 1363 (2001), 1390 (2002), 1455 (2003) etc.) and Resolution 1373 of the Security Council as well as RS III of FATF. The preventive mechanism was not formally extended either to the CFT area. The detection in this respect is mainly made through international lists which have been disseminated by Financial Intelligence Unit technical statements. No

[3] The Andorran authorities indicated after the visit that there was no major technical problem to produce such statistics since the data are available in the data bases of the prosecution office and the police and only need to be compiled and used.

mechanism has been either adopted with a view to monitor efficiently the cross-border movements of cash and other values.

15. The FIU was established in 2000 and called Unit for the Prevention of Money Laundering (UPB) under the authority of the Government. Its tasks are both the classical analysis in respect of suspicions of money laundering reported and the monitoring of compliance with the LCPI standards of 2000 by all entities subject to them. It also plays an active role in taking awareness-raising measures and informing obliged entities. The UPB seems to perform its functions quite well despite the circumstances, especially the fact that various questions remained unanswered: means, powers/authority, real competence in respect of terrorism financing.

3. Preventive measures - Financial institutions

16. The financial sector – within the meaning of the Methodology - in Andorra is divided between banking sector, non-banking financial establishments and insurance companies. There is no national securities market. Stock-broking facilities are provided by the regulations but in practice the banks play this role. The prudential financial regulations are not applied to the insurance sector since the definition of the financing system in domestic legislation does not cover this sector (pending the future integration/consolidation of the financial system).

17. The LCPI is the main text regulating money laundering. The several preventive mechanisms have not yet been extended to the fight against the financing of terrorism. It was complemented by an implementing Regulation in 2000 (revised in 2002). The sectorial initiatives mainly concern banks (which represent the most important economic part). This sector is the most advanced in terms of compliance with the AML requirements. Unfortunately, important coordination problems exist between the natural supervisor of this sector – the Andorran National Institute of Finances – and the FIU (general supervisor), on the responsibilities related to AML/CFT.

18. Some Andorran specificities (numbered accounts, omnibus accounts, use of name-lenders) do not lead to an excessive opacity in the financial area because this is generally regulated (there are problems in practice, though). The conformity level with the FATF recommendations needs important improvements in the financial area. Transposing the requirements in respect of politically exposed persons, correspondent banking relationships, new technologies and introduced business transactions, as well as relations with risk countries should appear amongst the authorities' priorities[4]. The implementation of Customer Due Diligence (CDD) requirements on the one hand and the system of regulation, control and supervision on the other hand need to be reviewed. There are significant gaps in those areas.

4. Preventive measures – Designated non financial businesses and professions (DNFBPs)

19. The category of DNFBP comprises quite a long list of entities subject to anti-money laundering requirements; this is to be welcomed. In practice, the various professions have not been monitored as regards their level of compliance with the AML standards. Nevertheless, some of these entities have already started to notify ML suspicions (lawyers, notaries, real estate intermediaries). The level of self-involvement in the AML efforts seems low as a whole. The situation as regards subjection of some kinds of professions to the general AML/CFT requirements needs to be clarified rapidly.

[4] Certain measures have been taken after the on-site visit (e.g. concerning the matter of politically exposed persons)

5. Legal persons and arrangements & non-profit organisations

20. The situation as regards information access on real beneficial ownership and monitoring of legal entities is quite positive due to the modern registering system. The negative point stands in the addition of several factors, among which the unclear statute of information kept in the register of companies and the question of reliability / updating of data, both of which are to be clarified. Andorran laws do not allow trusts and "fiduciaries". The question of whether certain professions are subjected – or not - to the AML/CFT measures needs to be clarified rapidly.

6. National and international cooperation

21. National co-operation seems good as a whole. Nevertheless, some issues remain to be solved so far and this questions the real extent of coordination. Andorra has for some years now had an anti-laundering system and much has been done on the basis of personal relations to develop a cooperation climate, which is to be welcomed. Time has come now to consolidate and reinforce this co-operation, by setting up an inter-institutional and stable platform for such purposes.

22. The theme of international cooperation and the capacity of the country to be able to assist other countries enable to give a good picture. Indeed, although Andorra has not yet ratified enough international conventions, the LCPI contains various cooperation mechanisms and the country does not stick to a restrictive interpretation of conditions when it comes to granting legal assistance, which is worth welcoming.

III. MUTUAL EVALUATION REPORT

1 GENERAL INFORMATION

1.1 General information on Andorra and its economy

23. The Principality of Andorra is one of Europe's smallest countries (468 km²), situated in the Pyrenees and sharing a frontier with France and Spain. It has 72 320 inhabitants, in the following seven administrative districts, or parròquies: Canillo, Encamp, Ordino, la Massana, Andorra la Vella, Sant Julià de Lòria and Escaldes-Engordany. Each district is governed, administered and represented by a civil authority called a comú.

24. Under its constitution of 28 April 1993, Andorra is a parliamentary co-principality. The heads of state are the co-princes, the Archbishop of Urgell and the President of France, who exercise their responsibilities jointly. The Andorran parliament is the General Council, composed of 28 members elected by universal suffrage from national and local lists. The Government, or Govern, comprises a head of government and ministers.

25. Despite its small size, the country now has a properly developed state system, with a central administrative structure made up of various bodies with specific responsibilities, including several ministries, a court of auditors, ombudsman, customs service and financial intelligence unit. The judicial system is organised as follows:

- the Constitutional Court (Tribunal Constitucional), which interprets the constitution,
- civil, administrative and criminal justice is administered by individual judges or batlles, batlles sitting as a court, the so-called Tribunal de Corts (criminal court) and the Tribunal Superior de Justícia, or high court of justice.
- to safeguard the independence of the judicial system, the Andorran Constitution has established a Consell Superior de la Justicia or judicial service commission. Under Article 89 of the Constitution, the commission represents, governs and administers the judicial system, safeguards its independence and ensures the proper administration of justice.

26. The Andorran economy is mainly based on the secondary and tertiary sectors, particularly tourism, commerce and other services. The gross domestic product in 2004 was € 2 157 million, with imports and exports € 1 400 and 98 million respectively.

27. There are no exchange controls in Andorra. Money can therefore be exchanged freely.

28. The country comes into the category of "tax havens", since taxes are very low, with no direct taxes on income, capital or companies, and banking and professional secrecy are enshrined in the Constitution and in the Criminal Code and the anti-money laundering legislation. It is on the list of countries that are not yet committed to transparency and the exchange of information for tax purposes and has been classified by the OECD's Committee on Fiscal Affairs as an un-cooperative tax haven. According to a representative of the "advisory" sector whom the team met, 99% of the foreign or expatriate clientele in Andorra are there for tax reasons. However, he does not consider Andorra to be one of the countries that offer sufficient legal security for the purposes of tax optimisation.

29. Significant adjustments have been made in areas affecting money laundering and terrorist financing, with the establishment of laundering prevention arrangements which do not allow banking and professional secrecy to be invoked as grounds for refusing to co-operate with the Financial Intelligence Unit (FIU) and the judicial authorities, when operating in this area. The FIU is empowered to provide assistance on laundering linked to tax evasion – even in the absence of dual criminality – if requests do not simply concern tax matters but also have, at least in part, a money laundering element.

30. The financial services sector and retail trade have been developed and are used in particular by nationals of the neighbouring countries, Spain and France, with which Andorra has special relations, including a customs union and eligibility of Spanish and French nationals for state employment, including the judicial branch. According to certain estimates, 60% of the clients of Andorran banks are foreign nationals. Other sources state that it is difficult to establish the breakdown of assets between Andorran and foreign nationals because many foreigners are considered to be residents or give an Andorran address.

31. Although Andorrans themselves cite the 1993 constitution, and subsequent legislation, as decisive factors in the modernisation of their country, it still retains certain distinctive features from the past. The size of the country, where "everyone knows everyone", helps to explain the commitment to professional discretion.

32. So far, no investigations have been carried out into corruption, which is one of the structural elements which may significantly impair the effectiveness of the AML/CFT framework. No cases of corruption have been officially reported. As advised on site, the country's small size works both ways, in that it can encourage corruption, particularly through conflicts of interest and favouritism, but also helps to limit its effects. Above all, there is no general policy on the subject. However, Andorra has started to take steps in this direction, which is to be welcomed, and in early 2005 it became the 39th member state of the Council of Europe's Group of States against Corruption[5]. It has not yet ratified either of the two Council of Europe conventions on corruption (the criminal and civil law conventions).

1.2 General situation regarding money laundering and the financing of terrorism

Money laundering

33. According to the Andorran authorities, the country has traditionally enjoyed a high level of security and offences committed there are relatively few and minor. Its particular geographical and social circumstances have spared it from the effects of large-scale international crime such as major drug or human trafficking.

34. Until recently, cigarette smuggling was a highly profitable activity but has declined markedly since it was made a criminal offence.

[5]GRECO's joint first and second round report on Andorra was published, with its authorities' agreement, in February 2007 – see www.coe.int/greco

35. Offences committed in the country are generally not on a sufficient scale to give rise to the laundering of large sums of money. In general, the latter usually derive from predicate offences committed abroad.

36. The most important offences committed in Andorra, in terms of the profits they can generate or the scale of the criminal organisations involved, concern financial or white collar crime.

37. The predicate offences of most of the laundering offences committed in Andorra are mainly connected with drug trafficking or fraud, with drug trafficking abroad the main source of laundered money.

38. In the last four years, the Andorran authorities have recorded an increase in money laundering judicial proceedings. Nevertheless, the increase is minimal, when set alongside the total volume of criminal offences committed in the country over this period (the statistics are included in the response to the next item). There were 2.4 times more laundering proceedings in the 2004-2005 legal year than in 2001-2002, and 2.8 times more in 2003-2004. These results show that the measures adopted have helped to improve the procedures for detecting these offences.

39. The most frequent problem faced by the Andorran authorities when investigating such offences is in establishing the relationship between the laundering and the predicate offence or offences, which are generally committed abroad. International co-operation is therefore essential if Andorra is to successfully combat this type of offence.

40. Up to 12 July 2005, in proceedings concerning presumed money laundering, the batllia (courts of first instance) had seized € 40 509 427.48, GBP 127 979.49 and USD 1 533.53. In addition, over the last four years, in connection with final convictions, the criminal court has ordered the confiscation of € 1 159 045.31, USD 141 830.76 and GBP 65 332.29.

41. Efforts to secure greater awareness, AML/CFT measures and greater international co-operation have contributed to the considerable increase in laundering proceedings and investigations. This particularly concerns declarations of suspicions to the Financial Intelligence Unit (FIU).

42. The financial sector appears to have been highly conscious of the threat posed by money laundering and terrorist financing and, bearing in mind the scale and reputation of the sector, has made a major contribution to efforts to combat these offences.

43. No significant change has been observed in the laundering methods used. According to Andorra, the measures adopted and publicity for the enforcement agencies' successes have acted as a deterrent to the use of the principality as a vehicle for laundering.

44. The number of laundering cases reported by the authorities necessarily concerns ones for which there has been a criminal conviction or a request for mutual assistance. These amount to two convictions and twenty requests for assistance. There have also been seventy suspected cases of money laundering over the last four years, that is ones that have been the subject of preliminary or judicial investigations by the police or the FIU. The various cases of laundering detected recently have all been notified by the banking sector, which is considered to be very aware of the problem

and the threat it poses to this sector's reputation, both nationally and internationally. These offences are committed by international criminal organisations or national groups that are mainly from other countries.

45. According to the Andorran authorities, the laundering method most frequently used is to introduce dirty money into the country's economy directly via the banking system or indirectly through an economic activity, through the creation of national companies or the purchase of property. The police representatives said that since limits were placed on the anonymity of accounts in 1990, dirty money has entered through various channels and no longer just through the banks. At the time of the visit, the property sector was a particular source of concern for them. From various on-site meetings it appeared that national and foreign intermediaries were often used in cases of (suspected) laundering. So far, no attempt has been made to investigate laundering and the methods used to carry it out.

Terrorist financing

46. To date, the country has not dealt with any terrorist financing cases or received any requests for international legal co-operation concerned with this offence. It has received various requests for co-operation in connection with United Nations resolutions and has introduced certain measures for identifying the funds of the persons and organisations concerned. However, these measures have not enabled the authorities to detect any funds from terrorist activities or intended to finance them. So far, there have been no declarations of suspicion at the national level concerned with terrorism, and in any case there is no provision for such declarations in the anti-laundering legislation. Operationally, no investigations of terrorist financing have been launched by the police or carried out with their co-operation.

47. The FIU has provided training on terrorist financing to persons required to issue declarations, covering preventive measures and the forms this offence takes. According to the Andorran authorities, major steps have been taken to increase awareness of this problem and special care is taken when operations are carried out or planned concerning individuals and bodies that are considered a potential risk.

48. In addition, in accordance with UN resolutions, the FIU has supplied the entire financial sector with lists published outside Andorra of individuals and organisations connected with terrorism or its financing. According to information currently available, none of the persons listed has a bank account in the country and no measures have so far been taken under the auspices of existing international machinery. To supplement existing surveillance measures, the financial sector has developed a special database that collates all the relevant information submitted by the FIU, which enables all those concerned to monitor the opening of new bank accounts. The data is regularly updated in communiqués from the FIU.

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

Financial sector

49. The banking sector in Andorra – as defined by the Methodology – comprises banks, non-bank financial institutions and insurance companies. There are no exchange controls in Andorra. There

is legal provision for brokers specialising in the purchase and sale of securities but in practice banks perform this function.

50. Financial establishments in Andorra all need formal authorisation to operate, under the Financial Systems Act of 27 November 1993:

"Final provisions, two

Individuals and legal persons who participate in activities specified in sections 3, 4 and 5 without the necessary authorisation will be liable to penalties specified in the relevant regulations."

51. Financial institutions are defined in the Andorran legislation of 19 December 1996 governing the activities of the different elements of the financial system. The relevant sections are as follows:

Chapter one. Section 1

The Andorran financial system comprises:
- banks, specialised non-banking credit institutions, financial investment institutions and institutions offering other financial services,
- professional associations in the financial sector,
- executive bodies with technical authority.

Chapter two. Section 2
Banks

a. Banks shall be understood to include undertakings that receive deposits and other forms of repayable funding and grant loans, of any sort, for their own purpose.

b. Banks may also undertake the following activities:

- investment and related guarantees
- payment operations
- issuing and managing payment facilities, such as credit cards, travellers' cheques and letters of credit
- operations on their own or their customers' behalf on the markets for securities, monetary and financial instruments, futures and options
- subscription to and assistance with securities market issues
- administration and holding of securities
- asset management
- financial consultancy
- commercial information services
- hire of strong boxes

Chapter two. Section 3
Specialised non-banking credit institutions

a. Specialised non-banking credit institutions comprise financial institutions that regularly engage in one or more of the following specialist lending activities on their own behalf:

- mortgage lending
- forward sales
- leasing.
- factoring

Chapter two. Section 4
Financial investment institutions

a. Financial investment institutions are concerned with:

- asset management
- mutual fund management
- risk capital management

Chapter two. Section 5
Institutions offering other financial services

a. Financial institutions offering other financial services regularly engage in the following activities:

- exchange operations
- financial advice
- acting as financial intermediaries

52. The following table shows the number of authorised establishments and their size:

	2003	**2004**
Banks	**6 groups**	**6 groups**
With no foreign shareholding	2 groups	2 groups
With foreign shareholding	4 groups	4 groups
Specialised non-banking credit institutions	**1**	**1**
investment companies	**14 (3 inactive)**	**14 (3 inactive)**
Asset management companies	5 (1 inactive)	5 (1 inactive)
Mutual and/or pension fund management	9	9
Banking	6 (1 inactive)	6 (1 inactive)
Non-banking	3 (1 inactive)	3 (1 inactive)
Risk capital companies	0	0
Other institutions	**0**	**0**

53. On 31/12/2004, the sums managed were as follows:

- banks: € 17 463 401 000
- institutions managing mutual funds: € 6 450 013 000
- other asset managing institutions: € 213 645 000

54. Asset management companies deal with € 73 737 000 in their intermediary capacity.

55. The team was informed that the structure of the financial industry had remained relatively stable. There had been one merger of two Andorran banks in 2001. As indicated in Section 1.1, according to certain estimates 60% of the clients of Andorran banks are foreign nationals. Other sources state that it is difficult to establish general breakdowns of assets between Andorran and foreign nationals because many foreigners are considered to be residents or give an Andorran address.

56. The insurance industry is governed by the insurance regulation legislation of 11 May 1989. This requires all those concerned in this sector to seek authorisation from the government.

57. The Andorran insurance sector comprises local companies, branches of foreign insurance companies and brokers. It is supervised by the finance ministry, though it does not form part of the Andorran financial sector. However, under the new legislation governing this sector, insurance will be incorporated into the financial system and thus be supervised by the Andorran national finance institution (INAF).

58. The insurance sector accounts for less than 1% of the financial system's assets. Insurance products are distributed either by Andorran companies, most of which are controlled by banks, or via the branches of foreign – mainly French or Spanish – companies.

59. The sector is represented by two associations: the AAA and ASAAR, respectively the Andorran insurance, and insurance and reinsurance, associations.

60. There are currently 21 branches of foreign insurance companies and 13 national insurance companies operating in Andorra.

Designated non-financial businesses and professions (DNFBPs)

61. A strict reading of section 45 of the anti-laundering legislation shows that the list of DNFBPs is not exhaustive, for two reasons. Firstly, the first paragraph uses the term "in particular" in connection with affected professions and activities, which means that the list could be extended. Secondly, the list of high value commercial activities (over € 15 000) that are covered refers explicitly to the trade in precious stones and metals but from the wording it appears that other forms of commerce, particularly in vehicles and works of art, could also potentially be concerned.

62. There are no casinos in Andorra. Games of chance are banned by law, other than bingo establishments, of which there are currently two. These are governed by the Act of 28 November 1996 and can only be opened with government approval and after a deposit has been lodged with the Andorran national finance institution (INAF). The legislation specifies the conditions of play and the obligations concerning customer identification. The last paragraph of section 4§3 specifies that the company's annual accounts must be closed on the last day of each civil year and must be audited by external auditors practising in Andorra. Copies of the annual report and the auditors' report, duly signed by all the company directors, must be presented to the government before 31 March of each year. The prizes are fairly small – some € 100 – and the jackpot of about € 12 000 must be paid by non-transferable cheque in the winner's name. There have been no significant changes since the last evaluation. The section of the finance ministry responsible for overseeing

this activity monitors these external audits and carries out annual inspections. No failures to meet legal requirements have been reported.

63. Real estate agents belong to an association, AGIA, with 251 members. Under the Act of 15 December 2000 and the implementing regulation of 21 March 2001, estate agents must sit an examination organised by the government, which awards certificates of aptitude, and meet other conditions laid down in law. The exam covers national legislation to combat laundering and terrorist financing, on which specific questions are asked. The FIU has helped to devise courses on laundering and terrorist financing and exam questions on the subject. There have been no significant changes since the last evaluation. Non-residents may buy not more than one property of no more than 1000m² per family unit. They require government authorisation and the authorities maintain a register of such properties.

64. The Bar association comprises 124 lawyers practising in Andorra. The profession is governed by a 1993 code containing its statutes and ethical rules.

65. Notaries are governed the Act of 28 November 1996, section 15 of which requires the government to determine the number of notaries to reflect the country's needs, with between one and four notaries per 10 000 inhabitants. There are currently four notaries in a collegial body called the chamber of notaries.

66. The profession of dealer in precious metals and stones is carried out by jewellers and watch repairers. Some 130 enterprises are involved. Most of those active in this sector belong to a jewellers' corporation.

67. The Andorran authorities have not supplied information on other types of dealer in high value items.

68. External accountants and tax assessors are also listed in the anti-laundering legislation. In the absence of a developed fiscal policy, accountants and auditors are mainly used at present for commercial accounting purposes. A few accountants are currently trying to organise the profession to raise quality standards and introduce a formal recognition system into a country where little use is made of their services, which according to representatives whom the team met, are seen as not always very professional.

Other advisory professions

69. There are other professions under various titles, offering tax, legal and company formation and management advice): *economistas* (about 85 in Andorra, offering marketing, accounting, tax advisory and audit services), *gestorias* and *asesorias* (unknown number, offering varied services in such areas as tax advice and accounting, book keeping, asset management, company formation, drafting contracts, assistance to "passive residents" and more generally – according to certain Andorran professional sites – all forms of assistance and intermediation in completing administrative, civil and commercial formalities. Mention is also made of a *financiera* of British origin, whose main activity is supplying investment advice.

70. The assessors have not been able to determine precisely which of these are covered by the anti-laundering legislation. Representatives of some of them, such as the economistas, met on the spot considered that they were subject to the AML requirements. However, the efforts of the authorities and the Andorran laundering prevention unit have so far focussed on the previously mentioned categories. In practice, some of these advisory professions are not recognised as such, which creates problems from the standpoint of their explicit inclusion in the legislation.

71. Some professionals are involved in advising on and establishing arrangements for "passive" residents to optimise their tax situation, for example a British businessman seeking to avoid taxation on capital appreciation when divesting himself of his company prior to retirement. As it was explained on site, these professionals help to establish arrangements in places such as the Virgin Isles and Jersey, with the help of a lawyer on the spot. The aim, by keeping accounts in the various countries, is to ensure that those concerned are not taxed in any of them (in the example quoted, in Andorra, Virgin Islands/Jersey or the United Kingdom).

72. It was stated that these professions can not only establish companies but also they can administer and provide a domicile for them.

Clientele

73. Foreign customers, including companies and small and medium-sized savers, make great use of Andorran financial services. Data on the structure of this clientele is sometimes difficult to obtain, as the assessors discovered, or, as they were informed, not always reliable, since financial operators are sometimes inclined to exaggerate the figures on their customers for reasons of prestige.

74. Professional associations whom the team met, such as the association of non-banking financial institutions, said that they did not have any statistics.

75. Data is also hard to come by because of a lack of transparency, for example linked to the use of name-lenders and omnibus accounts, and – within the profession of notaries - exaggerated notions of the confidentiality of information on such matters as company shareholdings.

Attitudes to anti-laundering legislation

76. Andorra is a fairly small country where the perceptible crime rate is low and security is a high priority. Violent and street crime are almost non-existent. The assessors' attention was frequently drawn to the importance Andorrans and their authorities attach to this tranquillity and the country's reputation.

77. As in other countries, much has been done in Andorra in recent years to introduce and strengthen measures to combat money laundering, particularly with the introduction of the preventive system of the anti-laundering legislation on 2000 (amended in 2002) and the establishment of a financial intelligence unit.

78. Because of the size of this sector, banks have been, and largely remain, the main private sector partners in the authorities' activities. The anti-laundering legislation does not yet include all the necessary elements laid down in international norms but the Andorran banks' association has taken additional steps, such as the adoption of a code of conduct including the Basle Committee's standards and a ban on customer anonymity.

79. Available statistics suggest that various sectors are co-operating with, and declaring suspect operations to, the FIU, but that this is not always the case, one exception being the insurance industry. The non-banking financial sector is fairly varied and the transposition of the anti-laundering legislation requires a considerable investment in time, measures and staff, which may sometimes be difficult to reconcile with the reduced scale of these undertakings. Generally speaking, DNFBPs require greater efforts if they are to be fully involved in anti-laundering measures.

80. The assessors consider that various Andorran practices which sometimes breach the law or exploit gaps in it (e.g. use of name lenders), affect the level of transparency, which is difficult to reconcile with anti-laundering measures.

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

Companies

81. The commercial companies regulation of 19 May 1983, which has force of law, forms the basis for subsequent regulations governing the formation of companies.

82. Commercial companies may take the form of commercial partnerships, and public and private limited companies. Two-thirds of the authorised capital of all Andorran companies, except banks, must be of Andorran origin.

83. Andorran capital is considered to be the capital of individuals and legal persons of Andorran nationality, and that of foreign individuals with at least 20 years' residence in the country. Under an agreement between Andorra, Spain and France, Spanish and French nationals only require a minimum of ten years' residence.

84. Public companies must have a minimum capital of € 30 050.61, which must be totally subscribed and paid up.

85. Companies are officially registered with a notary, following government approval. Legal personality can only be obtained after the registration with the notary is recorded in the companies register. Nor can any modification be binding on third parties until it has been formally registered. The companies register is a central register that is regularly updated. The register is public and information is provided in response to requests from institutions or the general public. Registration documents and all other documentation concerning companies recorded in the central register are maintained in the archives of the ministry of the economy. Enforcement and judicial agencies have free access to this documentation. The department of commerce thus retains all the documentation relating to the identity of the members of companies, their statutes, declarations concerning the antecedents of non-residents, the powers granted to third parties and so on. Access to the information is computerised.

86. The commercial companies regulation of 19 May 1983 required - in principle - bearer securities issued by existing companies to be registered with individuals or completely dispensed with. However, at the time of the visit, some such bearer instruments still existed[6].

[6] the Andorran authorities stressed that at the time of adoption of the report, the last bearer securities have ceased to exist.

87. By virtue of sector-specific regulations, there are book-keeping duties for the entities which are part of the « financial system » (banks, non bank financial houses), insurance businesses. As for the latter, there was no unanimity during the on site visit about the existence of such duties, which was apparently due to the absence of sanctions in the regulations, apart from those penalties applicable to fraudulent bankruptcy. On the other side, there is clearly no general financial audit requirement, except for « financial system » entities and insurance companies.

Associations

88. There are no provisions relating to foundations.

89. Associations are governed by the Associations Act of 29/12/2000 and a register of associations regulation of 01/08/2001. The Secretariat General of the government (and its legal services) are responsible for their application.

90. The agreement of at least three individuals or legal persons is necessary to create an association. They must declare that they wish to do so and supply the statute setting out the rules governing its organisation and operations. The record of an association's foundation must include:

> a. in the case of individuals, names and forenames, addresses, passport or other identity document numbers and dates of birth of the founders; in the case of legal persons, names, official addresses, registration numbers on the relevant registers and the names and addresses of the individuals representing the bodies concerned for the purposes of creating the association and relevant accreditation documents. Foreign nationals must also record their passport numbers and, if necessary, their residence permits or authorisations, in the case of individuals, or evidence that they have been founded in accordance with their national legislation and their registration on the corresponding register, in the case of legal persons.
>
> b. the signatures of the individuals concerned confirming their wish to found the association, or, in the case of legal persons, the signatures of their representatives together with the certificate adopted by the bodies concerned establishing their agreement to found the association.
>
> c. the adopted statutes that will govern the association, which will include the information specified in section 6 of the law.
>
> d. the names of the members who will form the association's governing bodies. An interim committee must be appointed, and recorded in the foundation documents. It will be responsible, *inter alia*, for organising the election of members to the permanent governing bodies, within a specified time scale.

91. Newly founded associations are reported to the register of associations, managed by the legal service of the government secretariat, with a notarised copy of the record of their foundation. Registration has declarative, but not constitutive, force. Unregistered associations are governed by section 16 of the 2000 legislation. Administrative and judicial institutions have unrestricted access to information about associations.

92. Associations must maintain certain records and registers, including account books, which must be presented to the register of associations (section 28.1). The government may require associations receiving public funding to submit additional accounting documents (section 28.2).

93. Associations subject to the 2000 legislation may undertake economic activities if this is provided for in their statutes and they are not intended, explicitly or implicitly, to secure financial benefits to be shared among their members.

Other legal arrangements

94. According to the Andorran authorities there is no legislation authorising legal arrangements (such as trusts, fiduciaries etc.) in Andorra. Foreign trusts nonetheless operate in the country.

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

a. AML/CFT strategies

95. Andorra's anti-money laundering and combating the financing of terrorism (AML/CFT) strategy is based on international co-operation, while taking account of the country's distinctive features. This co-operation must take place at all levels and be rapid and effective.

96. The team was also told that particular stress is laid on prevention, including education for all sectors of society, and enforcement.

97. The evaluators were not informed of any concrete projects or plans, aimed at developing these approaches, apart from the planned amendments and updating related to the anti-laundering Act (LCPI), which would incorporate recommendations from the IMF and MONEYVAL. The evaluators were told that the IMF and MONEYVAL evaluations would provide the authorities with the inputs necessary to introduce the possible improvements needed in respect of the FATF recommendations.

b. The AML/CFT institutions

The ministries

Ministry of Finance

98. This has final authority in Andorra in financial matters. It comprises departments covering general affairs, the budget and assets, taxes, surveys and customs. The ministry participates in various projects with international bodies and public sector institutions in other countries, including the European Commission, OECD, IMF and the French and Spanish ministries of finance and the economy. The minister can appoint up to two persons with the necessary financial qualifications to the FIU. He appoints the head of the Unit, jointly with the minister of justice and the interior. The finance minister is informed as necessary of any problems that might arise in the FIU, and of any measures that might be introduced to improve its operations.

99. According to the Andorran authorities, the various departments of this ministry are particularly aware of the importance of combating laundering and terrorist financing. An Internet site (www.finances.ad) has been established, which contains all available information on the relevant Andorran legislation and the evaluation reports of international bodies such as MONEYVAL and the IMF.

Ministry of Justice and the Interior

100. The Interior ministry is responsible for the police, the prison, the register of births, marriages and deaths, and immigration, forensic medicine, labour and passport departments. This ministry controls the FIU budget and the interior and finance ministers jointly appoint its head.

Ministry of Foreign Affairs, Culture and Co-operation

101. The Andorran authorities state that the country is a member of several international organisations whose current principal priorities include the fight against money laundering and terrorist financing. The United Nations, the Council of Europe and Organisation for Security and Co-operation in Europe are all concerned with drawing up new and effective legal instruments that Andorra tries to abide by, via a large number of agreements.

102. The role of the Foreign ministry, and more particularly of its multilateral affairs and development co-operation directorate, is to regularly monitor anti-laundering conventions drawn up by international organisations, take part as far as possible in their drafting and report on how they might relate to the Andorran legal system, with a view to recommending their adoption to the full executive. The anti-laundering act (LCPI) made the Foreign ministry responsible for receiving requests for international co-operation, which are sent through diplomatic channels, and for replying by the same route once they have been executed. Following the entry into force in Andorra of the European Convention on Mutual Assistance in Criminal Matters, since 25 July 2005 it has no longer been necessary to pass through diplomatic channels, in the interests of speed and efficiency. The Convention grants justice ministries the main role in dealing with international requests for assistance in criminal matters, rather than Foreign ministries. Requests for co-operation in criminal cases from countries that are party to the Convention now have to be sent to the justice and Interior ministry, which also deals with the replies. Requests for co-operation in civil matter and those relating to criminal cases from states that are not members of the Convention will continue to pass via the Andorran Foreign ministry.

Ministry of the Economy

103. This includes, inter alia, the department of commerce and industry, which deals with matters relating to companies.

Bodies of the financial and other sectors

104. The main body is the Andorran national finance institute (INAF), established in 1989. As well as its general responsibility for managing public funds in the general interest (its Treasury function) and organising and protecting the country's economic and financial interests, in its role of central bank, INAF has general regulatory and oversight responsibility – though not in the anti-laundering field – for the Andorran financial sector, both banks and other financial establishments.

105. New legislation on INAF came into force in November 2003, giving it a new governing body and broader oversight and enforcement powers, in accordance with a second evaluation round recommendation.

106. However, the withdrawal of licences remains the responsibility of the government, which also issues licenses to and supervises the insurance sector. It is also the government that issues licences for activities coming under the DNFBP heading, as understood under the FATF terminology.

Criminal justice and operational bodies

The Financial Intelligence Unit (FIU) – the laundering prevention unit

107. The FIU is the sole independent body responsible for preventing and combating laundering and terrorist financing.

108. The anti-laundering act (LCPI), which came into force on 24 July 2001 (a regulation implementing the Act was approved in 2002), established an FIU, called the anti-laundering unit, or UPB [the two terms are used interchangeably in this report]. The UPB is an independent body which collates and assesses all declarations of suspected money laundering. It initiates and co-ordinates measures to prevent laundering and also:

- directs and encourages prevention and enforcement measures;
- gathers all necessary information from persons subject to statutory requirements, the police, other official bodies, foreign counterpart organisations and so on;
- collects, collates and analyses declarations of suspicion;
- co-operates with equivalent foreign organisations;
- forwards details of criminal offences to the prosecution service;
- forwards details of administrative offences to the government;
- submits proposed legislation and regulations on laundering to the government.

109. The FIU is funded by the Justice and Interior Ministry and includes a) one person with financial skills appointed by the finance minister (the law allows up to two such persons), b) a judge appointed by the judicial service commission, c) two police officials appointed by the justice and Interior ministry (the law allows up to two such persons), and d) an administrative member of staff. The FIU has the necessary technical facilities to perform its task, in particular a secure computerised information network with various data bases for analysing and processing national and international information and direct or indirect access to information from governmental institutions.

The police

110. The Andorran police force was established by a decree of 11 July 1931. It is currently governed by the Act of 27 May 2004. The police force comes under the Justice and Interior ministry.

111. There is a single police force in Andorra with civilian status, including a criminal police division, comprising investigation and inquiries departments and the Andorran central Interpol office. The investigation department includes an organised crime and laundering unit of eight persons, who are concerned with economic crime. Its members are specially trained to deal with any offences with a financial aspect, particularly, laundering, terrorist financing and corruption. They assist the relevant investigating judges and co-operate with foreign police forces through Interpol.

112. The Act of 27 May 2004 contains provisions on the public service covering such topics as recruitment, promotions, work assessment, disciplinary arrangements and organisation.

113. The director and deputy director are appointed directly by the Interior minister for the duration of his or her term of office. The post of director may be filled by a non-civil servant, whereas the deputy must come from the public service.

114. Article 94 of the Constitution stipulates that judges and prosecutors direct the activities of the police in the judicial domain, in accordance with the law. Under chapter II of the Justice Act, the police shall carry out any duties ordered by investigating judges or prosecutors to obtain evidence or inquire into events that may amount to an offence.

Judicial system and authorities

115. There have been no changes in procedure and responsibilities since the last evaluation. For example:

- criminal cases are investigated by the police under the direction of an investigating judge;
- major offences are heard at first instance by the *Tribunal de Corts* (criminal court) and on appeal by the *Tribunal Superior*, or high court of justice; minor offences are heard by the *batlles;*
- the prosecution service is involved throughout the proceedings and conducts prosecutions.

116. The Andorran Constitution, which was approved by referendum on 14 March 1993, safeguards judicial independence. The Justice Act approved by parliament on 3 September 1993 enables the judicial system to exercise its powers independently and impartially.

117. To safeguard the independence of the judicial system, the Andorran Constitution has established a *Consell Superior de la Justicia* or judicial service commission. Under Article 89 of the constitution, the commission represents, governs and administers the judicial system, safeguards its independence and ensures the proper administration of justice. It comprises five members, one appointed by each of the two co-princes, one by the Síndic General, who is the speaker of the parliament, one by the head of government and one by the judiciary. The commission appoints members of the prosecution service, on the recommendation of the government, and judges and court registrars. It acts as the disciplinary authority for the judicial system by applying the disciplinary provisions of the legislation governing the judicial system and the prosecution service, and the Judicial Administration Act of 27 May 2004.

118. Criminal cases may be heard by individual *batlles*, batlles sitting as a court, the so-called *Tribunal de Corts* (criminal court) and the high court of justice. There are three levels of criminal courts. The batlles, or first instance judges, sitting as individuals, hear petty offences and investigate all criminal cases. Sitting as a court, they hear other lesser offences. There are currently five investigating judges, to whom cases are allocated on a rotating basis. Investigating judges also sit in the court of batlles.

119. The criminal court hears other criminal cases at first instance and supervises the enforcement of sentences and other decisions, through its president. It also hears criminal appeals against decisions of the lower courts.

120. The high court of justice comprises a president and eight judges appointed by the Judicial Service Commission. It is the highest court in Andorra. It hears all the appeals lodged against decisions at first instance of the civil and administrative courts and against judgments of the criminal court.

121. Once judgments are final, they cannot be modified or quashed unless, following an individual appeals procedure, the Constitutional Court, which is the supreme interpreter of the Constitution, rules that they have been handed down in violation of a fundamental right.

122. The status of judges[7] is laid down in chapter 5 of the Justice Act, which establishes the rules governing i.a. incompatibilities and prohibited activities, the disciplinary system and civil and criminal liability.

123. The prosecution service, led by the chief prosecutor, is responsible for defending and applying the legal system and maintaining the independence of the courts, and for ensuring that the law is applied in the courts to protect citizens' rights and defend the public interest. It operates according to the principles of legality, unity and internal hierarchy (article 93 of the Constitution).

124. The members of the prosecution service are appointed by the Judicial Service Commission, on the recommendation of the government. The legal status of the prosecution service is governed by the act of 12 December 1996, which states in its introduction that it is a distinctive institution because it has links with the judicial, executive and legislative branches of government. The act lays down a series of provisions in four sections that determine the functions of the prosecution service, its relations with the executive, legislative and judicial branches, its organisation, and incompatibilities and circumstances for judges' withdrawal.

125. Investigating judges, who are *batlles*, are responsible for investigating laundering and terrorist financing offences. Such cases are then heard at first instance by the *Tribunal de* Corts, or criminal court.

The Customs Department

126. The Andorran customs service comprises some hundred officials. It has a directorate and three sub-directorates. Its main duties are: a. fiscal, that is raising taxes, since a significant part of public finance comes from indirect taxation; b. economic, that is ensuring that foreign trade operations are lawful, against a background of the liberalisation of international trade and specific national circumstances, and c. protective, since its leading position on the country's borders, its organisation and its experience in the field of research and monitoring mean that the customs service's activities extend to many areas of government policy.

[7] The lack of a career structure for judges and prosecutors was criticised in the GRECO evaluation of Andorra. See www.coe.int/greco

127. Apart from these three key functions, it also has a transversal responsibility for combating fraud. This calls for a multilateral approach since it can be linked to various types of customs offences, such as commercial fraud (falsely declared goods, value or origin and import or export without a declaration), counterfeit or pirated goods, smuggling of highly taxed items, drug and precursor trafficking, arms smuggling and money laundering. Here again, the customs co-operate closely with numerous other agencies, such as the FIU in the case of money laundering.

c. The approach to risk

128. The FATF recommendations enable financial institutions to adopt a risk-based approach. This approach may be reflected in the guidelines issued by the surveillance authorities.

129. The Andorran authorities state that numerous contacts have been made with a view to establishing procedures for measuring underlying AML/CFT risks. These studies are currently based on indicators established by the FIU and on the statistics of enforcement and judicial bodies.

130. Andorra does not plan to introduce a risk-based approach to AML/CFT measures. Risk is only taken into account when the activity is conducted on a very occasional or limited basis.

d. Progress since the last MONEYVAL mutual evaluation (March 2002)

Legal aspects

131. The Andorran authorities have supplied the following information:

- *"The evaluation team therefore repeats its first evaluation round recommendation that the Andorran authorities modify the definition of laundering by broadening the scope of predicate offences to include all criminal offences."*

132. Andorra has adopted a new Criminal Code that broadens considerably the definition of laundering. It will come into force on 23 September 2005 (details of the new offence of laundering appear in the answer to question 2.1).

- *"Having regard to judicial practice concerning articles 145 (commission by omission) and 303 (negligence), the Andorran government should reconsider the possibility of making failure to declare suspicions a criminal offence".*

133. In the section relating to general criminal law, the Criminal Code provides for the commission of offences by omission (article 22). Persons who intentionally fail to declare suspicions will be guilty of a laundering offence. If the omission is not intentional, the anti-laundering legislation, which establishes the administrative liability of persons who fail to fulfil their legal obligations, will apply. Severe penalties are laid down and have a significant deterrent effect.

- *"In this context, and in order to avoid operational difficulties, it should be specified that when, in accordance with section 47 of the Act, the laundering prevention unit freezes a suspicious operation that turns out not to be so, it cannot be held liable for any harm caused to the bank's customer."*

134. This recommendation is being considered as part of the review of the anti-laundering legislation.

- *"the evaluation team recommends that the Andorrans consider reversing the burden of proof in confiscation proceedings, when existing methods cannot be used to determine the origin of funds suspected to be of criminal origin."*

135. This proposal has been considered in the context of the new Criminal Code but has not been accepted.

- *"facilitate international co-operation by informing requesting states of changes introduced under the anti-laundering legislation, particularly concerning the judicial co-operation that <u>can</u> be granted in money laundering cases when the offence that concerns the requesting state extends beyond Andorra and the specific provisions of the legislation concerned with interim measures and confiscation."*

136. Andorra has ratified the European Convention on Mutual Assistance in Criminal Matters, which will be applicable in July 2005. Information has been supplied on the legislation applicable to co-operation via international reports drawn up by the institutions responsible for combating laundering and terrorist financing.

- *"develop the organisational structure of the laundering prevention unit (UPB). The proliferation of surveillance authorities undoubtedly represents a cost and is not always beneficial to the supervisory system. In this context, even if the UBP is guaranteed a wide measure of management autonomy, consideration might be given to incorporating it into the Andorran National Finance Institute (INAF)".*

137. The organisational structure of the FIU is now fully developed. The anti-laundering legislation has established a channel of communication between the FIU and INAF in the form of information exchanges, when the financial sector is involved. Incorporating the FIU into INAF could threaten the UPB's autonomy and independence and restrict its activities.

- *"empower the UPB to impose directly administrative penalties, thus avoiding the need to involve a political body - the government – in technical problems that also entail the communication of confidential information on the operational capacities of persons subject to the Act of 29/12/00;"*

138. This recommendation is being considered as part of the review of the anti-laundering legislation.

- *"safeguard the operational independence of the UPB, which must be able to carry out its responsibilities without receiving instructions from or being open to the influence of other bodies concerned with money laundering (Ministry of Finance);"*

139. The anti-laundering legislation establishing the FIU lays down the functions of the Ministry of Finance, which are confined to appointing the unit's financial experts and, jointly with the Minister of Justice and the Interior, its director.

140. These provisions do much to safeguard the FIU's independence, which cannot be influenced by outside bodies or authorities. Moreover, in carrying out their responsibilities, other authorities have not transgressed this rule. The FIU has always enjoyed complete confidence and freedom in carrying out its duties.

- *"to facilitate international co-operation, the conditions governing such co-operation should be relaxed, since sections 55 and 56 of the legislation could place too many obstacles in the way of effective collaboration between the UPB and other financial intelligence units."*

141. Since the scope of the offence of laundering was extended in the new Criminal Code, the FIU has been able to collaborate on a much broader scale. The only restrictions on international collaboration are those provided for in the memorandum of understanding (MOU) procedure of the Egmont Group.

Financial aspects

142. The Andorran authorities have supplied the following information:

- *"turn INAF into a full banking supervisory body, by making it independent of political bodies at all levels, and authorising it to carry out on-the-spot inspections without having to request prior approval from any authority, to impose directly administrative penalties, to report criminal cases to the courts and to communicate with counterpart international bodies, particularly to carry out proper checks on the safety and soundness of banks and other financial operators."*

143. Much work was carried out in 2002, both in INAF and in the finance ministry, to assess the whole body of legislation governing the surveillance bodies of our neighbouring countries and of ones with similar characteristics to Andorra. These activities formed the basis for the Andorran National Finance Institute (INAF) Act, which was approved on 23 October 2003. It makes significant changes both to the independence of the surveillance bodies vis-à-vis central government and to their powers and the resources at their disposal. We will now describe all the changes that have been completed.

144. Firstly, it should be noted that the second evaluation report noted that the powers of INAF had increased, at the expense of the High Finance Commission (CSF). However, the CSF as such had not yet been dissolved, which is now the case following the adoption of a new law distributing among the Ministry of Finance, the UPB and the INAF the functions held previously by the CSF.

145. Secondly, INAF has been allocated new responsibilities. Some of these responsibilities had already been incorporated in the Act of 12 June 1989, as amended by that of 3 September 1993. However, to clarify the whole body of legislation about the surveillance authority, the new Act was accompanied by the partial repeal of the 1989 and 1993 legislation. The following is a list of all the responsibilities of INAF:

1- Supervising and monitoring the financial system (management process to identify, measure, monitor and control significant risks)
2- Disciplinary authority and the power to impose penalties
3- Treasury functions and management of public debt
4- Acting as financial agent
5- Policy advice and research
6- International relations

146. In carrying its task, INAF is now totally independent of the central authorities, a point emphasised in section 1 of the Act. The surveillance authority therefore has the necessary independence vis-à-vis the political authorities without taking account of other technical aspects. There has been considerable progress in this area. Particular attention has also been paid to the system for appointing members of the Institute's governing body and its director. All of these individuals are required to have particular qualifications.

147. INAF's aim is to secure both financial stability, by avoiding crises, and a properly functioning financial system in general. It has been given new powers to carry out this role. One important change under the new legislation is that it can now make on-the-spot inspections without the need for prior approval from any body whatever. It is planned to establish a surveillance team in situ when the surveillance authority's new decision making bodies are appointed. The surveillance authority may also issue recommendations and warnings, and can request any information it needs to carry out its responsibilities.

148. To ensure that the surveillance authority has sufficient resources to perform its functions, INAF should be financed from the management of its assets, the development of its activities and state grants.

149. INAF now also has disciplinary authority and the power to impose penalties. It continues to investigate all the problem areas identified in its surveillance activities and can impose penalties on establishments that have committed minor or serious offences. The investigating and enforcement organs are, respectively, the institute's directorate general and governing body. The finance ministry is responsible for dealing with very serious offences, although their investigation is also the responsibility of INAF. The penalties that can be imposed under the law vary according to the seriousness of the offence and range from fines to prohibiting the employment of certain persons in the sector concerned and/or the replacement of an establishment's directors. Establishments may also have their licence to operate withdrawn.

150. Finally, the new legislation grants the surveillance authority the power to establish contacts and enter into international co-operation agreements with its international counterparts and other national and international official bodies with financial responsibilities.

- *"also transfer to INAF responsibility for supervising insurance and reinsurance companies, in view of the continuing integration of the financial and insurance markets and the shares held by Andorran banks in insurance companies;"*

151. The new legislation governing the insurance sector will treat it as part of the financial system and make it subject to INAF supervision.

Law enforcement aspects

152. The Andorran authorities have supplied the following information:

- *"the evaluation team recommend that the Andorran authorities consider the situation collectively, to identify the problems that prevent the existing system from securing more convictions. Widening the scope of the definition of laundering and abandoning the restricted list of predicate*

offences should help to make the system work better, though it is only one of a number of factors to be taken into account. Other problems should be considered, including possibly, those of available resources and administrative, judicial and police personnel. The examination should also cover the difficulties experienced by Andorra in obtaining from other countries necessary evidence of predicate offences committed abroad."

153. An assessment has been made of the various sectors involved and how to achieve their co-ordination and collaboration at national level. Naturally, the abandonment of the restricted list of predicate offences will make a contribution. National policy has emphasised this co-ordination and additional resources have been made available to various institutions such as the FIU, which has recruited a new member from the police force. Closer links have been established between institutions and international co-operation has been developed at all levels, both operationally and in legislation.

- *"strengthen supervision of the legal and notarial professions and establish channels for transmitting declarations of suspicious or unusual transactions to the UPB;"*

154. Various training sessions and meetings have been organised with these two groups to inform them of the measures laid down in the LCPI and the channels for transmitting declarations.

- *"increase awareness of laundering and supervision arrangements in the property sector and establish channels for transmitting declarations of suspicious or unusual transactions to the UPB;"*

155. The FIU has organised training in conjunction with the estate agents' association. The unit has also helped to develop the subject of legal obligations concerning laundering, which is part of the compulsory training for those wishing to sit the government examination leading to the award of the certificate of aptitude that all those wishing to enter the profession must pass. A new training project that involves the FIU in university teaching in this area was implemented (a first training session took place in November 2005)[8].

[8] Other sessions took place after that date.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Legislation and regulations

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

156. Andorra ratified the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances on 23/07/1999 and signed the United Nations Convention on Transnational Organised Crime of 15 November 2000 on 10/11/2001. It ratified the Strasbourg Convention on 28/07/1999.

157. It has adopted a new Criminal Code, which was approved by parliament on 21 February 2005 and came into force on 23 September 2005, about a month before the evaluation team's visit. Laundering is now covered by chapter IV of part XXII.

Chapter IV: Offences of money or securities laundering

Article 409 Money or securities laundering
Persons who take steps to conceal the origin of money or securities, and assets purchased with them or their equivalent value, deriving from any serious offence punishable by a maximum term of imprisonment of at least three years, or a lesser offence of procuring or drug trafficking, being aware of their origin and without having been convicted as the perpetrator or an accomplice, shall be liable to one to five years' imprisonment and a fine of up to three times their value.
Attempts to commit an offence, conspiracy and incitement are offences.

Article 410 Aggravated circumstances
A term of imprisonment of three to eight years shall be imposed if any one of the following circumstances applies:

1. When the offence is committed by an organised group
2. When the offence is committed on a regular basis
3. When the perpetrator of the laundering operates in a bank or other financial establishment, an estate agency or an insurance company. In this case, the court may impose an additional penalty of disqualification from performing this occupation or from the post for up to ten years.

Article 411 Additional consequences
The court may also order any of the following measures:
1. Seizure of the proceeds of the offence, in accordance with Article 70.
2. Winding-up of the organisation or permanent closure of its premises or establishments open to the public.
3. Suspension of the organisation's activities, or closure of its premises or establishments open to the public for up to five years.
4. A ban on activities or commercial or other business operations whose exercise facilitated the offence for up to five years.

Article 412 Application of the criminal law
The previous three articles shall be applicable even if the predicate offence was committed abroad, if that offence was also a criminal offence under Andorran law.

Article 413 Mitigating circumstances
Persons whose disclosures during inquiries or an investigation help to dismantle a network of drug traffickers or money launderers shall be entitled to the reduced sentence specified in Article 53.

The courts may decide not to impose prison sentences on persons who, before the opening of inquiries or an official investigation, spontaneously supply information about the aforementioned offences in sufficient detail to justify the arrest of those responsible.

158. The Andorran authorities state that the main change to the criminalisation of laundering is the extension of the list of predicate (and underlying) offences. There were five of these under the former Article 145: drug trafficking, illegal confinement, unlawful arms sales, procuring and terrorism. This improvement is a response to concerns expressed in the first and second round evaluation reports.

2.1.1 Description and analysis

Recommendation 1

159. This recommendation – and more particularly criterion 1.1 – requires countries to criminalise money laundering on the basis of United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and United Nations Convention against Transnational Organised Crime, 2000 (the Palermo Convention), that is the physical and material aspects of the offence (see Article 3(1)(b)&(c) of the Vienna Convention and Article 6(1) of the Palermo Convention).

160. Article 409 of the new Code, which defines the offence, deals with its material elements fairly briefly but in broad terms - *persons who take steps to conceal the origin of money or securities, and assets purchased with them or their equivalent value*. The definition of laundering is also quite distinct from that of handling stolen goods in Articles 406 ff. Because it is so simple, the definition does not adopt a systematic and enumerative approach, as in international treaties, that is *a. the conversion or transfer of property*[9]*, b. the concealment or disguise of the true nature, source, location, disposition, movement or rights with respect to, or ownership of, property, c. the acquisition, possession or use of property, and so on.*

161. Certain practitioners whom the team met said that they gave a broad interpretation to the material element of Article 409, which is little changed from the former Article 145. To some extent this is confirmed in the practice adopted by the judicial authorities to seizure and confiscation and by the fact that convictions for laundering so far secured in Andorra concern funds held in the country by foreign nationals in connection with offences committed elsewhere.

162. Moreover, under Article 3 of the Constitution, treaties ratified by Andorra are deemed to form part of the legal system after their publication in the official journal. Criminalisation therefore needs to be seen in the light of these international conventions. However, the evaluators consider such an argument difficult to justify in every case, because of the principle of the legality of offences and penalties, particularly when there are significant differences between the international and

[9] Property in the wider sense, including assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets.

domestic definitions of the offence. For example, a basic element of the Andorran definition of the offence is the fact of taking steps to "conceal" ("*cacher*" in the French version) the origin of the proceeds of a crime, whereas this is only one of the elements of international definitions. The latter also include objective circumstances that do not always require an intentional element of concealment (for example, the acquisition and transfer of property). The representatives of the prosecution service whom the team met confirmed that the term "conceal" has to be interpreted strictly and that steps therefore have to have been taken to hide the origin of the proceeds.

163. It would therefore be preferable for the Andorran offence of laundering to be based more explicitly on international law, since only some of the aspects of laundering are currently covered.

164. Furthermore, Article 3.4 of the Constitution, which provides that treaties cannot be modified or repealed by the law, definitely introduces a hierarchy in favour of the former.

165. Regarding criterion 1.2 and the proceeds of crime, Andorran legislation refers to "money or securities, and assets purchased with them or their equivalent value". This formulation generally encompasses various forms of proceeds of crime, indirect as well as direct. However, it appears from a strict reading that the terms used do not cover every case. For example, Article 409 only refers to money and securities (and not assets) as direct products and only assets purchased with this money or securities as indirect proceeds. Nor is the reference to "equivalent value" (in French "*contrepartie*") very clear in this context.

166. The origin of proceeds of crime may be inferred from objective factual circumstances and it is not necessary, in principle, for a person to be convicted of a predicate offence (criterion 1.2.1). The representatives of the prosecution service whom the team met said that circumstantial evidence was sufficient, but acknowledged that when cases were transferred to prosecutors by the UPB, if the former could not establish at a fairly early stage a link with a predicate offence the cases were discontinued. The police also confirmed that when suspects did not already have a criminal record, having already been convicted for the offence that generated the proceeds was still a crucial factor and that in the typical case of foreign nationals who were not known in Andorra, the Andorran prosecution authorities preferred to await individuals' conviction for the predicate offence. It was argued that without that, convictions for laundering could be difficult to secure. The criminal court judges who were met acknowledged that the question of how much evidence was required of the underlying offence was still not resolved. Court judgments show that account is taken of suspects' ability to establish the origin of their funds. If they are unable to offer such proof, this becomes additional (but not sufficient) evidence for the prosecution.

167. Andorra now has a wider range of predicate offence (criterion 1.3). These comprise, firstly, serious offences liable to three of more years' imprisonment. Article 12 of the Criminal Code classifies offences into three categories, serious, lesser and petty. Serious offences are ones punishable by maximum terms of imprisonment of more than two years (Article 12 combined with Articles 35 and 36). Secondly, the offence of laundering also applies to two categories of lesser offence: drug trafficking and procuring.

168. The evaluators welcome this extension of the range of predicate offences. This is consistent with international expectations and with making anti-laundering more effective. However, it should be noted that the approach adopted is still more restricted than the one set out in FATF's Recommendation 1, and does not reflect any of the options in criterion 1.4: *where countries apply a threshold approach or a combined approach that includes a threshold approach*[10] *, predicate offences should at a minimum comprise all offences:*

a) which fall within the category of serious offences under their national law; or
b) which are punishable by a maximum penalty of more than one year's imprisonment; or
c) which are punished by a minimum penalty of more than six months imprisonment (for countries that have a minimum threshold for offences in their legal system).

169. Andorra accepted a high proportion of the designated categories of offences11. These are serious offences defined in the Criminal Code as ones punishable by maximum terms of imprisonment of between two and 25 years. However, only some of them constitute predicate offences and the term of imprisonment specified – a maximum of three years or more – is higher than that of a year recommended by the FATF. The result of Andorra's approach is that there is still inadequate

[10] Countries determine the underlying predicate offences for money laundering by reference to (a) all offences, or (b) to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence (threshold approach), or (c) to a list of predicate offences, or (d) a combination of these approaches.

11

Designated categories of offences	**Criminalised (Yes/No)**	**Predicate offence (Yes/No)**
participation in an organised criminal group and racketeering	yes ; art. 359, 360 and 207	Yes, for the leader
terrorism, including terrorist financing	yes ; art. 362 and f.	yes
trafficking in human beings and migrant smuggling	yes ; art. 252.2, 133 to 138	yes
sexual exploitation, including sexual exploitation of children	Yes; art. 151.2, 151.3, 152, 154	Yes
illicit trafficking in narcotic drugs and psychotropic substances	yes, art. 281 and f.	Yes
illicit arms trafficking	yes ; art. 264 to 267	Yes
illicit trafficking in stolen and other goods	yes; art. 216 (customary receiving)	Yes
corruption and bribery	yes; art. 381.1 (authority or civil servant) ; art. 384.1 (magistrate)	Yes
fraud	yes; art. 209 and 210 (aggravated fraud and in relation with IT)	Yes
counterfeiting currency	yes; art. 431	Yes
counterfeiting and piracy of products	yes ; art. 229 and f. (3 months to 3 years)	**NO**
environmental crime	yes; art. 290 (if aggravating circumstances)	Yes
murder, grievous bodily harm	yes; art. 102, 103, 115, 116	Yes
kidnapping, illegal restraint and hostage-taking	yes ; art. 135 and 136	Yes
robbery or theft	yes; art. 199 (if housebreaking or inhabited house), art. 202 (with violence), art. 203 (if armed or involving gang)	Yes
smuggling	yes; art. 245 and f.	**NO**
extortion	Yes; art. 207 (cf. racket)	Yes
forgery	yes; art. 435 and f.	**NO**
piracy	yes; art. 455 (air or maritime)	Yes
insider trading and market manipulation	yes; art. 228 (public tenders)	**NO**

coverage of the designated categories of offences specified by the Methodology (the evaluators noted that counterfeiting and piracy of products, and smuggling for instance are no predicate offences despite the importance of criminal proceeds such crimes can generate).

170. The provisions on laundering also apply explicitly – and this is to be welcomed – to cases where the predicate offence was committed abroad. In practice, so far this has been the main sort of case to arise in Andorra. Article 412 is less demanding than criterion 1.5 because it is sufficient for the offence to be a criminal offence under Andorran law. A strict reading would therefore suggest that it does not have to be an offence in the country where it was committed (so the dual criminality principle does not apply). This also answers the additional question in 1.8. The Andorran authorities interpret the law in the same way.

171. Turning to criterion 1.6, laundering committed by the perpetrator of the predicate offence – self-laundering - is not an offence. Whereas the former Article 145 implicitly covered the perpetrator of the predicate offence by not distinguishing between the perpetrator of the laundering and that of the predicate offence, Article 409 now explicitly excludes perpetrators – and also accomplices – of predicate offences. This is therefore a step back. The prosecutors whom the team met said that the reform was intended to put an end to the double penalty of the previous system. The evaluators noted that there are several other Roman law countries which have adopted the option of self-laundering. Given the previous implicit criminalisation of self laundering, it appears that this is not contrary to fundamental legal principles in Andorra.

172. In accordance with criterion 1.7, the Criminal Code provides for a number of ancillary offences: accessoryship (in French *complicité*), conspiracy, attempt and incitement – "inducing" under the Andorran law - (Articles 23 and 17-19 of the general part of the Criminal Code). The provisions relating to accessoryship are of general application but the other ancillary offences only apply if this is specified in the wording of the offence in the special part of the Criminal Code. The various ancillary offences are applicable in cases of money laundering under the final paragraph of Article 409 ("attempt, conspiracy and incitement are punishable"). Under Andorran law, other ancillary offences, such as aiding and abetting (as specified in the French version of the Methodology: *le fait de d'aider et d'assister*), facilitating, and counselling the commission are not explicitly provided for. The public prosecutor's office take the view, however, that these are covered by the provisions on accessoryship of Art. 21 to 23 (which cover aiding, inciting, facilitating a crime by refraining from acting). Doctrinary developments interpret accessoryship broadly and it would also include other concepts (councelling, facilitating) and any other form of support.

Recommendation 2

173. The use of the term "being aware of their origin" means that the definition of the offence explicitly satisfies criterion 2.1: "natural persons that knowingly engage in ML activity". The offence in the former Criminal Code included another provision that even covered laundering by negligence. The Andorran authorities have stated that under Article 13 of the new Criminal Code, laundering can only be a deliberate offence and laundering by negligence is no longer an offence. The evaluators note that the new Criminal Code still includes numerous provisions on offences committed by negligence, and therefore regret that this no longer applies to laundering. Like self-laundering, which is no longer covered, this is another area in which Andorran law has regressed.

174. It has therefore become particularly important for the intentional element of the offence to be inferable from objective factual circumstances. The prosecution representatives met said that the amount of evidence required concerning the mental element of the offence was still reasonable and interpreted as "should/ought to have known" rather than "knew" that the money or assets were

of criminal origin (therefore, one can wonder whether negligent money laundering has been really abolished in practice)

175. The criminal liability of legal persons (criterion 2.3) existed in the previous Criminal Code but is not included in the new 2005 version. It is difficult, therefore, to identify any fundamental obstacles in Andorran law to the recognition of legal persons' criminal liability. According to the new Article 24, "criminal liability is a personal matter. Only individuals may be held liable." This appears to constitute a further regression in the new Code. However, it should be noted that the courts can decide under Article 71 to order ancillary measures against legal persons, including dissolution of the company, association or foundation, or suspension of its activities for a maximum period of six years. Article 411, which specifies a number of additional consequences of laundering offences, also provides for the winding-up of the organisation or closure of its premises, suspension of its activities, a ban on its commercial activities and so on for up to five years.

176. The sanctions specifically provided for in laundering cases (criterion 2.5) are:

- one to five years' imprisonment and a fine of three times the value of the assets;
- three to eight years' imprisonment where there are aggravating circumstances: offence committed by an organised group, or on a regular basis, and "when the perpetrator of the laundering operates in a bank or other financial establishment, an estate agency or an insurance company". In such cases, "the court may impose an additional penalty of disqualification from performing this occupation or from the post for up to ten years".
- as noted earlier, Article 411 also empowers courts to impose optional ancillary measures, but they must not be cumulative. These include the organisation's winding-up or the suspension of activities, but also seizure (in the case of confiscation) of the proceeds of the offence, under Article 70. Yet in principle, the Article 70 machinery is obligatory (see the discussion in section 2.3 of this report).

177. Besides, the anti-laundering legislation (LCPI) also establishes the administrative liability of individuals and legal persons subject to preventive legal obligations. It lays down administrative penalties, such as the temporary or permanent exclusion of individuals from particular activities, and financial ones, in the form of fines of up to € 600 000.

178. When considering the effectiveness of sanctions, the evaluators note that there have been five amnesty laws in Andorra in the last ten years, in connection with the co-princes. They have led to reductions in prison sentences of three to eight months, but do not appear to have caused any controversy concerning possible impunity in cases of major crimes.

179. Nor, according to information provided, has the introduction of the revised Criminal Code in 2005 caused any particular problems. Andorra has adopted the principle of non-retroactivity, other than for the lightest sentences. There is a retrial/review process for individual cases.

Statistics on and effectiveness of criminal convictions for money laundering

180. The laundering provisions are used in practice, sometimes successfully. Overall though the results are modest and are still mainly linked to international trafficking. However, Andorra is a small country and the still recent extension of the list of underlying predicate offences should make it possible to take on a wider range of cases and also deal with ones of purely national origin.

181. The representative judges from the Criminal Court said that to date laundering cases had all concerned bank deposits, other than one case of a laundering operation concerning the acquisition of assets.

182. The Andorran authorities have supplied the following information on the number of proceedings for money laundering (20% of which have been generated by the FAU):

- 2004-2005 legal year: 12 laundering proceedings (investigations conducted by the investigative judge) launched
- 2003-2004 legal year: 14 laundering proceedings (investigations conducted by the investigative judge) launched
- 2002-2003 legal year: 7 laundering proceedings (investigations conducted by the investigative judge) launched
- 2001-2002 legal year: 5 laundering proceedings (investigations conducted by the investigative judge) launched

183. Since the second round visit, the Criminal Court has handed down two money laundering convictions, one on 10 December 2001 and the other on 26 February 2003. At the time of the visit, another laundering case was awaiting judgment. The conclusion drawn from these figures is the same as for other small countries: predicate offences were committed abroad; therefore, it is necessary to be able to bring the offender to trial in Andorra for Money laundering whereas he/she would already be detained in the country of origin or he/she cannot be extradited to Andorra.

184. Six flats, two vehicles and various sums of money have been seized. In the end, confiscations amount to € 1 159 045.31, USD 141 830.76 and GBP 65 332.29.

185. **Case No. 1:** on 10 December 2001, the Criminal Court sentenced a Spanish woman to immediate imprisonment for four years and a fine of € 150 253, and ordered her permanent expulsion from Andorra, confiscation of the assets seized and the winding up of the Andorra company concerned.

186. She had participated in establishing a complex set of arrangements to introduce money from drug trafficking into the financial system. The money came from an organised gang that had been trafficking in cocaine and heroin in Spain. On December 1993 one of the accused, who was dead by the time the Andorran court handed down judgment, had been sentenced by the Spanish courts to ten years' imprisonment and a fine of € 600 000, plus the confiscation of the instrumentalities, proceeds and assets deriving from the offence.

187. **Case No. 2**: on 26 February 2003, the Criminal Court sentenced two Spanish men to five years' imprisonment and a € 150 000 fine and a third to three years' imprisonment and a € 50 000 fine, their permanent expulsion from Andorra and the confiscation of assets seized (€ 720 000), for a serious offence of laundering the proceeds of drug trafficking (hashish).

188. Between April 1991 and April 1993, the three had jointly participated in a large scale network trafficking hashish from Morocco. They were bringing drugs into Spain for sale and distribution in Europe. They were arrested in Spain on 20 April 1993 in possession of 1 300 kilograms of hashish and had various penalties imposed on them on 9 October 1995 by a judicial investigator, under the authority of the Barcelona Audiencia Provincial, for public health offences. In order to channel the large profits earned from this illegal trafficking and to conceal their source they opened accounts in Andorran banking institutions. They made large cash deposits and shortly after introduced further sums in cash into the financial sector to make them appear legitimate.

2.1.2 Recommendations and comments

189. The new Criminal Code represents progress in the criminalisation of laundering insofar as the list of predicate offences has been extended. But at the same time it is also a step back in several areas because self-laundering, laundering by negligence (subject to the interpretation given by certain practitioners) and the criminal liability of legal persons are no longer covered. On self laundering, the examiners were not satisfied that such incrimination is contrary to 'fundamental principles of domestic law', given its previous implied criminalisation and recommend that it be provided for.

190. The wording of the offence of laundering is very concise, but it is interpreted broadly, in accordance with the spirit of Andorran law. It is not surprising therefore that numerous features required by international law do not appear explicitly. The evaluators consider that, in the interests of legal certainty, the offence of laundering should be revised and based more closely on the international model, to remove any ambiguity.

191. In the light of the foregoing, the following recommendations are made:

- bring the definition of laundering into line with UN instruments and the criteria in FATF Recommendation 1,
- extend the list of underlying predicate offences, for example to all serious offences, or all offences liable to maximum terms of imprisonment of more than a year or minimum terms of at least six months,
- reintroduce self-laundering and possibly also (explicitly) laundering by negligence,
- reintroduce criminal liability for legal persons.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of reasons for the rating
R.1	**PC**	Even though the Andorran authorities interpret laundering broadly, the offence does not include all the necessary physical elements: more predicate offences have been added but the list still fails to meet international requirements; self laundering not covered.
R.2	**LC**	The offence of laundering has been narrowed in a number of areas, including the criminal liability of legal persons although certain accessory sanctions can be applied to legal persons (in the framework of a case against a natural person).

2.2 Criminalisation of terrorist financing (SR.II)

2.2.1 Description and analysis

192. Andorra signed the 1999 UN International Convention for the Suppression of the Financing of Terrorism on 10 November 2001, but has not yet ratified it.

193. Article 366 of the new Criminal Code on collaboration with terrorist groups makes terrorist financing an offence.

> **Article 366 Collaboration with terrorist groups**
>
> 1. Persons who, while not [participating actively in a terrorist group] or perpetrating or acting as accomplices in completed or attempted terrorist acts, collaborate with the activities or goals of a terrorist group, shall be liable to imprisonment of from two to five years.
>
> 2. Collaboration includes:
>
> - Providing information on or undertaking surveillance of persons, property or installations,
> - Constructing, preparing, letting or using accommodation or storage facilities,
> - Concealing or transferring persons linked to terrorist armed groups, organisations or bodies,
> - Organising or assisting training,
> - Providing or collecting money,
> - In general, any other form of economic or other co-operation with, assistance to or intermediation on behalf of the activities of a terrorist group, of an equivalent degree of seriousness.

194. According to criterion II.1 of the Methodology:

Terrorist financing offences should extend to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part:

(i) to carry out (a) terrorist act(s);
(ii) by a terrorist organisation; or
(iii) by an individual terrorist.

195. Section 366 para. 2 covers the forms of collaboration and support, including financial, that are given to terrorists groups. In principle, therefore, it does not cover the financing of terrorist acts or of individual terrorists as such, where there is no group involved.

196. The wording of the offence remains very general. Certain elements of S.R. III are not explicitly mentioned in Andorran law, including:

- indirect as well as direct support,
- the use of funds in whole or in part,
- the unlawful intention that they should be used or the knowledge that they are to be used.

197. The forms of support are relatively extensive. Paragraph 2.5 refers to financing in strictly financial form (providing and collecting funds) but the final sub-paragraph extends the offence to other form of economic or other aid to terrorist group activities. The notion of "money" is not

defined as such, and there is no reference to the lawful or unlawful origin of finances. Even though the Andorran professionals met said that the provisions were to be interpreted broadly, it is difficult to determine whether in practice all types of financing would be properly covered and would include all the elements in the 1999 anti-terrorist convention: "assets of every kind, whether tangible or intangible, movable or immovable, however acquired, 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."

198. Article 366 does not make it a condition that the funds be actually used to carry out or attempt a terrorist act, or that they be linked to a specific terrorist act. Paragraph 1 uses the term "completed or intended".

199. Accessoryship (in its wider meaning accepted in Andorra) and incitment (*induction* in Andorran) apply to Article 366 because these situations do not need to be specified in the special part of the Code under the relevant offence. However, attempted collaboration and conspiracy are not included because this is not specified in Article 366. These elements are required under Article 2(5) of the 1999 Convention. However, the last sub-paragraph of Article 366.2, which refers to support in general terms, would probably help in part to fill these gaps in certain situations.

200. In accordance with criterion II.2, offences under Article 366 are predicate offences for laundering purposes because of the sentences they carry.

201. It is not stated explicitly whether under Article 366.2 it is irrelevant whether or not the persons accused of the offence are from the same country as the one in which the terrorist group or groups are located or in which the terrorist acts occurred or will occur. Once again, in principle a broad interpretation would suggest that these various contingencies are covered (criterion II.3). However, in the absence of any court judgments confirming this, it would be preferable for the legislation to make this explicit.

202. Turning to criterion II.4, which applies to criteria 2.2 to 2.5 of R.2:

- the wording of Article 366 does not make it clear whether the intentional element of the offence can be inferred from objective factual circumstances and there is so far no case-law regarding terrorist financing;

- as noted earlier, Andorran law no longer recognises the criminal liability of legal persons, which disappeared with the revised Criminal Code of 2005. According to the new Article 24, "criminal liability is an individual matter. Only individuals may be held liable." There are no alternative provisions for civil or administrative liability;

- individuals are liable to two to five years' imprisonment. This is a maximum since there are no aggravating circumstances. In contrast, the provisions on laundering permit an increase in the sentence (3 to 8 years) in certain circumstances, such as acting as an organised group, or on a regular basis, or when the offence is committed as part of a financial or related activity. Moreover, in contrast to money laundering[12] there is no explicit provision for the confiscation of assets or funds in connection with terrorist financing, or for such additional consequences as the winding-up of the organisation or a ban on professional activities. Article 71 on measures against

[12]See Articles 410 and 411, which appear in section 2.1 of this report, and see also section 2.3 on confiscation.

legal persons is of general application but they are not included in Article 366. It is not clear whether Article 71 nevertheless applies.

2.2.2 Recommendations and comments

203. Terrorist financing is an offence in Andorra, to a certain extent. Apart from the fact that the offence is confined to forms of support for terrorist groups, various features ought to appear explicitly in Article 366 of the Criminal Code. This would increase legal certainty, for the defence as well as the prosecution.

204. The evaluators cannot agree with the Andorran authorities that terrorist financing has been made an autonomous offence in Andorran law. If this were the case, it is reasonable to assume that there would be further provisions on aggravating circumstances and additional consequences, which are currently lacking despite the seriousness of the offence of terrorist financing and Andorra's position as a financial centre attracting foreign capital. The following recommendations are therefore made:

- establish a separate offence of terrorist financing, in a broader form than collaboration with a terrorist group, and,
- review the transposition of international requirements and SR II on the criminalisation of terrorist financing, particularly by extending the offence to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part, to carry out a terrorist act or acts, by a terrorist organisation or by an individual terrorist;
- ensure that attempt and conspiracy apply to terrorist financing;
- reintroduce criminal liability for legal persons and extend it to terrorist financing;
- introduce further provisions on aggravating circumstances and additional consequences, such as winding up the body concerned.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of reasons for the rating
SR.II	**PC**	The offence covers various forms of support, including financial support, for terrorist groups, but not terrorist financing more generally outside this context, such as isolated terrorist acts and terrorists; various aspects are not mentioned explicitly; various general provisions do not apply (attempt, conspiracy, the criminal liability of legal persons). These aspects must be covered as part of an autonomous offence with aggravating circumstances and additional consequences, as in the case of laundering.

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

2.3.1 Description and analysis

205. It should be noted firstly that these matters are covered in various statutes. In principle, purely national arrangements are covered by the Criminal Code and the Code of Criminal Procedure, and mutual assistance and international co-operation in general and specifically relating to seizure and confiscation by the anti-laundering legislation (LCPI – Act on international criminal co-operation against money laundering and the proceeds of international crime). However, the new Criminal Code of February 2005 includes several final provisions amending the December 2000 version of the LCPI. The changes do not affect the substance and the relevant machinery, as far as the evaluators can judge.

Confiscation

206. Criterion 3.1 of the FATF methodology states that:

3.1 Laws should provide for the confiscation of property that has been laundered or which constitutes:

a) proceeds from
b) instrumentalities used in; and
c) instrumentalities intended for use in

the commission of any money laundering, terrorist financing or other predicate offences, and property of corresponding value.

3.1.1 Criterion 3.1 should equally apply:

a) to property that is derived directly or indirectly from proceeds of crime; including income, profits or other benefits from the proceeds of crime; and
b) subject to criterion 3.5, to all the property referred to above, regardless of whether it is held or owned by a criminal defendant or by a third party.

207. The basic provisions on confiscation appear in Article 70 of the Andorran Criminal Code (the article refers to "seizure", but in the permanent form of confiscation, rather than as a temporary measure):

Article 70 Seizure of instrumentalities, effects and profits

When the accused is found guilty and in other cases specified in the Code of Criminal Procedure, the court must order the seizure of instrumentalities used to commit the offence, its proceeds and any profits deriving from them, and any subsequent conversion of those proceeds.

Assets belonging to a third parties who are not criminally liable and who acquired them lawfully may not be seized.

The court may decide not to order seizure or to order it only partially if the profits or the instrumentalities derive from lawful commerce and are out of proportion to the nature and seriousness of the offence, or when there are other reasons to justify this.

208. Article 411, on the additional consequences of the offence of laundering, refers explicitly to Article 70: The court may also order any of the following measures: 1. Seizure of the proceeds of the offence, in accordance with Article 70.

209. The first comment to make is that whereas confiscation under Article 70 is obligatory, under Article 411 it is an optional measure for the courts. This lack of consistency is acknowledged by the members of the Andorran prosecution service, who said that it was a legislative mistake that had to be rectified.

210. Article 70.1 is extensive in scope because the confiscation applies to instrumentalities, proceeds and profits from proceeds, including the conversion of the proceeds. This is consistent with criterion 3.1.

211. The prosecution representatives said that (seizure and) confiscation of equivalent values was possible in Andorra. However, there was no provision for this as such in Andorran law, other than converted (or indirect) proceeds. According to the evaluators, the latter are the visible results of criminal profits whereas equivalent confiscation is applicable to any part of a person's assets or wealth, when the proceeds themselves cannot be located or are out of reach – abroad, for example. The third paragraph of Article 70 also includes a partial exception that confirms the absence of equivalent confiscation, since it gives courts the choice of whether or not to confiscate, and even to confiscate part of the assets when the profits or instrumentalities derive from lawful commerce and are disproportionate to the nature or seriousness of the offence.

212. Article 70 is also silent on the confiscation of assets that are a combination of the proceeds of crime and ones of lawful origin.

213. Article 70 also prevents confiscation in certain cases from bona fide third parties who are not criminally liable and have acquired the assets lawfully. This means that in other circumstances it is lawful to confiscate from third parties. The Andorran judicial representatives said that in practice when proceeds were transferred to relatives of accused persons against whom such orders had been made, the former were always assumed to be aware of the origin of those assets and thus to have acquired them illegally.

214. Article 70 should be compared with the only other article on confiscation, Article 286, which together with Article 411, concerns confiscation linked to drug trafficking:

Article 286 - Seizure

Unless they belong to a third party who is not criminally liable and who acquired them lawfully, the courts shall order the seizure of the toxic drugs, equipment, material and substances referred to in the previous article, vehicles and any assets and effects used as instrumentalities to commit any of the offences specified in this chapter or derived from them, and any profits obtained, irrespective of any transformation they may have undergone.

215. In principle, article 70 applies to all serious and lesser offences. However, the legislation states explicitly in Article 411 that Article 70 is applicable in laundering cases. As noted earlier in the report, there is no similar statement concerning terrorist financing offences under Article 366. Since such offences are often recent additions to countries' legal armouries and are considered to be untypical of ones that generate profits or instruments – as the funds are not necessarily of criminal origin (for example ones that come from public fund raising) and may be held long before they are put to use for the purposes of a terrorist offence – the evaluators think that to remove all ambiguity Article 363 should also refer to Article 70. This would probably make it

impossible to avoid, when and if Article 366 is also extended to include the various forms of terrorist financing envisaged by FATF, as recommended above.

Interim measures

216. Provisional measures – criterion 3.2 of the Methodology – are governed by the Code of Criminal Procedure adopted on 10/12/1998 and amended on 21/02/2005. The changes to the Code in February 2005 introduced new seizure arrangements under Article 26 (see below) to facilitate the handling of certain assets seized.

217. In Andorra, provisional measures form part of the more general provisions and powers relating to searches and the protection of evidence by the police and courts.

218. According to the responses to the questionnaire, under Andorran legislation seizure (segrest) may be carried out directly by judges or indirectly via the police. Judicial seizure requires a judicial order with reasons for the decision. Provisional measures may be ordered for any criminal offence.

219. Provisional measures taken by the police to secure necessary evidence, involving any items that may be connected to an offence, are governed by Article 26.2 of the Code of Criminal Procedure.

Article 26
To assemble the required evidence, whenever necessary the police must:
(…)
2. Take possession of all documents and objects pertaining to the offence, in particular arms and instrumentalities that were used or were intended to be used to perpetrate the offence and anything that appears to form part of the proceeds of the offence or might constitute evidence of it. The objects seized must be sealed and be included in the case file, with a full inventory attached. If their size or other characteristics prevent the objects seized from being attached to the case file a corresponding list must be drawn up indicating the place where each item is stored and the person responsible for it, and the items must remain at the court's disposal. The seals on all the objects seized may only be removed by a judge or the court. Items that are not relevant to the proceedings shall be consigned as rapidly as possible to the destination specified in Article 79.

Even if the police do not have time to examine all the items held, they must be submitted to the courts unless the latter authorise the police, in an order giving reasons, to retain them for examination for a maximum period of ten days, subject to their being subsequently submitted to an expert witness, as specified in Articles 80 ff of this Code.
(…)

220. The evaluators note from a comparison of the former and new wordings of Article 26 that the earlier version mainly concerned items that could be attached to the case file or placed elsewhere. The new version includes provisions on the sealing of items and the freezing of assets, to be placed under the supervision of a named person, when this is necessary.

221. The Andorran authorities have explained that the purpose of police seizures is to make evidence available for criminal proceedings, preserve that evidence and ensure that the proceeds of offences are available for confiscation. The items concerned must be identified, described and sealed. If by their nature they cannot be sent directly to the court the police must indicate their exact location and the person responsible for their custody. The seals may only be broken on the order of the judge or court and objects seized must be transmitted to the judicial authorities in their entirety.

222. Leaving aside Article 26.2 on police powers (on the orders of the court), investigating judges may themselves order provisional measures, under Articles 76 ff of the Code of Criminal Procedure, which also govern the cessation of such measures.

Section 8 - Searches and seizures
Article 76. The judge may visit any place necessary to carry out searches and seize objects and documents that will help to establish the facts. He or she may also issue a corresponding judicial order to the police.

Article 78. A report must be drawn up of any searches carried out and a list prepared of any objects seized, with a description and a note of any special features.

Article 79. The judge must take appropriate steps to ensure the restitution of any objects seized that are of no relevance to the case.
Similarly, once the proceeds of the offence have been identified and assessed, he or she must take appropriate steps to restore them to their owner, to avoid any further inconvenience.

223. The final part of article 112 of the Code of Criminal Procedure authorises judges to effect seizures as a safeguard against any civil liability arising from an offence. Under article 119, such measures may also be applied to third parties likely to be found civilly liable for offences committed. The evaluators note that these provisions are much less restrictive than those of the Criminal Code on the confiscation of assets held by third parties.

224. Article 26.2 is broad-ranging in scope. Seizures may be used to collect evidence, but may also concern "anything that appears to form part of the proceeds of the offence or might constitute evidence of it".

225. Section 26.2 is essentially concerned with material and tangible assets. Article 76 refers to "objects" and documents. Other forms of criminal proceeds as such do not appear to be covered. The Andorran authorities have specified that Article 87.4 empowers judges or courts to authorise checks on banks and the seizure of bank accounts. Article 87.1 essentially repeats Article 76 – "the investigating judge shall gather all relevant evidence for establishing guilt or innocence. For this purpose, he or she shall seize any object ..." However, paragraph 4 makes no reference to the freezing or seizure of bank accounts – "should it be necessary to obtain information from a bank, the judge or court shall order this, giving reasons."

226. There are no specific provisions on other types of assets, such as ones invested in financial products or company shares. The fact that there are specific provisions on bank accounts (whatever their actual scope in practice) raises questions about the seizure of other forms of assets. The on-the-spot discussions showed that laundering cases dealt with so far mainly concerned funds deposited in bank accounts or material assets, such as vehicles and property. This could have reflected the type of assets covered by the legal provisions or be simple coincidence.

227. It was stated that in practice, when criminal profits are suspected, provisional measures apply in principle to all the suspects' assets and anything in their possession. As well as suspects, third parties must then establish the lawfulness of those assets, their ignorance of their criminal origin, their good faith and so on to obtain the lifting of these measures – even though the legal provisions on temporary measures say nothing about third parties and the ultimate goal of confiscation.

228. Section 26.2, and even more Article 76, are very succinct and do not reflect the various options for confiscation considered above: instrumentalities, proceeds, profits from proceeds, converted proceeds and proceeds held by third parties. Their ease of application to a wide range of situations owes much to the broad interpretation given to them by the judicial authorities.

229. Above all, the evaluators note that according to the legislation, the main purpose of these measures is to preserve evidence. Neither Article 26.2 nor Article 76 (or 84) of the Code of Criminal Procedure specify that another purpose should be to permit the eventual confiscation of the proceeds of crime (criterion 3.2 of the Methodology). The fact that according to the Andorran authorities, provisional measures are intended to permit confiscation, rather than just the accumulation of evidence, is the consequence of practice and a broad interpretation of what constitutes evidence.

230. The evaluation team welcome this approach, which is fully consistent with the spirit of seizure as an anti-laundering tool and targets the proceeds of crime in general. Yet again, however, the lack of explicit provisions could cause problems from the standpoint of certainty of the law, particularly in the contest of measures to freeze terrorist assets (see section 2.4).

Suspension of financial transactions

231. As well as the criminal procedure, there is a system of temporary administrative measures under the anti-laundering legislation that enables the laundering prevention unit (UPB) to freeze/delay implementation of a suspicious transaction reported to it for five days. It can do this by telephone.

Article 47

Declarations must be made before the person concerned has implemented the suspicious financial or economic transaction. If the laundering prevention unit then considers that there is sufficient evidence, it shall order the temporary suspension of the transaction.

This suspension may not exceed five days, after which the unit shall lift the suspension if it considers that the suspicions are unfounded and authorise implementation of the transaction, or otherwise transfer the case to the prosecution service.

232. After five days have elapsed, an application for the continuation of measures, or for any freezing or seizure of funds or other proceeds, must be submitted to an investigating judge via the prosecution service. In practice, to save time, the UPB approaches the investigating judge directly.

Suspects are not informed

233. As a matter of principle, provisional measures are applied rapidly. As noted earlier, the relevant provisions are fairly simple, if not rudimentary, and there are no special procedures for informing suspects in advance that such measures are imminent, which would thus leave them time to take counter-measures to protect the proceeds of crime. This is consistent with criterion 3.3.

Identification and tracing of assets

234. Criterion 3.4 requires law enforcement agencies, the FIU or other competent authorities to be given adequate powers to identify and trace property that is, or may become, subject to confiscation or is suspected of being the proceeds of crime.

235. The main responsibility rests with the criminal investigation authorities, either on their own initiative or in response to a report from the UPB. In practice, investigating judges, rather than prosecutors, direct the criminal inquiries and manage seized assets, which they place under seal or place under the management of a third party. Under the law, the chief registrar of the criminal court carries out searches. In practice, investigating judges act directly. Finally, investigating judges have wide access to financial information.

236. As noted earlier, access to banking information is explicitly authorised under criminal law. The professionals whom the team met said that they did not usually experience any problems with the other sectors (despite the inconsistencies in the provisions on professional, banking and other forms of confidentiality – see section 3.4).

237. Investigating judges, who generally conduct asset inquiries, can request assistance from any public official, such as specialist police officers or economics ministry officials, with a certain measure of expertise in the area concerned, as well as from the police already involved. They may also call on other experts, and have a special budget for that purpose.

238. Like other serious offences - those with a maximum term of imprisonment in excess of two years – money laundering and terrorist financing are time-barred after ten years, which as such is a reasonable period for completing inquiries. Moreover, any procedural steps suspend the limitation period.

239. Andorran criminal law offers a fairly wide range of inquiry methods for obtaining evidence (see section 2.6 for a review of their strengths and weaknesses). The UPB offers investigating authorities additional channels of information, including information from abroad.

240. Judges and police were well aware of the need to combat the proceeds of crime. There is a specialist police unit to deal with laundering cases emanating from the UPB and other authorities, including the police themselves. However, it was impossible to determine the extent to which in practice the police were concerned with the assets and financial dimensions of cases coming before them, apart from those generated by the preventive system. There are no separate statistics on seizures/confiscation not necessarily linked to laundering cases. This is significant in the Andorran context where, even though major criminal activities such as prostitution, drug and arms trafficking and counterfeiting are largely absent, financial and white-collar crimes are acknowledged by the authorities to be the main source of criminal profits – see also section 2.1.

241. According to the Andorran authorities, over the previous four years, the enforcement agencies had launched some twenty inquiries. Those relating to money laundering culminated in several arrests, both in Andorra and in other countries, since the predicate offences were committed abroad. Eleven persons were arrested in Andorra for money laundering, and about forty abroad, mainly in Spain. In all these investigations, the predicate offence was drug trafficking. A substantial amount of assets and property was frozen.

Rights of bona fide third parties

242. As noted earlier, in principle and in certain circumstances the law on confiscation also applies to assets held by third parties, though there is nothing in the legislation on the seizure of third parties' assets. Prosecutors indicated that bona fide third parties are always protected under Andorran law and that under the Code of Criminal Procedure, third parties must be invited to and heard at court hearings (Art. 119 and 120 of the Code of Criminal Procedure. Overall, the situation seems consistent with criterion 3.5 of the Methodology.

Contractual and other steps to prevent or void actions to preserve proceeds subject to confiscation

243. There are no specific and detailed provisions that would satisfy criterion 3.6. As noted earlier, existing provisions on provisional measures are fairly cursory but are interpreted broadly by the judicial authorities. On the other hand, in response to requests for judicial assistance from abroad, the courts may – under section 2 of the anti-laundering legislation – at any moment in the proceedings order any preventive measures they consider appropriate, such as blocking accounts and preventive seizure, and may also prohibit any transaction or transfer of any asset that is subject to confiscation in the applicant country.

244. There is no provision for applying confiscation to criminal organisations as a general rule (optional criterion 3.7).

245. Although it includes a fairly strong element of reversal of the burden of proof, with regard to provisional measures, Andorran criminal procedure makes no provision for civil confiscation/forfeiture. Confiscation of the proceeds of crime and of laundering is still dependent on a conviction and the principles of criminal law, including the principle that the burden of proof rests with the prosecution.

Statistics

246. Statistics are kept by the UPB for cases in which it is involved and by the judicial authorities. The latter appear sometimes to overlap with those of the UPB but also include measures taken at the request of foreign countries. The evaluators were unable to prepare a comprehensive table from the different data sources, which would have to include those of the police, which were unavailable.

247. The available statistics concerned laundering cases and none were supplied on the proceeds of crime unconnected with such cases.

2.3.2 Recommendations and comments

248. Although its law on confiscation and provisional measures does not deal explicitly with certain types of situations or assets and does not authorise confiscation in connection with provisional measures, Andorra appears to interpret existing machinery broadly, which is to the country's credit.

249. Various practical examples of laundering cases have been presented, showing that measures are applied, mainly to bank accounts and material assets.

250. However, this positive picture is somewhat marred by the inadequacy of available statistics and police information, aside from laundering cases generated by the preventive system.[13]

[13] The Andorran authorities indicated after the visit that there are no major technical problems to produce such statistics; information available in the prosecutor's office and police database just needs to be exploited / compiled.

251. The following recommendations are made:

- bring Article 411 of the Criminal Code into line with Article 70 by making confiscation obligatory, since this appears to be a clear error in the legislation;
- authorise the confiscation of equivalent assets;
- clarify the rules on the temporary freezing and seizure of the proceeds of crime by making it explicit that they are applicable to assets held by third parties and for the purposes of confiscation;
- consider reversing the burden of proof for the purposes of confiscation after a conviction;
- extend the application of provisional measures and confiscation beyond material assets and bank accounts to include all forms of assets, including shareholdings in companies, other financial arrangements and less tangible forms of assets;
- maintain statistics on freezing, seizure and confiscation for criminal cases other than laundering ones.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of reasons for the rating
R.3	**LC**	Inconsistency in the wording of articles 70 and 411 of the Criminal Code concerning the obligatory nature of confiscation; impossibility of confiscating equivalent assets; need to clarify the rules on provisional measures for the purposes of confiscation and the applicability of measures specified in criterion 3.6; extend the application of provisional measures and confiscation beyond material assets and bank accounts to include all forms of assets, including shareholdings in companies, other financial arrangements and less tangible forms of assets. Nevertheless, available measures do seem to be fairly extensively applied, with positive effect (positive effectiveness criterion).

2.4 Freezing of funds used to finance terrorism (SR.III)

2.4.1 Description and analysis

252. SR III requires each country:

- to implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts;

- to adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.

253. In accordance with Resolution 1373, Andorra has submitted the reports requested by the Security Council. According to the authorities, the Council has identified three measures to be taken:

- include the offence of terrorist financing in the new Criminal Code, which it has done (see section 2.2 of this report);
- ratify the European Convention on Mutual Assistance in Criminal Matters, which it did in April 2005 (see section 6.3);
- ratify the UN International Convention for the Suppression of the Financing of Terrorism, which was under way at the time of the visit, and scheduled for the end of the year or the start of the next.

254. The Foreign Ministry has received the names of the individuals designated by the Security Council Committee created under Resolution 1267 (and the consolidated list published by the Committee) sfrom its co-ordinator at the UN and has circulated it to the UPB, the Interior ministry (immigration and police) and the finance ministry. Meetings have been held internally to decide how to proceed and information has been sought on the possible presence of assets belonging to listed persons.

255. At the time of the visit, Andorra had not yet introduced specific legislation to meet the requirements of Security Council Resolution 1267 (and of those extending its period of application – 1333 (2000), 1363 (2001), 1390 (2002), 1455 (2003) and so on), of Security Council Resolution 1373 and of FATF's SR III. In contrast to other countries, therefore, Andorra has no special measures such as a national (or Community) list of terrorists, a procedure for inclusion on or removal from the list and for rapid checking of suspects' identities, specific administrative machinery for freezing and seizure to permit these measures to be applied rapidly to all listed persons' assets and to unblock some or all of these assets where necessary, and so on. The last of these reflects criteria III.7 to 10.

256. The relevant legislation therefore essentially comprises the Criminal Code, the Code of Criminal Procedure and the anti-laundering legislation (LCPI), which applies mainly to laundering but has also been supplemented by certain technical communiqués.

257. For example, in accordance with technical communiqués issued by the UPB, under the LCPI and its implementing regulation, relevant bodies have been invited to report to the UPB the assets of persons listed by the Security Council (criterion III.5). A first communiqué dated 8 October 2001, with an initial list of 65 names, was rapidly circulated after 11 September, followed by another with 200 names on 16 November. The UPB has subsequently circulated updates, the American list drawn up by the FBI and Spain's list of ETA terrorists. As indicated in section 3.7, the LCPI is not concerned with terrorist financing. The technical communiqués issued under section 4 of the implementing regulation – which authorises the UPB to specify operations that it considers could be used for money laundering – have offered an initial means of rectifying this deficiency (it was explained that technical communiqués – which set out the reporting criteria – must be taken into account by reporting bodies). However this situation is not really satisfactory and highlights the need to extend the LCPI explicitly to terrorist financing.

258. The situation had not changed at the time of the visit. Andorra is aware of these shortcomings and the team has been told that an amendment to the legislation is planned, which would explicitly extend its scope to include terrorist financing.

259. Not all the sectors and bodies covered by the LCPI have been involved in the task of identifying assets. According to the Andorran authorities, at the time of the visit “the country's financial

bodies had replied that none of the individuals or companies listed were or had been either holders of or authorised agents for any account or other assets" [translated from the responses to the questionnaire and underlined by the evaluators].

260. If operations had been reported this would have led to general measures, such as freezing for a maximum of five days under the LCPI and then the imposition of provisional measures under the Code of Criminal Procedure. As noted in section 2.3, the provisions on seizure offer fairly limited scope for action and mainly concern the protection of evidence, above all tangible evidence, even though in practice these provisions are also used to secure confiscation.

261. The LCPI reporting system represents an essentially reactive response by the authorities. The evaluators therefore asked what spontaneous or proactive steps were taken and were told that researches had been carried out by the Interior ministry into such matters as the presence of certain nationalities in Andorra and comparisons of the list of passive residents and others with the UN lists. The extent of these checks could not be determined accurately but no person on the international lists has been identified.

262. One judge stated that the fact that a person was included on one of the lists circulated in Andorra was sufficient evidence of a criminal offence for a court to approve the application of provisional measures. However, this interpretation has not been tested in practice.

263. There is no specific anti-terrorist financing machinery to implement actions initiated under the freezing mechanisms of other jurisdictions, as required by criterion III.3, on the basis simply of a listing of persons. In theory, therefore, the provisions on general provisional measures considered earlier are applicable. However, as noted above, one Andorran judge thought that a person's listing was sufficient evidence of an offence for the courts to approve provisional measures, including ones requested by other countries.

264. Information-based measures appear to have concerned mainly the financial sector and assets held in accounts. In an Andorran context in particular, measures to deal with other forms of assets covered by criterion III.4, such as property and shares in companies, would probably have made it necessary to include bodies outside the financial sector and administrative bodies maintaining registers, in particular notaries and lawyers.

265. No specific measures were reported concerning criteria III.11, III.12 and III.13. Regarding the last named, reporting is obligatory under the LCPI and, according to the Andorran authorities, technical communiqués. Those who fail to report an operation are liable to general penalties specified in the LCPI. But as noted earlier, the rationale and legal basis for this are debateable.

2.4.2 Recommendations and comments

266. Andorra has no specific legal framework to implement international sanctions but the country has taken certain steps to apply these sanctions. For the time being, these are fairly cursory and limited to reporting the assets of listed persons (when transactions take place or an account is opened or in other circumstances). According to the Andorran authorities, the measures in place allow to meet the international expectations. The country does also seem to be able to respond to requests from abroad for the freezing of assets by a flexible interpretation of the general criminal

law. There are no specific and detailed regulations on such matters as the listing and delisting of persons, the conditions for unfreezing assets and information to the public, apart from the banking system, on which efforts have hitherto been concentrated. Nor is there a legal basis for the preventive system in the form of an extension of the LCPI to terrorist financing.

267. To summarise, the evaluators recommend that the Andorran authorities pursue actively the application of Security Council resolutions and FATF SR III and transpose them into appropriate national regulations.

2.4.3 Compliance with SR III

	Rating	Summary of reasons for the rating
SR III	**PC**	No clearly designated body, no arrangements for freezing all assets without delay (even without a transaction taking place), no specific and detailed regulations on such matters as the listing and delisting of persons, the conditions for unfreezing assets and information to the public, no apparent wider awareness raising efforts (apart from the banking sector); no legal basis for the preventive system in the form of an extension of the LCPI to terrorist financing.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)

2.5.1 Description and analysis

268. The Act of 29 December 2000 on international co-operation against the laundering of money and the proceeds of international crime (LCPI) established the FIU, under the title of the laundering prevention unit (UPB). The regulation of 27 March 2002 has been amended and the new regulation applying the LCPI (the "LCPI regulation") was adopted on 31 July 2002.

269. According to the preamble to the LCPI, the UPB is the central body for all money laundering declarations. Its responsibilities include gathering, collating and analysing declarations from the bodies concerned, together with all written and oral communications received, and assessing the facts (section 52.2 of the LCPI), requesting, with reasons, any information or documents from the bodies concerned to monitor the application of this Act (section 53.2), transmitting to the relevant administrative authorities any cases investigated in which an administrative offence appears to have been committed, accompanied by recommended penalties (section 53.2) and submitting to the prosecution service cases in which there are reasonable grounds for suspecting that a criminal offence has been committed (section 53.2).

270. Concerning criterion 26.2, one of the FIU's responsibilities is to direct and initiate activities to prevent and combat the use of the country's financial and other establishments for laundering purposes, using the necessary technical procedures and rules (section 53.2). The FIU has organised a number of training activities for persons subject to the reporting obligation, as part of the government's money laundering and terrorist financing prevention policy. Those taking part are told about the different types of offence concerned and how they should fulfil their legal obligations. The unit also circulates technical communiqués, such as the one dated 19 December 2002 containing a model declaration of suspicion and another dated 10 February 2004 on the documentation that should accompany such declarations.

271. The evaluators regret that the UPB has not been granted greater authority to carry out its functions, as shown by the fact that its technical communiqués are not legally binding, that it cannot impose penalties directly, that the judicial authorities are not required to inform it of what action is taken on cases referred to them and that it was necessary to specify in section 50 of the LCPI that if banks refuse to communicate information the unit must apply to the investigating judge to settle the matter.

272. The FIU can request, with reasons, any information or documents from the bodies concerned to monitor the application of the Act (section 53.2), ask for and receive criminal records from the relevant judicial authorities (section 53.2) and ask for and receive any information from the police or any other official body in connection with its responsibilities (section 53.2). As a matter of principle, professional secrecy, which offers general protection of the confidentiality of customers' financial affairs, cannot be raised as an objection to its requests (section 50). This is consistent with criteria 26.3 and 26.4. The FIU said it could consult directly or indirectly all the databases of government institutions such as the registers of companies, vehicle ownership and driving licences, and indirectly other registers of enforcement and other bodies. It also makes frequent use of international on-line financial databases. It appears from discussions on the spot that the FIU does not have access to the police database or the register of property of non-residents.

273. It is authorised to circulate financial information to national authorities for use in inquiries and other activities when there are grounds for suspecting money laundering or terrorist financing operations. Among other responsibilities, it transmits to the relevant administrative authorities any cases investigated in which an administrative offence appears to have been committed, accompanied by recommended penalties (section 53.2 of the LCPI), and submits to the prosecution service cases in which there are reasonable grounds for suspecting that a criminal offence has been committed (section 53.2), which includes money laundering and terrorist financing operations.

274. Under section 53 of the LCPI, the UPB is an independent body with full operational control of its activities (criterion 26.6). It does not have an independent budget, since this is the responsibility of the supervisory ministry[14].

275. The LCPI specifies the composition of the UPB, which at the time of the visit comprised a seconded judge, who continued to perform his judicial duties, two police officers and an administrative assistant. It is headed by a director with a financial background appointed jointly by the finance and justice and Interior ministers. The police and financial staff of the FIU have to be full time and may not occupy any other post or functions in the public or private sector. No

[14]Since the evaluation visit, the UPB has its own budget which remains part of that of the Ministry of Justice and the Interior

particular practical problems were reported concerning the organisation's independence and autonomy.

276. However, the evaluators noted that the director of the UPB and certain other public officials in Andorra with special status, such as special advisers, retained close links with the government, whose confidence they had to enjoy. From the standpoint of criterion 26.6, it would be preferable for the director to be given more independence, through the introduction of a renewable term of office of a few years. He or she should also be involved in the selection of his or her staff. These are currently appointed, according to who is concerned, by the interior or finance ministers or the Judicial Service Commission. Moreover, there have been frequent changes in these colleagues in recent years. The UPB has its own premises, though these are modest, with a single office for the five members of the team.

277. Its information is protected (criterion 26.7) because the members of the FIU, including its administrative staff, are bound by professional confidentiality, breach of which is a criminal offence (section 54 of the LCPI). This obligation continues when they leave the unit. The only exception to this is in dealings with the judicial authorities (section 9 of the LCPI regulation). The use of this information is governed by the LCPI.

278. In connection with criterion 26.8, the FIU draws up an annual report for the government[15], describing its activities and developments in money laundering and terrorist financing. The report contains various statistics, such as total number of declarations of suspicion submitted to the FIU and their source, number of inquiries initiated and their source, number of inquiries forwarded to the judicial authorities, currently under investigation and archived, number of freezing procedures carried out, with the sums involved and the outcome, number of seizures by the judicial authorities based on FIU inquiries, with the sums involved and the outcome, and exchanges with other financial intelligence units. The statistics were improved in 2005 and in future it is planned to include an analysis of the financial methods used by persons investigated by the unit, to identify typologies.

279. The FIU monitors progress on cases referred to the judicial authorities on the basis of information it can obtain, though the latter are not obliged to keep the unit informed.

280. The FIU joined the Egmont Group in June 2006 (criterion 26.9) and has the necessary legal powers to collaborate effectively with its foreign counterparts. The extension of the LCPI to terrorist financing was under consideration at the time of the visit. According to the Egmont Group's working party on legal questions, the FIU does not fully meet the definition in its new Statement of Purpose of 23 June 2004, because it still lacks an anti-terrorist financing dimension (criterion 26.10). The FIU has signed co-operation agreements with its counterparts in Spain, France, Belgium, Portugal, Luxembourg, Monaco, Poland, Netherlands Antilles, Bahamas, Thailand and Peru. The unit co-operates with counterpart organisations in accordance with the Egmont Group's Statement of Purpose and sections 55 and 56 of the LCPI, which specify three conditions to be met to cooperate: reciprocity, use of the information for the LCPI's stated goals and confidentiality. Lack of an agreement or protocol is not a barrier to co-operation, since this is possible under the aforementioned sections of the LCPI (section 11 of the LCPI regulation). The FIU may submit requests, and respond to requests from its counterparts, on money laundering and terrorist financing (section 56 of the LCPI refers to operations or proposed operations to deal with

[15]Since the report of 2005 (which was communicated to the media) and the report of 2006 (which was published on-line and disseminated widely), the report is no longer confidential.

money laundering and international crime). In responding to requests, it uses its own database and other national sources of enforcement, administrative or public data. The FIU can only exchange information with equivalent bodies. However, other requests are assessed and redirected to the relevant departments. The applicant institution is immediately informed of this and the FIU takes responsibility for contacting the relevant authority.

Recommendation 30

281. The LCPI states that members of the FIU must have appropriate skills in the areas covered by the legislation. They receive initial training when they join the unit, and continuing training in AML/CFT is also available through attendance at international gatherings organised by MONEYVAL, the Egmont Group, the UN, etc.

282. As noted earlier, most of the UPB's staff come from the judiciary or the police, and already satisfy the criterion of integrity, as well as being required under the legislation to respect confidentiality.

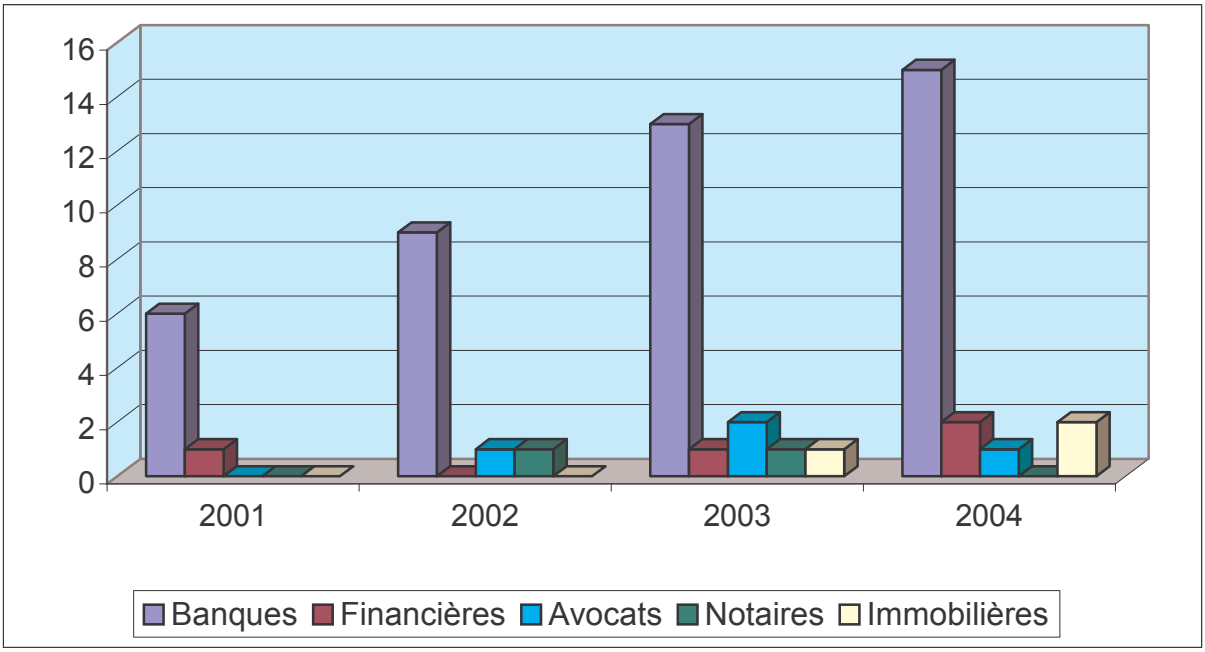
283. With five members, it has limited staffing. Although the preventive and declaration system chosen by Andorra does not call for a significant amount of work or a major computerised system for analysis, and the number of declarations of suspicion remains limited (one or two per month), there are also all the various activities concerned with education, monitoring, co-ordination, international co-operation, analysis of the laundering phenomenon and so on. However, mainly because of the size of the country, the UPB faces considerable difficulties in finding qualified personnel and securing a certain stability in its membership, which varies greatly despite its small size. This may have an effect on the level of expertise of its members, calling for frequent training sessions. This situation should be reviewed, if necessary by arranging for members of the police and judiciary to serve for longer periods and possible by recruiting from abroad, as is already the case in the judicial system.

Recommendation 32

284. The UPB keeps detailed statistics, as seen below.

Declarations of suspicion over time

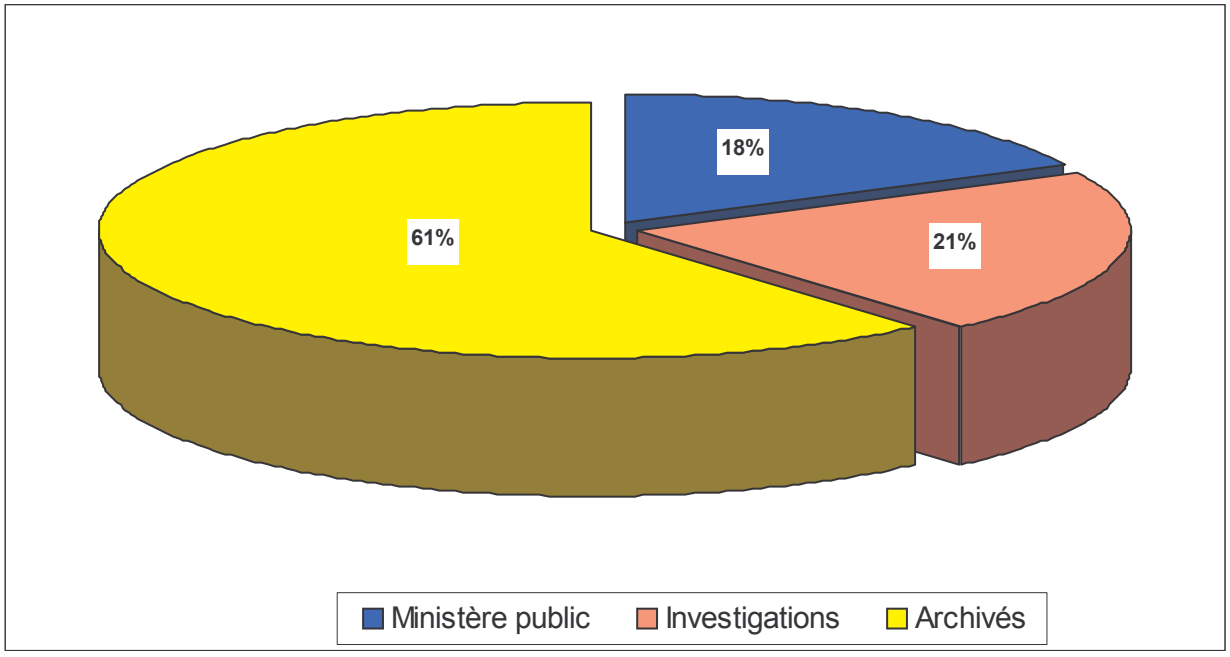
	2001	***2002***	***2003***	***2004***	*Total*
Banks	6	9	13	15	43
Financial institutions	1	0	1	2	4
Lawyers	0	1	2	1	4
Notaries	0	1	1	0	2
Real estate agencies	0	0	1	2	3
Total	**7**	**11**	**18**	**20**	**56**

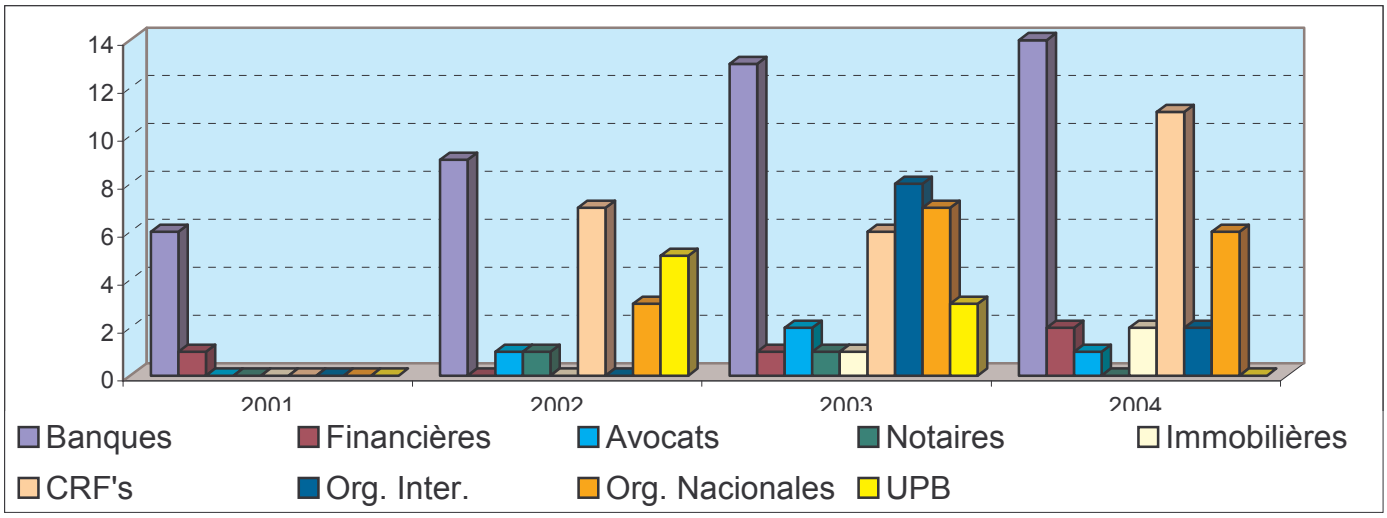


State of inquiries				
	Prosecution service	***Under investigation***	***Archived***	***Total***
Banks	9	13	21	**43**
Non-banking financial institutions	0	2	2	**4**
Legal professions	1	1	2	**4**
Notaries	0	0	2	**2**
Real estate agencies	1	0	2	**3**
Financial intelligence units	5	4	15	**24**
Other international bodies	0	0	10	**10**
National bodies	2	4	10	**16**
FIU initiative (on the basis of open sources like newspapers, Internet)	2	0	6	**8**
Total	**20**	**24**	**70**	**124**

Origin of inquiries

	2001	*2002*	*2003*	*2004*	TOTAL
Banks	**6**	**9**	**13**	**15**	**43**
Non-banking financial institutions	**1**	**0**	**1**	**2**	**4**
Legal professions	**0**	**1**	**2**	**1**	**4**
Notaries	**0**	**1**	**1**	**0**	**2**
Real estate agencies	**0**	**0**	**1**	**2**	**3**
Financial intelligence units	**0**	**7**	**6**	**11**	**24**
Other international bodies	**0**	**0**	**8**	**2**	**10**
National bodies	**0**	**3**	**7**	**6**	**16**
FIU initiative	**0**	**5**	**3**	**0**	**8**
Total	**7**	**26**	**42**	**39**	**114**





Requests made and received by the FIU 2002-2004

Body	Requests made 2002	Requests received 2002	Requests made	Requests received 2003	Requests made	Requests received 2004
Sepblac- Spain	6	4	2	7	2	3
Tracfin- France	1	4	3	1	2	8
Ctif-Cfi Belgium	0	3	0	0	3	3
Siccfin- Monaco	1	1	2	1	0	0
CDE- Chile	0	0	0	2	0	2
Coaf- Brazil	0	0	0	2	0	0
FCU- Isle of Man	0	0	0	1	0	0
Amlscu- UAE	0	0	0	2	0	0
Okokrim-Norway	0	0	0	2	0	0
Dgaio- Mexico	0	0	0	3	0	2
Edoc- Austria	0	0	1	2	0	4
Ofis-Slovakia	0	0	1	2	0	2
Uiaf- Colombia	0	0	0	1	0	0
Fiu-Luxembourg	0	0	1	3	3	0
Kd-Latvia	0	0	0	2	0	1
Mros-Switzerland	0	0	1	2	3	2
FIU-Bahamas	0	0	0	1	0	1
Orfk-Hungary	0	0	0	2	0	0
Fincen- USA	0	0	1	2	1	3
Uif-Bolivia	0	0	0	1	0	2

Sar-Italy	0	0	0	1	3	1
Unif-Venezuela	0	0	0	1	0	2
Msk-Turkey	0	0	0	1	1	0
Fmc-Russia	0	0	1	1	1	0
Fintrac-Canada	0	0	1	0	0	1
Mokas-Cyprus	0	0	1	0	1	1
FIU – United Kingdom	0	0	0	0	0	1
Fiu-Poland	0	0	1	0	0	1
Fiu-Liechtenstein	0	0	0	0	0	1
Fiu-Israel	0	0	0	0	2	1
Fiu-Netherlands	0	0	0	0	1	0
Fiu-Finland	0	0	0	0	0	1
FIU- United Arab Emirates	0	0	1	0	0	2
Fiu-Bulgaria	0	0	0	0	0	1
Bib-Portugal	0	0	1	0	2	1
Other bodies	0	0	0	5	0	6
TOTAL	**8**	**12**	**16**	**48**	**25**	**53**

2.5.2 Recommendations and comments

285. The situation concerning the UPB is satisfactory. However, certain matters need to be resolved, such as its resources, its authority and its terrorist financing role. In view of the foregoing, the following recommendations are made:

- extend the scope of the LCPI to make the FIU responsible for terrorist financing matters, as is already planned;
- publish the FIU's annual report and include in it a survey of laundering risks in the country typology of methods used, as already planned;
- authorise more extensive direct access to databases, for example of the police and the register of property of non-residents;
- consider ways of strengthening the UPB's authority, for example concerning technical communiqués, which are not binding, and its lack of direct powers to impose penalties for non-compliance with the LCPI;
- consider possible ways of reducing the UPB's staff turnover;
- make the UPB and its director more independent of the government, with a renewable term of office of a number of years for the director and the latter's right to select his staff.

2.5.3 Compliance with Recommendations 26, 30 and 32

	Rating	Summary of reasons (relating specifically to section 2.5) for the rating
R.26	**PC**	The FIU's responsibilities in the field of terrorist financing have not yet been laid down in the LCPI, though in practice it does exercise certain functions; the annual report is not published[16]; the authority and independence of the FIU and its director must be strengthened.
R.30	**LC**	Turnover and number of staff. is problematic
R.32	**C**	

2.6 Law enforcement, prosecution and other competent authorities – the arrangements for investigating and prosecuting offences, and for confiscation and freezing (R.27, 28, 30)

2.6.1 Description and analysis

Recommendation 27

286. There is a single police force in Andorra with civilian status, including a criminal police division, comprising investigation and inquiries departments and the Andorran central Interpol office. The investigation department includes an organised crime and money laundering unit of eight persons, who are concerned with economic crime. Its members are specially trained to deal with any offences with a financial aspect, particularly, laundering, terrorist financing and corruption. They assist the relevant investigating judges and co-operate with foreign police forces through Interpol.

287. In the judicial system, prosecutions are conducted by investigating judges. The judicial authorities consider that the number of laundering cases is not sufficient to justify setting up an ad hoc structure specifically responsible for prosecuting these offences. The judges concerned receive special training in laundering and financial crime organised by the French and Spanish judicial service commissions.

288. The police representatives said that financial inquiries to identify the proceeds of crime were automatically launched in cases generated outside the anti-money laundering system.

289. Concerning criterion 27.2, Andorran practice permits the waiving of coercive measures that might impede the conduct of inquiries. Investigating judges direct the activities of the enforcement services and assemble the evidence necessary to ensure that inquiries culminate in arrests or the seizure of assets. They have the power to postpone arrests or seizures in order to assemble evidence of the commissioning of an offence. However, there is nothing in the legislation on this subject.

[16] It has become public after the evaluation visit

290. In the case of criteria 27.3 and 4, Article 87 of the Code of Criminal Procedure permits telephone tapping and the interception of mail and other forms of communication, subject to judicial approval, in inquiries into serious offences, including money laundering and terrorist financing. The LCPI has added a new section to Part 2, Chapter 4 of the Code of Criminal Procedure, with articles 122 b, c and d, empowering judges to authorise special investigation techniques such as controlled circulation or delivery of drugs and other psychotropic substances, firearms, works of art, counterfeit currency, child pornography, human organs and objects or money derived from money laundering operations (Article 122b), or "sting" operations, in connection with offences linked to drugs, firearms, counterfeit currency, procuring, terrorism, trafficking in criterion, child prostitution and pornography, trafficking in human organs and money laundering (Article 122c). At the time of the evaluation visit, no controlled deliveries or sting operations had been used.

291. As noted in section 6.3 of this report, under Andorran law officials of foreign governments can be involved in inquiries in Andorra. Since the predicate offences are committed abroad, all laundering cases require international police and judicial co-operation. This occurs systematically and in many cases goes beyond mere exchanges of information to include an operational element. In the most important laundering cases, joint physical and technical surveillance operations are conducted and investigation teams set up, in accordance with criterion 27.5. However, there is no tradition of multidisciplinary groups in Andorra. These are possible, but not used in practice. If specific expertise is required, the police ask the courts to supply temporary experts.

292. It is regrettable that neither the police nor the UPB have made a detailed study of the risks of laundering in Andorra (criterion 27.6). The police have analysts. Although there is also a system for processing information, it is admitted that there is no expertise on how to use it. The UPB statistics were improved in 2005 and in future it is planned to include an analysis of the financial methods used by persons investigated by the unit.

Recommendation 28

293. The production of documents, searches and seizures and the obtaining of evidence - criterion 28.1 - are all covered by articles 26 and 76 to 79 of the Code of Criminal Procedure. They are also the basis for provisional measures, considered earlier under section 2.3, used in investigations into laundering and other serious offences. Article 76 of the Criminal Code is still the main basis on which investigating judges, or the police under their direction, obtain information.

294. The wording of Article 76 is fairly cursory and it does not list the various types of document or other evidence that can be seized or consulted ("the judge may visit any place necessary to carry out searches and seize items and documents that will help to establish the facts"). The gathering of preliminary information is based on Article 26, which governs relevant police activities. The various rules on professional and banking secrecy can be overruled by judicial decision (see also section 3.4).

295. The Code of Criminal Procedure authorises the police to take evidence on the spot, as part of the preliminary investigation, and provides for suspects to be summoned for examination and, above all, for witnesses and other persons to be heard (Articles 66 to 75). This is consistent with criterion 28.2.

Recommendation 30

296. This recommendation poses several problems for Andorra, apart from the situation of the FIU as previously considered.

297. Aside from any issues of autonomy and independence from the political authorities, most of those met referred to (criterion 30.1):

- a lack of human resources, in terms of police responsible for laundering cases, prosecutors and investigating judges;
- an inequitable distribution of cases of laundering and other major crime, with investigating judges who have made the effort to specialise in such cases also having to deal with all the more common or garden ones that require less personal effort;
- lack of career certainty, since prosecutors and judges are always appointed for renewable terms and cannot progress in their careers because the judicial system is on such a small scale;
- inadequate salaries and lack of experienced staff in the police.

298. Andorra is a small country, which limits the possibilities of developing institutions. Overall, the working conditions of these professions do not seem markedly worse than those of their other European counterparts, as far as the evaluators could see, based on a very brief examination.

299. Nevertheless, some of the issues raised have to be taken seriously since the private sector, particularly banks, the profession of lawyer and other forms of advisers, are a significant source of attraction. Andorra thus runs the risk of a regular outflow, after several years' service, of experienced police officers and judicial personnel for whom it has great need, in response to which it has had to recruit French and Spanish judges to make up the numbers.

300. The widespread sense of dissatisfaction should also send out a warning signal to the Andorran government.

301. It is not conducive to the effective treatment of complex cases of laundering and other serious offences, which requires a high level of experience and expertise, personal involvement, checking and analysis and external support in various forms, including support from the hierarchy. General experience shows that, otherwise, complex case files tend to be thrown together, and the cases themselves eventually lost (from the authorities' perspective) or simply not proceeded with.

302. Turning to criterion 30.2, professional standards and integrity requirements exist – though not necessarily in the form of a code of ethics – and the selection machinery – under the auspices of the Judicial Service Commission and the police selection examination procedure – is designed to recruit a high standard of personnel, despite the limited number of candidates. The police have difficulties recruiting experienced officers of a high standard and, unlike the judicial system, can only take on Andorran nationals.

303. The country's size limits training opportunities, hence the frequent use of Spanish and French facilities to fill the gap, particularly in areas such as organised crime, laundering and terrorist financing (criterion 30.3).

2.6.2 Recommendations and comments

304. The investigation and prosecuting authorities appear to have all the necessary legal resources, if not in the statutes at least in practice. However, there are significant allegations of human resources problems, in such areas as careers and motivation, that the Andorran government needs to look at. The following recommendations are made:

- to consider amend the legislation to explicitly allow authorities investigating money laundering cases to defer the arrest of suspects and/or the seizure of funds, or not to make such arrests and seizures, if this is necessary to identify persons involved in these activities or to collect evidence;
- undertake an active and detailed study of the risks of laundering (and terrorist financing) in Andorra;
- give close consideration to the various expectations and claims of the judiciary and the police and make any reforms necessary, bearing in mind the special demands created by serious crime, including laundering, such as the difficulties of investigation, the volume of work, the need for special expertise and motivation and the need for extra support.

2.6.3 Compliance with Recommendations 27, 28 and 30

	Rating	Summary of reasons (relating specifically to section 2.6) for the rating
R.27	**C**	
R.28	**C**	
R.30	**PC**	Alleged problems concerning the status and careers of prosecutors and judges, lack of personnel (police responsible for laundering, prosecutors and judges), inadequate police salaries and the management of investigating judges' workload.

2.7 Cross border declaration or disclosure (SR IX)

2.7.1 Description and analysis

305. Special Recommendation IX requires countries to:

establish measures to detect the physical cross-border transportation of currency and bearer negotiable instruments, including a declaration system or a compulsory disclosure system;

empower their competent authorities to stop or restrain currency or bearer negotiable instruments where there is a suspicion of money laundering or terrorist financing or a false declaration/disclosure;

ensure that effective, proportionate and dissuasive sanctions are available to deal with persons making false declarations or disclosures. If transported currency or bearer negotiable

instruments are related to terrorist financing or money laundering, countries should also adopt measures, including legislation, in accordance with Recommendation 3 and Special Recommendation III, which authorise the confiscation of such currency or instruments.

306. An agreement dated 28 June 1990 (EUR-Lex – 21990A1231(02) – EN) established a customs union between the European Economic Community and Andorra for the products covered by Chapters 25 to 97 of the Harmonized System. In the case of capital movements, Andorra remains a third country vis-à-vis the European Union.

307. The evaluators were told that the purchase of tax-free products in Andorra was a great tourist attraction, leading to large movements of people and vehicles into the country. The French and Spanish authorities carry out random checks on them at the border, because imports of such products are subject to quotas.

308. It emerged from on-the-spot interviews that Andorra has not so far adopted any measures corresponding to SR IX, or its criteria. There is no provision for declaring or monitoring transfrontier movements of currency or bearer negotiable instruments. Currency can be taken into and out of the country freely and in unlimited quantities.

309. Andorra's only borders are with Spain and France. In the absence of an airport or any maritime frontier, capital physically enters and leaves through these countries. For example, by virtue of their country's legislation, Spanish and French citizens may export to Andorra – on each trip – up to € 6 000 in cash and must declare any amounts in excess of this. Andorra does not systematically receive or request information from these two countries on funds declared or detected going to or coming from Andorra. However, the French customs do sometimes (an example of notification by the Customs of Calais was given) notify the UPB of non-declared funds entering France or intended for Andorra.

310. The customs are mainly concerned with collecting customs duties and combating fraud and smuggling. They take part in bi- and multilateral meetings with the UPB and sometimes report certain events, such as over-billing, goods crossing and recrossing the border, large increases in certain categories of merchandise and carrousels of goods, as part of the process of co-operation required by the LCPI. The evaluators were also told that if the customs discovered that suspect currency was being transported, this would be declared to the UPB and the currency would be detained by them pending further information and/or the arrival of the police (Article 7.6 of the Customs Code). So far this has not happened, which has certainly surprised the evaluators given that 60% of Andorran banks' customers are foreign nationals and that many persons, particularly small savers, bring money in cash into these banks.

311. From the on-site discussions it was not possible to determine the customs' level of involvement in AML/CFT.

312. The customs department is a member of the World Customs Organisation.

313. One of the FIU's responsibilities is to "ask for and receive any information from the police or any other official body in connection with its responsibilities" (section 53.2 of the LCPI). In practice this exchange of information does not cover SR IX

2.7.2 Recommendations and comments

314. The information available to the evaluators suggests that no action has been taken under SR IX and its criteria. In view of the foregoing, the following recommendations are made:

- review the application of FATF special recommendation IX in its entirety;
- involve the customs service more clearly – in law and in practice – in AML/CFT machinery.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of reasons for the rating
SR IX	**NC**	Funds enter and leave Andorra freely and no specific measures have been taken to apply SR IX; for the time being, there do not appear to be any alternative measures.

3 PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

315. Financial institutions and other bodies and professions subject to AML/CFT requirements are covered by:

- the Act on international criminal co-operation against money laundering and the proceeds of international crime (LCPI)
- The LCPI regulation

316. Despite their apparent simplicity, these two statutory texts – which both are to be considered as enforceable - establish a very complex system, for two reasons:

- according to circumstances, sections and paragraphs refer either to all the bodies and institutions concerned or only to institutions in the financial system (banks and financial establishments), according to a logic that is not always easy to follow. Sometimes it seems to be deliberate and on other occasions the result of errors in wording;

- the LCPI regulation (hereinafter RLCPI or regulation) was intended to clarify or implement the LCPI, but in practice includes sometimes significant changes to it.

317. As far as possible, the areas of application are specified.

318. Secondary material issued by the Andorran National Finance Institute (INAF) and the UPB varies in value. According to INAF, its technical communiqués are binding, which is not the case with those of the UPB, which are mainly for information or offer strong encouragement.

319. According to the country's terminology, the country's financial sector comprises:

- banks
- other financial services establishments

320. Although they are covered by the LCPI, insurance companies are not part of the Andorran "financial system", which means that they are not fully under the control of INAF. The finance ministry issues their operating licences and carries out tax inspections. There are plans to rectify this in the medium term. Another consequence is that the requirements of the LCPI and its regulation do not necessarily apply to insurance companies (or to DNFBPs) in the same way as to institutions in the "financial system". For example, the duty to oversee and check identities in Article 51.e only applies to these bodies if there is a suspicion of laundering:

Article 51.e:
The obligations to supervise and verify the identity of the institutions of the financial system also includes the other persons under obligation concerning any client with an interest in any operation that raises suspicions of an act of laundering due to the quantity or conditions in which it is carried out.

321. There is no securities exchange in Andorra. Banks and other financial establishments offer their services as brokers on foreign exchanges.

322. Like insurance companies, *bureaux de change* are not part of the "financial system".

Customer due diligence and record-keeping

3.1 Risk of money laundering or terrorist financing

323. This issue is covered in detail in section 1.5.c

3.2 Customer due diligence, including enhanced or reduced measures

3.2.1 Description and analysis

Recommendation 5

324. Recommendation 5 establishes basic obligations that should be laid down either in laws or regulations issued or authorised by a legislative body, which impose mandatory requirements with sanctions for non-compliance, or by other enforceable means, which require there to be a binding text (not issued or authorised by a legislative body), but under which sanctions can be imposed. Criteria marked with an asterisk in the Methodology have to be provided for by law or Regulations, as these terms are understood under the Methodology.

325. The LCPI is a law that clearly imposes sanctions. The LCPI regulation is the implementing legislation thereto; therefore, its provisions are enforceable in the same way as the LCPI (although the regulation does not specifically refer back to the sanctioning system of the LCPI). The AML/CFT system also relies on the technical communiqués of the UPB but as indicated earlier, it would seem that these are not enforceable means.

Anonymous accounts and accounts in fictitious names

326. In connection with criterion 5.1*, the Andorran authorities have stated that anonymous accounts do not exist in the country. Although they are not explicitly prohibited by law, Art. 58(2)a makes it a serious offence not to ascertain the client's identity when establishing a business relationship, which amounts to the same in practice. In addition, the banks adopted as early as 1991 an inter-banking convention which puts an explicit ban on anonymous accounts.[17] The team was also told that all cheques are crossed and carry a name.

327. However, numbered accounts do exist. Until the new legislation in 1999, confidentiality about the identities of account holders created numerous problems of access to information and encouraged the arrival of significant sums in cash derived from drug trafficking. The evaluators were told that, since this date, "even though the practice has continued, account holders are now identified by and known to the bank managers", as well as the AML/CFT compliance officer, clientele portfolio managers, auditors and secretarial staff, which represents in total 40 to 50 staff for a given bank (this is required by criterion 5.1*. Numbered accounts are subject to the same obligations and identification procedures as named accounts. The numbers are only used in banks' internal dealings for reasons of confidentiality. Payment orders issued and received must bear the name of the customer and not the number. Particular diligence is shown with regard to these numbered accounts and they are included in the criteria drawn up by each financial establishment concerning

[17] INAF's technical communiqué N° 163/2005 (which became effective after the on site visit as it was disseminated domestically in February 2006) prohibits the offering of anonymous accounts.

risk categories. Financial institutions regularly assess these categories, to which they apply extra vigilance.

328. The requirements concerning customer due diligence under criteria 5.2* and 5.3* are provided for in section 51 of the LCPI. These apply to operators in the "financial system", as defined in Andorran law, which only includes banks and other financial houses. As noted above, section 51.e extends them to other institutions, but only where laundering is suspected:

Art. 51 e LCPI

e)The obligations to supervise and verify the identity of the institutions of the financial system also includes the other persons under obligation concerning any client with an interest in any operation that raises suspicions of an act of laundering due to the quantity or conditions in which it is carried out.

329. Thus, the identification obligations in their entirety, under section 51, only apply to banks and financial houses, which make up the financial system. Insurance companies, and *bureaux de change* as non-principal activities, are therefore not covered.

330. The basic identification requirements are phrased in different ways in the LCPI (section 51.C) and its implementing regulation (RLCPI, sections 12 and 13). Moreover, the wording refers in different ways to the institutions covered (it should be noted that the English translation and the French translation do not match), which makes it difficult to interpret (the relevant bits are underlined by the evaluators in the following provisions):

As far as the institutions of the financial system are concerned, request a client to identify himself/herself by showing an official document at the moment a business relationship is established.

1 If the client is a natural person, the person under obligation must confirm the identity of the client, his or her domicile and professional activity. To this effect he or she must ask the client to show an item official identification containing a photograph, and he or she must keep a copy of this.

2 If the client is a legal entity the person under obligation must request:

A certificate of the inscription of the entity in the Registry of Companies.

Justification, in the same way indicated in paragraph c) 1 of this article, of the identity of the natural person who the document presented shows to have powers to represent the entity.

Article 12 RLCPI
Before setting up any business relationship, a bank in the financial system [the French version refers to "financial system institutions"] shall ascertain the identity of the other contracting party from whom it shall require, if it is an individual, an original official document bearing his photograph and proving his identity.

In order to ascertain the domicile and professional activity of an individual, the bank in the financial system requires whatever document of proof it may consider necessary and, if it has any doubts about the truthfulness of these points, it shall require him to sign a specific declaration. The bank keeps a copy of all these documents.

In the same conditions as those set out in paragraph 1 of this article, the bank ascertains the identity of any occasional customer requesting it to perform any operation for an amount equal to or in excess of 1250 euros.

Article 13 RLCPI
In the case of legally constituted bodies, the banks in the financial system [the French version refers to "financial system institutions"] require the presentation of the original or a certified true copy of any deed or extract of a deed

in an official register which gives the name, company aim, legal form and registered offices thereof as well as the powers of attorney of the persons acting in the name of the legally constituted body. With regard to the empowered representatives of legally constituted bodies, the banks in the financial system require the same documents as for individuals other than those referring to their profession. They shall also identify the true owners by obtaining a signed declaration from the representatives. The banks in the financial system keep a copy of all these documents.

In the case of legally constituted bodies under incorporation, the bank in the financial system may open an account, identifying as provided for in the first paragraph of this article the individual or individuals making the request but it may not authorize any sort of operation other than lodgements and sums charged to account in connection with the incorporation of the company until such time as the body is legally constituted and the documents provided for in the foregoing paragraph have been produced.

331. Under the LCPI, these measures are required only at the time the business relationship is established, which according to banking practice cannot be effected at a distance. The regulation is inconsistent with the LCPI because identification also applies to occasional customers in the case of banks (and only banks) conducting operations for sums equal to or over € 1 250, which is compatible with the € 15 000 limit in criterion 5.2. The provision does not cover batch transactions, but € 1 250 is considerably below the criterion level, which makes the question of batches superfluous. Occasional wire transfers, as referred to in SR VII, are not explicitly covered, but they are covered by the regulation's concept of "operations". Moreover, the € 1 250 limit is well below the € 3 000 of SR VII.

332. Section 51.a of the LCPI, which applies to all establishments, calls for "particular scrutiny" when laundering is suspected. Paragraph e, which applies to all establishments, states that checks must be made on the identity of customers suspected of laundering. This duty applies to all establishments covered by the LCPI. The act does not at present cover terrorist financing. Nor is particular vigilance required when there are suspicions about the veracity or relevance of customer identification data.

333. The LCPI and its regulation require identity checks, based on reliable sources, when a business relationship is being established with individuals or legal persons. In accordance with Art. 12, last paragraph, of the regulation, occasional clients need to be identified for any operation of € 1250 or more (criterion 5.3*). For natural persons and concerning checks of the address and professional activity, any document considered useful shall be requested. In case of doubts as to the validity of the information, an express declaration is to be signed by the client. The requirements of Articles 12 and 13 of the RLCPI which provide that the verification of identity can include a declaration by the customer, does not meet the test of independent source document as set out in criterion 5.3.

334. The obligation for financial institutions to identify customers also appears in the 1990 code of practice of the Andorran banks' association.

335. Section 51.2.c of the LCPI, which applies to all establishments, and section 13 of the regulation, which only applies to the financial system, requires checks to be carried out on the identity of any persons with power to represent legal persons and the legal status of legal persons, by securing supporting documents (criteria 5.4a* and b).

336. In connection with criteria 5.5* and 5.5.1*, section 51 d of the LCPI and section 13 of the regulation, both of which are only applicable to the financial system, require identification of the beneficial owners/controllers of legal persons or individuals, and the occupation. The LCPI and RLCPI do not provide for a definition of beneficial owners, that would have helped to clarify whether the above requirements are related to beneficial owners in the meaning of the FATF glossary, or just proxy relationships. The use of name-lenders is widely practised in Andorran companies, despite very clear prohibitions, as in section 10 of the commercial decree of October 1981 on all industrial and commercial assemblies. The new companies legislation planned for 2006-2007 should open the share capital of Andorran companies to foreign nationals, which should help to limit the use of name-lenders and Andorran intermediaries which are an obstacle for the identification of ultimate beneficiaries. The use of omnibus accounts and the type of business relationship maintained with the holders of these accounts makes it also impossible for the bank concerned to identify the beneficial owners[18].

337. The LCPI and its regulation do not cover criterion 5.5.2a explicitly. Banking establishments told the evaluators that in practice they took necessary steps to establish the ownership and control structure of their customers, but acknowledged that it was sometimes difficult for certain foreign residents. Criterion 5.5.2 b* is to a certain extent covered by section 51 d of the LCPI, applicable to all establishments, and section 13 of the regulation, only applicable to the financial system, which require identification of the individual who exercises ultimate effective control over a legal person or arrangement, and his or her occupation.

338. There is also the practice of "omnibus" accounts[19]. The evaluators were told that this type of bank account was mainly used by non-banking financial establishments[20], either in Andorra or abroad, to avoid having their customers "stolen" by banks. In practice, the holders are not identified by the banks, who rely on the identification made by the financial establishments. There is no agreement between banks and other financial establishments on questions of identification. The association of non-banking financial establishments has even stated that these establishments are forbidden from providing banks with information on their customers, to which only the authorities, including INAF have access.

339. Name-lenders (« prête noms ») are strictly forbidden in Andorra (as it is stated in section 10 of the decree of 10 October 1981 adopted by the minister of the Consell Général: "neither Andorrans nor resident foreign nationals may lend their names in any circumstances. The MI Consell Général reserves the right to establish a commission to secure compliance with this provision"; section 10 of the companies regulation of 1983: "neither Andorrans nor foreign nationals may lend their names in any circumstances": see also chapter 5.1 of the present report). It happens occasionally that name lenders are used in relationships with Andorran financial institutions, including banks. The latter, in accordance with the LCPI, identify the real beneficial owner. It happens sometimes that the name-lender however would not reveal the identity of the beneficiary to the bank, in which case the bank either makes a report to the FIU or refuses to perform the transaction.

---

[18]The Andorran authorities wished to stress that the (unique) company that uses a (single) omnibus account is, however, required to know its customers.

[19]Account held in the name of a body or person and used for the transactions of several anonymous clients of this body or person.

[20] The Andorran authorities explained after the visit that that, in fact, only one financial house uses this kind of accounts (one account only, in practice). The Andorran authorities are aware of this issue and it is foreseen to address the issue in the revised LCPI (AML Law).

340. The LCPI and its regulation do not cover criterion 5.6. However, banks told the evaluators that their internal procedures required them to obtain information on the purpose and intended nature of the business relationship. It was also indicated that the UPB had also disseminated – via a technical communiqué - a document on « KYC » which addresses the issue of understanding the purpose and nature of the business relationship.

341. The LCPI and its regulation do not cover fully criterion 5.7*. Indirectly, section 51.a of the LCPI and section 15 of the regulation cover criterion 5.7.1 in practice by requiring certain measures to be taken in response to unusual or unjustified operations (which pre-supposes an ongoing "know your customer" approach). This is mostly a commercial practice.

342. There is no requirement to ensure that documents, data or information are kept up-to-date and relevant (criterion 5.7.2). However, banks said that they took such steps as part of the normal monitoring of their customers.

343. There is no legislation (and the team was not informed of any other source of enforceable means) to apply criteria 5.8, 5.9, 5.10, 5.11, 5.12. Banks said that they applied a "scoring" system to determine each customer's risk factor, in accordance with internal procedures.[21]

344. Turning to criterion 5.13, by virtue of the LCPI (Art. 51c) and the RLCPI (Art. 12 and 13), verification of the identification is mandatory prior to establishing a business relationship with legal persons (on the basis of official documents or certified copies) and for individuals (on the basis of an official ID comprising a picture and any other evidentiary document considered useful). This also applies to occasional transactions in excess of € 1 250 (art. 12 RLCPI). Section 15 of the regulation required all establishments to exercise due diligence throughout the business relationship to ensure that transactions continue to be in accordance with information supplied when the relationship started. The question of the beneficial owners of corporate customers is dealt with separately in section 13 of the regulation, which requires identification of the beneficiary. Furthermore, Section 14 of the RLCPI requires verification also when a suspicion arises that the client is acting on behalf of a third person.

345. Andorra does not authorise deferrals in the verification of customer identity. The unique exception is contained in the last paragraph of Section 13 which permits such deferrals during the constitution of legal persons. The only transactions permitted concern deposits and withdrawals connected with the constitution of the company, until the process is completed and all the required documentation is supplied. This is consistent with criteria 5.14 and 5.14.1. The 1983 regulation on commercial companies requires to close accounts should the constitution not be finalised within 2 months.

346. The situation concerning criteria 5.15 a and b is somewhat confused. The team was told that the consequences of customer failure to comply with the due diligence obligations were only provided for in banks' internal procedures and satisfied FATF requirements (non-execution of the transaction/non establishing of the relationship and reporting to the UPB where it is impossible to comply with the due diligence/identification requirement. The Andorran authorities admitted that Section 14 of the regulation can be confusing, but its unique aim is to address wire transfers (the reference to account opening being a consequence of the need for occasional customers to open a temporary account in order to make a transfer). The problem remains for this type of services.

[21] According to the Andorran authorities, INAF's technical communiqué N° 163/2005 (23 February 2006) addresses these matters

347. Criteria 5.16, 5.17 and 5.18 are reportedly also only covered in banks' internal procedures

348. Article 7 of the EU Directive requires member states to ensure that financial institutions refrain from carrying out transactions that they know or suspect to be linked to money laundering, before informing the relevant authorities.

349. This principle is, in theory, covered in Andorra since section 47 of the LCPI requires all the establishments concerned to declare suspicious transactions to the UPB before the operation is carried out.

Recommendation 6 - politically exposed persons

350. Banks apply a level of diligence vis-à-vis customers that is consistent with "normal" working relations. For foreign nationals in Andorra, they mainly use databases such as Worldcheck and KYCI. Some have internal policies on politically exposed persons and, for example, operate classification systems based on risk levels.

351. At the time of the visit, there was no provision in Andorran law, regulation or other to deal with politically exposed persons. The Andorran authorities were aware of this shortcoming. The UPB said that it was preparing a draft technical communiqué on the subject[22]. INAF indicated that future ethical codes would look at this issue and include politicians, bank shareholders, lawyers and judges. In future, INAF would be informed of such persons' accounts.

Recommendation 7 – relationships with correspondent banks

352. According to FATF Recommendation 7:

Financial institutions should, in relation to cross-border correspondent banking and other similar relationships, in addition to performing normal due diligence measures:

a) Gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action.

[22] This technical communiqué was approved in June 2006 and circulated to the banking and insurance sectors. The evaluators have received an Andorran language version. In February 2006, INAF approved a document entitled "*Normes ètiques i de conducta*", which according to the Andorran authorities has binding force. Page 5, paragraph 4 deals with politically exposed persons. The technical communiqué requires those working in the financial and insurance sectors to take special steps when establishing relationships and conducting business with politically exposed persons. The seven measures required include procedures to establish the identity of beneficial account holders, risk management systems to determine whether customers come into the politically exposed category, checks to establish as far as possible the origin of funds and the accuracy of information supplied by clients, a policy on which customers are acceptable as clients, the need for senior management/board approval for accepting such customers, continued vigilance and reporting of the least incidents to the establishment's governing body. The INAF document contains a brief reference to the need for particular vigilance with regard to politically exposed persons and a list of these persons, including well known persons from public authorities, political parties and private bodies in which public authorities have majority shareholdings.

b) Assess the respondent institution's anti-money laundering and terrorist financing controls.

c) Obtain approval from senior management before establishing new correspondent relationships.

d) Document the respective responsibilities of each institution.

e) With respect to "payable-through accounts", be satisfied that the respondent bank has verified the identity of and performed on-going due diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer identification data upon request to the correspondent bank.

353. The subject of correspondent banks has not so far been considered, as INAF officials have confirmed. There are no specific laws, regulations or other enforceable means covering criteria 7.1 to 5.

354. Under existing banking regulations, banks must specify all the correspondent banks with whom they maintain relations in their quarterly reports to INAF. If INAF considers that this could be a source of problems it discusses the matter with the bank. The team was told that correspondent banks were generally in "good countries", from the standpoint of banking and other risks. To a certain extent, this form of externalised diligence (since it is not the responsibility of the financial institution itself) reflects the content of criterion 7.2.

Recommendation 8 – New technologies and non face to face business

355. According to FATF Recommendation 8:

Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity, and take measures, if needed, to prevent their use in money laundering schemes. In particular, financial institutions should have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.

356. The LCPI and its regulation do not cover these issues. The team was told that new technologies did not currently present any problems. The evaluators consider that there is rapid change in the field of new technologies, globalisation of the economy and on-line services. Andorra would be well advised to include provisions on this subject in the LCPI.

3.2.2 Recommendations and comments

357. The evaluators welcome Andorra's plans to update the LCPI. This would enable it to take account of recent developments in FATF standards. To date, recommendations 6, 7 and 8 have not been covered. There are certain gaps connected with recommendation 5. These are sometimes covered by the more developed standards in the banking sector, but this only constitutes part of the overall financial sector, as understood in the Methodology.

358. It is recommended that recommendations 6 to 8 on politically exposed persons, relationships with correspondent banks and risks associated with new technology be transposed into Andorran law.

359. The application of recommendation 5 should be subject to wide-ranging review, given the various gaps. In particular the Andorran authorities should:

- make sure a definition of beneficial owners(hip) is provided for, that would reflect the FATF glossary definition;
- review the application of recommendation 5 to omnibus accounts
- review the application of recommendation 5 to services offered – despite the existing legal prohibitions - by name-lenders;
- extend all the provisions of the LCPI and its regulation to insurance companies and to any other institution covered by FATF's definition of "financial institution", rather than Andorra's definition of "financial system";
- extend the duty of due diligence, including such measures as identification, to suspected terrorist financing;
- require diligence concerning identification and so on when there are suspicions about the veracity or relevance of client identification data;
- cover explicitly criteria 5.5.2 and 5.7;
- make it obligatory to obtain information on the nature and purpose of business relationships;
- make it a requirement that documents, data and information are kept up-to-date and relevant;
- introduce provisions on the principle of risk, in accordance with criteria 5.8 to 5.12;
- introduce a ban on conducting operations or establishing relationships if the body concerned cannot satisfy its duty of diligence;
- introduce provisions to apply the duty of diligence to existing customers;
- introduce a requirement that institutions consider filing an STR in instances in which they are unable to complete the CDD process.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of reasons for the rating
R.5	**NC**	Existence of omnibus accounts (several clients associated with one single bank account and who are kept secret by the intermediary) and name-lenders (or "straw-men"); need to extend all the provisions of the LCPI and its regulation to insurance companies and other financial institutions defined as such by the Methodology; need to extend the duty of due diligence, including such measures as identification, to suspected terrorist financing; no requirement for diligence concerning identification and so on when there are suspicions about the veracity or relevance of client identification data; need to cover explicitly criteria 5.5.2 and 5.7; no obligation to obtain information on the nature and purpose of business relationships; no requirement that documents, data and information are kept up-to-date and relevant; no risk-based approach on the basis of criteria 5.8* (and to a lesser extent 5.9 to 5.12) no ban on conducting operations or establishing relationships if the body

		concerned cannot satisfy its duty of diligence; no duty of diligence to existing customers.
R.6	**NC**	No measures concerning politically exposed persons; proposals were under consideration at the time of the visit.[23]
R.7	**NC**	No measures on relationships with correspondent banks.
R.8	**NC**	No specific measures on risks associated with new technology.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and analysis

360. The LCPI makes no provision for reliance on CDD measures undertaken by third parties and other business intermediaries and there are no mechanisms in place in this respect. Institutions are normally required to establish the identity of customers and any beneficial owners themselves.

3.3.2 Recommendations and comments

361. Recommendation 9 is not applicable to Andorra, the situation in practice is not compatible either with the ban on due diligence measures undertaken by third parties and other business intermediaries or with criteria 9.1 ff, which permit such reliance, but subject to certain conditions that are not met in this case.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of reasons for the rating
R.9	**NA**	

3.4 Financial institutional secrecy or confidentiality (R.4)

3.4.1 Description and analysis

362. According to criterion 4.1, countries should ensure that no financial institution secrecy law will inhibit the implementation of the FATF recommendations. Areas where this may be of particular concern are the ability of competent authorities to access information they require to properly perform their functions in combating money laundering or terrorist financing, the sharing of information between competent authorities, either domestically or internationally, and the sharing of information between financial institutions where this is required by R.7, R.9 or SR.VII

[23] On the issue of PEPs, a technical communiqué was circulated and training events organised after the visit

363. There are various legal provisions in Andorra to protect confidentiality.

364. Article 14 of the constitution protects professional confidentiality. The Criminal Code has similar provisions, including articles 182 to 193. Article 190 covers breach of confidentiality in the employment field, article 191 breach of professional confidentiality and article 192 the requirement for confidentiality to continue after a change of occupation or profession or the end of the contractual relationship. Article 377 concerns the disclosure of confidential information and is applicable to public authorities and individuals. The only clearly laid down exception to confidentiality requirements is in article 190, which exempts officials of different banks from the duty of maintaining banking secrecy when assessing commercial risks linked to loans.

365. The legislation on international co-operation against the laundering of money and the proceeds of international crime also includes a number of provisions, some of them fairly long (sections 32 and, above all, 50). Section 50 forbids financial establishments from providing information on relations with their clients and the latter's accounts and deposits except in the case of judicial proceedings and on the written instructions of a court. It also states that traditional professional confidentiality does not prevent the reporting of suspicious transactions to the UPB. The same section also disallows banking secrecy as grounds for refusing to respond to the UPB, which can appeal to the courts against any such refusal to supply information. Article 87.4 of the Code of Criminal Procedure also includes a similar exception to banking secrecy on behalf of the authorities in general: "should it be necessary to obtain banking information, the courts may issue an order to that effect, giving reasons for the decision".

366. The result of these various provisions is a legal framework that lacks coherence and retains strong elements of banking and professional confidentiality, other than in the case of banking information for which there are explicit exceptions. Exchanges of information between financial institutions appear to be particularly limited. A strict reading of the LCPI would suggest that financial institutions are not even allowed to supply information to INAF, their natural regulatory authority, since only the judicial authorities and the UPB have access to information held by financial bodies (or at least by banks). However, the law of 2003 on the regulation of the disciplinary regime of the financial system contains (since the amendments introduced by law 14/2003 on the INAF) an art. 4(1) which enables the INAF to receive from entities of the financial system all information considered useful to control the implementation of regulations, on the occasion of both periodic or occasional reports produced by the entities and on site controls.

367. The small size of the country and of Andorran society and the need to protect individuals' privacy in such a context were given as reasons for this insistence on data protection.

368. In practice, the UPB has not reported any particular difficulties. Since the establishment of the FIU, none of its requests have been refused by persons subject to LCPI obligations, and nor have the judicial authorities reported any difficulties. However, police representatives did raise the issue of access to banking information, though they do not appear so far to have needed much information from other sectors. None of those whom the team met referred to any obstacles to international exchanges of financial and other information.

369. Nevertheless, issues remain concerning the impact of existing rules on information exchanges between financial institutions, to which the confidentiality rules continue to apply, and the culture of discretion is still a reality.

370. According to the Andorran authorities, the provisions of the LCPI mean that professional confidentiality is no longer an obstacle to combating terrorist financing. However, the evaluators would like the act to deal explicitly with terrorist financing because its preventive provisions are at present limited strictly to money laundering. The evaluators do not see how the UPB could rely on the LCPI, without risking a refusal of their request, to obtain information in connection with suspected terrorist financing if those concerned were not on an international sanction list or being charged with terrorism offences.

3.4.2 Recommendations and comments

371. The law on confidentiality and the protection of financial information should be reviewed to:
- make it more coherent;
- ensure that the judicial authorities and the UPB have access to this information in accordance with FATF Recommendation 4, in connection with terrorist financing;
- permit explicitly exchanges of information between financial institutions in accordance with FATF recommendations 7, 9 and SR VII.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of reasons for the rating
R.4	**LC**	The UPB and the judicial authorities do not report any particular difficulties arising from the rules on the confidentiality of financial information but the legal framework, which is highly protective of such confidentiality, is heterogeneous and, on paper, imposes restrictions.

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

3.5.1 Description and analysis

Recommendation 10

372. Recommendation 10 establishes basic obligations that should be laid down in laws or regulations issued or authorised by a legislative body, which impose mandatory requirements with sanctions for non-compliance.

373. Criterion 10.1* requires financial institutions *"to maintain all necessary records on transactions, both domestic and international, for at least five years following completion of the transaction (or longer if requested by a competent authority in specific cases and upon proper authority). This requirement applies regardless of whether the account or business relationship is ongoing or has been terminated."*

374. Sections 51f of the LCPI and 22 of its regulation require the retention of documents. Section 51f makes it an obligation for all the institutions covered by the legislation to retain documentation linked to the identification of customers for ten years from the termination of the commercial relationship with them. Section 22 of the regulation clarifies, and extends, the basic provisions by making them applicable to occasional transactions. The ten year period is calculated as follows:

- for regular customers, from the date the relationship is terminated;
- for occasional customers, from the date of the transaction (this aspect, which reflects the criterion, is not provided for in the LCPI);
- from the date on which any declaration of suspicion is made to the FIU (also not provided for in the LCPI).

375. The team was told on site that, in practice, "financial system" institutions retain documents for thirty years under older, more general legislation that is still habitually applied (this thirty year period applies to the lapse of rights under civil law). The authorities later advised that the main relevant legal framework is in fact provided by the Decree on commercial activities, insolvency and bankrupcy of 1969 whose Art. 5 requires to keep documentation for a period of 10 years after the last transaction.

376. Criterion 10.1* is satisfied in practice because the LCPI regulation (as an enforceable instrument) extends the time limit to occasional transactions, whereas the act itself only refers to the business relationship.

377. Criterion 10.1.1 reads: "*transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity"*.

378. Strictly speaking, the obligation in the LCPI (Art. 51f) and its regulation (Art. 22) concerns documentation on identification, plus declarations of suspicion and accompanying information. Section 47 states that declarations must be accompanied by any information concerning the transaction or the requested transaction, which can be understood as also creating an obligation to retain information going beyond identification. This was later confirmed by the authorities.

379. Under section 51f of the LCPI, the retention of other accounting and contractual documentation derives in principle from other relevant legislation, the decree of 1969 seen above, as well as the Regulation on mercantile companies of 1983. During the on site visit, there were inconsistencies on the issue of legal obligations related to bookkeeping requirements and the keeping of commercial and other documents.

380. Criterion 10.2* requires financial institutions *"to maintain all necessary records on transactions, both domestic and international, for at least five years following completion of the transaction (or longer if requested by a competent authority in specific cases and upon proper authority*). As noted above, the retention of information following cessation of a business relationship is covered by the LCPI.

381. Under criterion 10.3*, *"financial institutions should be required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority"*.

382. No such obligation exists in Andorra, whether of a general nature or in accordance with the internal AML/CFT measures that the institutions concerned should establish under section 52 of the LCPI. The team was told that in practice financial institutions have archiving systems and that the UPB, the judicial authorities and auditors have always had rapid access to information and documents requested.

SR VII

383. The answers to the questionnaire indicated that only the country's banks could make transfers. Transfers can never be made by credit card. The aspects of criterion VII.1 are covered by a circular of the Andorran Banking Association of August 2004. Banks are required for all international transfers, whatever the amount, to indicate the name of the originator and beneficiary, the originator and beneficiary's s account numbers, the reference number, the originator's address or his date and place of birth. For national transfers, only the reference number is attached. Identity verification is provided for under Section 14 of the regulation according to which financial system institutions are required to know the origin and destination of their customers' funds. As a consequence, if for any reason the institution suspects that the person opening an account or ordering a transaction – whether this is a regular or occasional customer – is acting on behalf of someone else, it shall require the presentation of any justification document that it considers necessary to ascertain the real identity of the originator and beneficiary. In case those documents cannot be obtained, it shall require a signed statement from the customer, indicating the originator and beneficiary's identity, the amount and purpose of the operation.

384. The information gathered must be attached to the transfer (VII.2). It is not provided that the originator must be mentioned, however, in practice the originator is mentioned in most cases. As indicated earlier, for domestic transfers, only the reference N° is attached (some banks also add the name), which reflects option VII.3b of the Methodology. The reference N° allows to retrieve the identity and other information gathered initially. Transfers without the required information are not transmited/are rejected, which implies that all the information is kept by the Andorran transfer intermediaries (VII.5). There are no specific provisions for batch transfers. As indicated earlier, there is no *de minimis* threshold (VII.6). There is no mechanism in place to ensure the implementation of the banking association's circular (VII.8), given the nature of the text (it is meant to be a guidance document on the implementation of SR VII and is thus not mandatory). Therefore, criterion VII.9 becomes irrelevant.

3.5.2 Conclusions and recommendations

385. Recommendation 10* is applied jointly via the LCPI and its regulation. Nevertheless, certain elements are lacking, so the following recommendations are made:

- To specify more clearly in the LCPI or its regulation the records and documentation to be kept in accordance with FATF Recommendation 10 and to provide for training and awareness-raising actions in this area;
- to require that records should be maintained for longer periods as may be required by competent authorities;
- make it a specific requirement that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

386. In practice, the banks apply most of the measures required under SR VII but there is no single law or regulation making this a legal requirement, covering all aspects of SR VII. It is therefore recommended that regulations be established to ensure the application of all aspects of SR VII.

3.5.3 3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of reasons for the rating
R.10	**LC**	The requirement to preserve documentation and records needs to be spelled out more clearly in the AML/CFT regulatory framework and training/awareness raising is needed in this field (entities are not aware of their obligations); need for a specific requirement that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.
SR VII	**PC**	In practice, the banks apply the measures required under SR VII on the basis of a circular of the banking association but there is no single law or regulation making this a legal requirement, covering all aspects of SR VII.

Unusual or suspicious transactions

3.6 Monitoring of transactions and business relationships (R11 & 21)

3.6.1 Description and analysis

Recommendation 11

387. In accordance with section 15 of the regulation (which is an enforceable instrument) persons subject to the LCPI must pay close attention to operations considered to be unusual because of their scale or circumstances or because they do not reflect the customer's normal activities (criterion 11.1). They must then request any documentation they consider necessary to justify the transaction. The banks told the evaluators that they had systems that enabled them to detect unusual or suspicious transactions, particularly using a scoring system. The UPB has also issued a technical communiqué calling for extra vigilance in looking out for such transactions.

388. As noted in section 4.1, section 15 of the regulation follows a series of obligations that only concern the "financial system", which could raise questions about its real scope. If all institutions were covered, this would include insurance companies.

389. There is no formal obligation to examine the background and purpose of transactions and keep a written record of the findings (criterion 11.2). Such a requirement derives indirectly from Art. 51f) of the LCPI.

390. As noted in section 2 of this report, the judicial authorities and the UPB generally have access to all information held by institutions covered by the legislation. However, there is no explicit

requirement for the findings referred to above to be kept for at least five years, in accordance with criterion 11.3. Such a requirement derives indirectly too, from Art. 51f) of the LCPI.

Recommendation 21

391. According to criteria 21.1 and 21.1.1, financial institutions should be required to give special attention to business relationships and transactions with persons from or in countries which apply the FATF recommendations either insufficiently or not at all, and there should be effective measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.

392. At the time of the visit, there were only three names on the list of countries and territories not co-operating with FATF (Myanmar, Nauru, Nigeria).

393. There is no legal requirement in the LCPI or its regulation corresponding to criterion 21.1 (or 21.2 – see also criterion 11.2 below). The evaluators were told that in practice banks maintained their own lists of countries and territories at risk, particularly regarding money laundering. The bank representatives whom the team met said that greater vigilance was practised with such customers. Nothing was said about counter-measures, as recommended in criterion 21.3.

3.6.2 Recommendations and comments

394. In the light of these points, the following recommendations are made:

- ensure that section 15 of the LCPI regulation is applied to all institutions covered by the legislation and not just those of the "financial system";
- make it a formal obligation to examine the background and purpose of transactions and keep a written record of the findings for at least five years;
- incorporate into Andorran legislation a requirement for all the institutions concerned to give special attention to business relationships and transactions with persons, particularly legal persons and financial institutions, from or in countries with weaknesses in their AML/CFT systems, examine, as far as possible, the background and purpose of transactions that have no apparent economic or visible lawful purpose, and make the findings available to the competent authorities, such as supervisors, law enforcement agencies and the FIU, and to auditors;
- give the Andorran government or the FIU statutory authority to apply appropriate counter-measures.

3.6.3 3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of reasons for the rating
R.11	**LC**	No formal obligation to examine the background and purpose of transactions and keep a written record of the findings for at least five years.
R.21	**NC**	In practice, only banks exercise a certain level of vigilance, based on their own lists (this is not provided for in legislation); no obligation to examine the background and purpose of transactions that have no apparent economic or lawful purpose, and make the findings available to the competent authorities; no counter-measures in accordance with criterion 21.3.[24]

[24]The Andorran authorities advised after the visit that the draft revised LCPI takes into account FATF Recommendation 21

3.7 Suspicious transactions and other reporting (R.13, 14, 19, 25 & SR.IV)

3.7.1 Description and analysis

Recommendation 13

395. Recommendation 13 establishes basic obligations that should be laid down in laws or regulations issued or authorised by a legislative body, which impose mandatory requirements with sanctions for non-compliance.

396. If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, directly by law or regulation, to report promptly its suspicions to the financial intelligence unit.

397. In connection with criterion 13.1, sections 46 and 47 of the LCPI and sections 19 and 20 of the regulation require all institutions concerned to report to the UPB "any transactions or proposed transactions concerning money [funds] or securities about which there are suspicions of laundering" (section 46.1 of the LCPI). The formula covers both attempted and completed transactions. The Andorran authorities have stated that the obligation relates simply to suspicions and does not require any objective justification. However, the evaluators note that the Methodology refers stricto sensu to suspicions of the proceeds of crime rather than of laundering, and that the latter might theoretically imply a level of suspicion that was unnecessarily high compared with a reference to the proceeds of crime. In practice, the two concepts are in fact equivalent. The new Article 409 of the Criminal Code extends the scope of laundering to numerous additional predicate offences, which is to be welcomed, not least from the standpoint of criterion 13.5. Nevertheless, Andorra has still not accepted the principle that all offences should be predicate offences to laundering.

398. Pending amendments (modifications are planned that would specify that it covered money laundering *and* terrorist financing), the LCPI does not require declarations of suspicion where it is suspected or there are reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism or terrorist acts, or by terrorist organisations or those who finance terrorism.

399. Regarding criterion 13.3*, section 46 of the LCPI applies not only to completed but also to planned transactions. The act sets no minimum sum for a declaration of suspicion – it is enough for a suspicion to exist.

400. Declarations must be made even if the transactions also involve tax matters (criterion 13.4), as soon as there is a suspicion of laundering concerning part of the transaction or one of the persons involved. There is nothing in the legislation that authorises financial institutions not to comply with their obligations when tax and laundering problems overlap (see interpretative note on recommendation 13, no. 2).

401. In comparison with other comparable financial centres, the number of STRs in Andorra is considered by the evaluative team to be of an average amount. Therefore, the system appears broadly to be effective.

European Union Directive

402. According to Article 6.1 of Directive 2001/97/EC, amending Council Directive 91/308/EEC, declarations must cover "any fact which might be an indication of money laundering", whereas FATF recommendation 13 links the declaration requirement to suspicions or "reasonable grounds to suspect that funds are the proceeds of a criminal activity". The Andorran provision is limited to the operation (likely to constitute laundering) and does not include other, more general, circumstances.

403. Article 7 of the EU directive requires states to ensure that the institutions and persons subject to the directive refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities, unless this is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money-laundering operation. Section 47 of the LCPI follows this approach, by requiring reporting to take place before transactions are carried out.

Protection for reporting individuals and bodies ("safe harbour") – criterion 14.1

404. Section 50 of the LCPI protects those (entities and their employees) making declarations of suspicion against the consequences of their reports. The wording is less precise and detailed than in the Methodology, particularly regarding unfounded suspicions. Andorra could modify the LCPI to take account of this. Moreover, the relevant provision appears right in the middle of a section on the "financial system" and banks, which could raise doubts as to its applicability to employees of insurance and other establishments. A separate and more visible provision would be preferable.

Disclosure of information on declarations or inquiries ("tipping off") – criterion 14.2

405. Section 49 of the LCPI prohibits all the institutions concerned (the wording is clear on this point) from informing customers or third parties that transactions have been reported, which is consistent with criterion 14.2. The final wording of the section extends the duty of discretion to any steps taken, such as inquiries, as a consequence of a declaration of suspicion. This is in line with Directive 2001/97/EC, which is more demanding than FATF Recommendation 14 in this regard.

Currency transactions and other declarations (Recommendation 19)

406. Andorra has no arrangements for financial institutions to report all transactions above a certain level. Nor has such a system been duly considered. Such machinery currently only exists for dealers in high value items such as precious stones and metals, who are required to report payments in cash of over € 15 000 (section 45.e of the LCPI). These reports are treated in the same way as other declarations of suspicion and stored in a FIU computerised database. However no such reports have yet been made (see section 4.2 of the report).

Recommendation 25

407. The UPB issues guidelines (criterion 25.1) in the form of technical communiqués. Of the dozen or so supplied to the evaluators one – dated 26 February 2002 – contained a typology (or list) of suspicious transactions with some twenty indicators. It is not clear whether other similar and updated communiqués have been issued, which would be desirable given developments in and changes to laundering techniques. All the technical communiqués have been circulated to banks, other financial establishments and insurance companies. The communiqués do not specify any additional measures that financial institutions could take to make their AML/CFT activities more

effective. In fact, the evaluators found that banks often appear to be well in advance of the LCPI. For example, some have policies for testing their internal anti-laundering machinery. The insurance and other financial sectors appeared to be much less dynamic in this regard.

408. As noted in section 2, the UPB does not publish an annual report to provide the establishments concerned with further information, such as additional typologies, current issues and problems and other countries' experience (these are communicated to obliged entities on the occasion of training sessions). The annual report is only intended for the government[25].

409. Other relationships are also maintained with relevant establishments in the financial sector. As shown in the table in section 3.10, training activities are organised for banks, other financial establishments and insurance companies.

410. It is not clear what anti-terrorist financing measures are taken, apart from circulating lists of persons subject to international sanctions. The LCPI does not at present cover terrorist financing.

411. Even though there is nothing in the legislation, in practice the UPB provides feedback (criterion 25.2) to the establishments concerned, including information on actual cases. None of the institutions spoken to complained of any gaps in this area.

Reporting suspicious transactions related to terrorism (SR IV)

412. To comply with SR IV: "a financial institution should be required by law or regulation to report to the FIU (a suspicious transaction report – STR) when it suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. This requirement should be a direct mandatory obligation, and any indirect or implicit obligation to report suspicious transactions, whether by reason of possible prosecution for a FT offence or otherwise (so called "indirect reporting"), is not acceptable".

413. As noted earlier under criterion 13.2, Andorra has not yet introduced such a provision. Changes to the legislation are planned to extend the preventive provisions to terrorist financing.

3.7.2 Recommendations and comments

414. Overall, the situation appears to be satisfactory. The practical shortcomings are minor, except that the LCPI requirements and the duty to report suspicious transactions – setting aside the lists of persons subject to international sanctions, which have been circulated – have not yet been extended to terrorist financing. The evaluators make the following recommendations:

- include in the wording of the LCPI, as is already planned, the requirement to make declarations of suspicion where it is suspected or there are reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism or terrorist acts, or by terrorist organisations or those who finance terrorism;

[25] the UPB started to publish the report after the evaluation visit.

- extend the protective provisions of section 50 to take account of criterion 14.1, and make it clear that this protection applies to all the establishments concerned by making it a separate provision;

- consider the feasibility and value of a system in which banks and other financial institutions and intermediaries reported all national and international transactions in cash above a certain level;

- circulate more information, typologies and good practices concerning AML/CFT issues.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 and SR IV

	Rating	Summary of reasons for the rating
R.13	**LC**	The requirement to report suspicious transactions does not yet cover terrorist financing, only suspected laundering (and not suspicions relating to the proceeds of crime)
R.14	**LC**	The provision on the protection of bodies making declarations of suspicion should be clarified and made more clearly applicable to all establishments (by separating it from the rest of the section)
R.19	**NC**	No consideration was given to the introduction of a duty to report all transactions above a certain threshold
R.25	**LC**	Relatively little seems to be done to raise awareness of terrorist financing; the UPB could do more to provide laundering typologies
SR IV	**NC**	No requirement to report suspicions of terrorist financing

Internal controls and other measures

3.8 Internal controls, compliance and foreign branches (R.15 & 22)

3.8.1 Description and analysis

Recommendation 15

415. Section 52 of the LCPI requires all establishments to adopt internal anti-laundering procedures.

Section 52
All establishments, and in particular those in the financial system, must devise appropriate and adequate monitoring and internal communication procedures for preventing and stopping laundering operations. This requires them to carry out specific training programmes for their staff.

Establishments' external auditors shall ensure that the provisions of this section are implemented and shall submit to the Laundering Prevention Unit at the end of each financial year a specific report on the implementation of this legislation.

416. This provision is fairly cursory, compared with criterion 15.1. There should be more detail on the content of these procedures. Moreover, section 52 only applies to money laundering aspects, which clear needs to be revised. However, there is a requirement to train staff in laundering prevention (criterion 15.3), though again more details on the content of such programmes would be welcome.

417. The LCPI also requires auditors to check whether internal procedures are being applied, though this takes the form of external supervision on behalf of the UPB (see also section 3.10). Section 48 of the LCPI requires the appointment of anti-laundering compliance officers, in accordance with criterion 15.1.1, to oversee the introduction and operation of procedures. This obligation applies to "financial system" institutions and insurance/reinsurance companies. Under section 18 of the LCPI regulation, the UPB must be advised of the name of establishments' compliance officers. The LCPI (Art. 48) and the RLCPI (Art. 12) are not clear enough on these officers' access to information and powers (criterion 15.1.2). They are silent on the internal audit arrangements applicable to these procedures (required by criterion 15.2).

418. According to the UPB, the institutions concerned have appointed officials and established anti-laundering procedures. The evaluation team also examined an internal circular on the subject produced by one of the Andorran banks. It was 25 pages long and relatively detailed, and included explanations on how laundering worked, a fairly long list of indicators of suspicious transactions, the types of at-risk operations requiring senior management approval, the countries and territories at risk, the supporting documentation to be assembled as part of the due diligence requirements and the arrangements for reporting suspicious transactions. However, the document was three years old.

419. According to criterion 15.4 of the Methodology, financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees. The evaluators were not told of any specific provisions on this subject.

Recommendation 22

420. Section 44 extends some of the scope of the LCPI to foreign branches: "Subsidiaries and branches of Andorran companies located abroad, and companies with their registered office abroad but controlled by individuals or legal persons of Andorran nationality or residing in Andorra, whose purpose is commercial or financial must act with the necessary diligence to prevent all forms of laundering."

421. Section 25 of the regulation states in similar terms that "subsidiaries and branches of Andorran companies located abroad, and companies with their registered office abroad but controlled by individuals or legal persons of Andorran nationality or residing in Andorra, whose purpose is commercial or financial must act with the necessary diligence to prevent all forms of money laundering and must maintain the level of oversight and the internal procedures specified in Andorran legislation." It specifies that: "Should the legislation of the country in which the institution has its registered office be less exigent than Andorran legislation, the Andorran national or resident who exercises control over the institution shall advise the UPB of this situation."

422. The terms of the regulation are fairly redundant but they do clarify a provision of the LCPI that would otherwise remain very imprecise. These clarifications ensure that the LCPI applies with

equal force outside Andorra, in the spirit of criteria 22.1.1 and 2 and 22.2. However, the wording in the Methodology is still more detailed and the LCPI should be brought into line with this[26].

3.8.2 Recommendations and comments

423. Generally speaking, recommendations 15 and 22 are reflected in Andorran law, other than the special recruitment procedures for employees, but they should be set out in more detail to cover the various criteria. The following recommendations are made:

- describe in more detail the requirements of internal anti-laundering procedures, the duties and powers of anti-laundering compliance officers and the content and objectives of training;
- introduce internal testing or auditing of procedures;
- establish regulations on appropriate procedures for recruiting employees;
- ensure that the various requirements of FATF recommendation 22 are specified more clearly in Andorran legislation.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of reasons for the rating
R.15	**PC**	The required content of internal anti-laundering procedures, the duties and powers of compliance officers and the content and purpose of training should be more clearly spelt out; no machinery for internal testing or auditing of procedures; no regulations on appropriate procedures for recruiting employees.
R.22	**PC**	The spirit of R 22 is largely reflected in the LCPI regulation but the wording is not sufficiently detailed.

3.9 Shell banks (R. 18)

3.9.1 Description and analysis

424. Under criterion 18.1, countries should not approve the establishment or accept the continued operation of shell banks.

425. The information supplied on site indicates that in the financial domain there are three investment businesses which have become inactive (of the 14 registered). But the six operative banking groups are all active. There is also one mutual fund management company (OPCVM) which has become inactive.

[26]INAF's communique N° 163/2005, disseminated in 2006, addresses the matter covered under R.22 and would implement it as regards the financial system (in the meaning given in Andorra).

426. Under the additional provisions of the regulation on the licensing of new banks under Andorran law of 30 June 1998, the issuing of a banking licence entails an obligation on the part of the applicant group to establish the bank and commence its activities within twelve months of notification of the authorisation, otherwise the licence may be withdrawn. All the banks in Andorra form part of Andorran or Spanish groups. Under a decree of February 2004, banks must make a reserve deposit of more than € 6 000 000. Finally, Section 246 of the Criminal Code criminalises the exercise of illegal (without agreement) banking and financial activities.

427. Under criterion 18.2, financial institutions should not be permitted to enter into, or continue, correspondent banking relationships with shell banks There is no such explicit ban in Andorra. However, the bank officials whom the team met said that any relationship with fictitious "off-shore" banks would be treated according to "high-risk" client diligence standards.

428. Under criterion 18.3, financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. As far as the evaluators could ascertain, there were no such provisions.

3.9.2 Recommendations and comments

429. The evaluators recommend that the Andorran authorities review the transposition of recommendation 18: financial institutions should not be permitted to enter into, or continue, correspondent banking relationships with shell banks; financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of reasons for the rating
R.18	**PC**	Relationships with shell banks are not forbidden. Such relationships are treated as high-risk ones. There is no obligation to monitor shell banks' use of accounts with client institutions of Andorran financial establishments.

Regulation, supervision, guidance, monitoring and sanctions

3.10 Supervisory and oversight system: competent authorities and self-regulating organisations - role, functions, obligations and powers (including sanctions) (R.17, 23, 25, 29, 30 and 32)

3.10.1 Description and analysis

Recommendation 17

430. Section 57 of the LCPI authorises the government to impose, on the UPB's initiative, administrative penalties for non-compliance with the act (the examiners noted that Chapter VI of the regulation provides in addition for the applicability of administrative sanctions under a Regulation on administrative sanctions procedure of 1998. These matters are further dealt with in sections 58 and 59, which make a distinction between minor, serious and very serious offences.

Section 58

Offences are classified as very serious, serious and minor:

1. Very serious offences:
   a) Failure to fulfil the obligation to report suspicions
   b) Breach of the prohibition in section 49
   c) Refusal or other failure to provide the information specified in section 51b to the UPB, other than in the cases specified in the final paragraph of section 45
   d) Repetition of a serious offence in the same year
2. Serious offences:
   a) Failure to establish customers' identification in accordance with section 51 c or to require the documents specified in this section
   b) Insufficient attempt to establish the beneficial owner of an operation in accordance with section 51d
   c) Failure to oversee and check identities in accordance with section 51e
   d) Failure to retain documents over the period specified in section 51d
   e) Failure to operate appropriate and adequate monitoring and internal communication procedures for preventing and stopping laundering operations, and to carry out the specific audit specified in section 54
   f) Repetition of a minor offence in the same year
3. Minor offences
   a) Failure to notify the UPB of the authorised persons in accordance with section 50
   b) Any other breach of the act not specified in the preceding paragraphs

Section 59

Minor offences are punishable by a written warning and a fine of from € 600 to 1 000; serious offences are punishable by disqualification from certain financial or commercial operations and/or temporary suspension of the managers of the establishment or of the individual in question from one to six months and a fine of € 6 000 to 60 000; very serious offences are punishable by temporary suspension of the managers of the establishment or of the individual in question for up to three years or their permanent suspension and a fine of € 60 000 to 600 000.

Within the limits laid down, the penalties should be graduated to take account of the seriousness of the particular case, any lack of supervision, any shortcomings or inadequacies in the planning arrangements and the degree of intention or negligence entailed.

431. The range of penalties is fairly broad and they are proportional to the seriousness of the offences. The evaluators note with satisfaction that they apply to all the obligations arising from the LCPI, since section 58.3 fills any potential gap. The penalties are applicable to the establishment, and if appropriate its managers, or – depending on it size – to the manager/owner him or herself.

432. The penalties only apply to obligations under the LCPI. This would not matter if the LCPI regulation confined itself to clarifying certain aspects, but in practice the implementing instrument diverges from, and sometimes even conflicts with, the LCPI (for example, on the duty to preserve documents and information). This must be rectified when the LCPI is revised.

433. As indicated on the spot, the government has never imposed any penalties and any infringements so far identified – generally of a less serious nature – have been resolved by less radical means, such as notification by, or a request of advice from, the UPB. More generally, INAF, which has direct powers to impose penalties, has not applied measures other than "courtesy" ones either.

434. As noted earlier, any shortcomings are generally revealed by means of external audits, on which the UPB largely and INAF completely rely. The UPB told the evaluators that audits show that the situation is satisfactory.

435. It is difficult for the evaluators to judge the effectiveness of the sanctions system. On the one hand, it is surprising that no penalties – not even a warning for a minor offence – have so far been imposed, despite the importance of the financial sector and the fact that penalties apply to all the LCPI obligations. On the other hand, it is encouraging that other measures not specified in legislation have sufficed to secure the desired outcomes.

436. The evaluators were told that audits had sometimes revealed certain problems in respect of internal procedures and customer identification, which are possibly sanctionable under section 58. An insurance representative whom the team met found it difficult to specify the internal anti-laundering measures in his company, before acknowledging that he was himself its anti-laundering compliance officer. The evaluators consider that sanctions (and supervisory) policies should be reviewed.

437. At all events, it would be helpful if the UPB could, like INAF, impose penalties directly.

Recommendation 23

438. Criterion 21 stipulates that countries should ensure that financial institutions are subject to adequate AML/CFT regulation and supervision and are effectively implementing the FATF recommendations.

439. The distribution of supervisory responsibilities was not always clear during the visit. The UPB maintains that it is solely responsible for overseeing the application of the LCPI by the establishments concerned. This is also the tenor of sections 53 and 57 of the legislation. At meetings with INAF, it remained unclear whether following the establishment of the UPB, INAF would continue to hold responsibilities in this area, including for customer identification issues.

440. The anti-money laundering officials of several banks said that INAF held an annual meeting with all the bank auditors and that it used this opportunity to question them about banks' internal procedures, including ones relating to laundering. The discussions were also said to focus on anti-laundering procedures and INAF apparently summoned the anti-laundering officials concerned to answer any queries.

441. The situation of non-financial establishments specialising in wealth, portfolio and fund management is clearer, since a quarterly audit is presented to INAF and an annual customer audit to the UPB.

442. INAF has not conducted any checks itself and has relied essentially on the results of external audits. In fact, to date INAF has not had any inspection procedure or department. Proposals to rectify this deficiency were under consideration at the time of the visit. The UPB situation is less clear because although it appears to have conducted its own checks, both on the spot and at a distance, the information received in Andorra suggests that it also largely relies on audit procedures. The evaluators noted that the UPB's on-the-spot checks only concerned banks.

443. The evaluators find it interesting that in a country the size of Andorra with its close-knit social structure, the supervisory bodies make use of auditors. They were informed that these are normally outside companies whose staff are mainly French and Spanish.

444. Certain issues are raised by the current situation:

- the supervisory bodies – the UPB for AML/CFT and INAF for more general matters – rely largely (or exclusively in the latter case) on second-hand information. They therefore need to have confidence in the information received in this way, with the attendant risk that it may not be objective or impartial;

- as the evaluators were told, the same firm carries out the external audit on the application of the LCPI and INAF's more general requirements, and any internal audits required. This gives the audit company concerned a crucial role, particularly as there do not appear to be - in the legislation or even in practice – any measures such as rotation of auditors or their selection by lot to avoid purely formal audits;

- section 52 of the LCPI, on the use of external audit to assess anti-laundering measures for the UPB, appears to suggest that it is always the establishment concerned that chooses its auditor ("the external audit of the establishment shall ensure ...").

445. The following table summarises, on the basis of information supplied in Andorra, the types of anti-laundering supervision exercised over financial bodies (a similar table in section 4 looks at designated non-financial businesses and professions (DNFBPs)).

	Inspections/audit	**Training and awareness raising**	**Others**
Banks	anti-laundering audits on behalf of the UPB and inspections by the UPB	training organised by the UPB	all the technical communiqués sent to the entire sector
Other financial institutions	anti-laundering audits on behalf of the UPB	training organised by the UPB	*Idem*.
Insurance	anti-laundering audits on behalf of the UPB	training organised by the UPB	*Idem*.

446. Whereas the external audits for the UPB have concerned the entire financial sector, its own inspections have been confined to banks. It was explained that this was the most important sector from an AML/CFT standpoint and that it was in any case difficult to undertake inspections of all financial bodies with its limited human resources.

447. The application of the legislation is judged to be satisfactory in the case of banks and the insurance sector, given the existence of anti-laundering officials/compliance officers, internal procedures with their various reporting arrangements, anti-laundering training and so on.

448. The evaluation team was shown a bank audit report carried out for the UPB and it is difficult to escape the impression that this was a fairly formal exercise, which took no account of such factors as the effectiveness of the arrangements, practical compliance with diligence requirements, the archiving of information and its quality and so on.

449. The situation regarding other financial establishments, or financial houses, was less than positive. There seem to be problems with the identification of clients and the disclosure of this information to the banks with which these establishments maintain close business relationships. Particular problems are caused by omnibus accounts and the absence of agreements between financial houses and banks. The relatively small size of these establishments would also appear to make it difficult to introduce anti-laundering procedures, because of the staffing problems this would raise.

450. At the on-the-spot meetings with the representatives of the various financial sectors, the banks showed great awareness of their obligations, the LCPI and the need to prevent money laundering in general. The evaluators consider that the banks are the only establishments that exceed the (relatively limited) requirements of the LCPI and show an equal concern for international standards and good practices. This is not the case with insurance companies and financial houses, even if occasionally specific individuals displayed greater awareness of these aspects. Moreover, as noted in this report, insurance companies have never made declarations of suspicion.

451. As noted earlier, the UPB has primary responsibility for supervising LCPI compliance by the establishments concerned, which is compatible with criterion 23.2. The situation regarding INAF is not always clear, even though in practice it appears to take an interest in such matters. The evaluators consider that a reasonable amount of overlap of responsibilities is not undesirable, particularly in view of both bodies' limited resources, the relatively large number of financial and related establishments in Andorra and the fact that supervision has largely been sub-contracted or externalised to auditors.

452. The evaluators were told that, apart from the banking-insurance groups the insurance sector is supervised by the government, with the UPB responsible for money laundering aspects. In fact, the only checks carried out by the government are the annual assessments of the finance ministry for indirect taxation purposes. INAF confines itself to an annual audit to check on existing reinsurance relationships. Moneyval made recommendations on this in its second round because the situation was unsatisfactory. Although it had still not changed at the time of the visit, the team was told of plans to transfer responsibilities to INAF that would probably be implemented in the coming months. This is to be welcomed.

453. Criterion 23.3 requires that "Supervisors or other competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc in a financial institution." Criterion 23.3.1 adds "Directors and senior management of financial institutions subject to the Core Principles should be evaluated on the basis of "fit and proper" criteria including those relating to expertise and integrity."

454. These various requirements are only partly reflected in the Andorran regulatory framework. Art. 13 of the Ordination Law on the financial system, of 27 November 1993, provides that board members should have a clean criminal record, and enjoy a good personal and professional reputation. Managers should, in addition, have adequate professional qualifications. As far as the evaluators could find out during the on-site discussions, these requirements are applied in practice as much as it can be in the context of the country's size. However, there do not seem to exist any regulatory framework or policies to prevent entities from being infiltrated and controlled financially by criminal assets. It was indicated on site that the origin of capital was easy to know and monitor in the context of Andorra and of investments coming mostly from Spain and France. Even though the size of the country and its firm care to preserve a good image suggest that risks would not be important on those issues, Andorra should have measures in place that would better reflect the various principles addressed under criterion 23.3.

455. Criterion 23.4 requires that: *"For financial institutions that are subject to the Core Principles the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering, should apply in a similar manner for anti-money laundering and terrorist financing purposes, except where specific criteria address the same issue in this Methodology.(Examples of regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering, include requirements for: (i) licensing and structure; (ii) risk management processes to identify, measure, monitor and control material risks; (iii) ongoing supervision and (iv) global consolidated supervision where required by the Core Principles).*

456. The examiners did not gather any information that would indicate that this criterion is reflected in domestic regulations or policies. These aspects therefore need to be addressed by the Andorran authorities. As indicated in the introduction to Part 3 (financial institutions) of this report, insurance companies are not yet subject to the core principles (unlike banks and financial houses which compose the financial sector (in the meaning of the Andorran terminology). There is no stock exchange in Andorra (securities are mostly traded by banks).

457. Concerning both criteria 23.3 and 23.4, as indicated above, the INAF does not consider AML/CFT to be on its own agenda. As a consequence, the existing prudential measures (for the banks and financial houses covered by the restrictive Andorran « financial system » concept) are not applied for AML/CFT purposes.

458. Turning to criteria 23.5 and 6, as noted earlier in connection with SR VI, where the matter is primarily dealt with, in theory only banks undertake money transfers. At the time of the visit, it appeared that post offices, which are owned by the French and Spanish postal services, had recently started to offer money transfer services. INAF, which discovered the change itself, should really have been informed of this and have issued authorisation, which was not the case. It further emerged from the team's meetings that INAF did not pass on the information to the UPB, despite

its significance from an anti-laundering standpoint. INAF's various requests to Spain for explanations have remained unanswered. At the time of the visit, this was still the situation and, pending its regularisation, nothing had been done to check compliance with the LCPI.

459. There are no exchange controls in Andorra. Money can therefore be changed freely. Exchange services are provided by banks and *bureaux de change*. The evaluators had the feeling that the latter are sometimes attached to shops as ancillary activities. The Andorran legislation of 19 December 1996 governing the activities of the different elements of the financial system treats as part of the financial system – thus making them subject to regulation and authorisation to operate – financial establishments normally [evaluators' underlining] concerned with one of the following:

- exchange operations
- financial advice
- financial intermediation.

460. The evaluators were unable to determine with any precision how far exchange activities outside banks were subject to registration and/or authorisation and to what extent they were subject to oversight. The LCPI does not cover *bureaux de change* as such, though it does cover banks and thus their activities, including exchange operations. These questions should be reviewed, particularly as the absence of exchange controls presents additional risks of (and opportunities for) laundering.

461. In Andorra, insurance companies are not part of the financial system, as defined in INAF regulations. A recommendation has already been made to rectify this situation and transfer responsibility for the insurance sector from the government to INAF. It is sometimes difficult to say in an Andorran context in which precise category to place non-banking financial establishments and some of the operators considered in section 4. Some of the latter may be treated as market intermediaries, in which case they must be deemed to be financial institutions subject to the fundamental principles. Financial establishments or houses and the diverse range of operators that this encompasses are included in the category of financial institutions in Andorran financial regulations and are subject to the LCPI on the same basis as banks. The evaluators have considered operators such as *consels, financiarias, economistas, gestorias* and so on – and the problems they pose – *en bloc*, under FATF recommendation 20 (see section 4.6 of the report).

462. As far as recommendation 23 in general is concerned, supervision has mainly focussed on anti-laundering, since the LCPI has not yet been formally amended and extended to combating terrorist financing. However, the UPB has sought to raise knowledge and awareness of international sanctions. The international lists, as well as those of the United States and Spain, have been circulated and the establishments concerned have been asked to report the assets of listed persons. At the time of the visit, checks carried out did not appear to be concerned with how these lists were taken into account, for example, through comparing establishments' client or customer lists with the international ones.

Recommendation 25

463. According to criterion 25.2, competent authorities, and particularly the FIU, should provide financial institutions and DNFBP that are required to report suspicious transactions, with adequate and appropriate feedback having regard to the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons.

464. As noted in the previous section, the UPB keeps reporting bodies informed of action taken on their declarations of suspicion, including any inquiries under way.

Recommendation 29

465. Regarding criteria 29.1 and 4, in theory both INAF and the UPB have powers of inspection, that is to visit establishments and ask to see documents. The UPB's powers to monitor compliance with the LCPI is covered in section 53.2 of the act and section 3 of its implementing regulation, both of 2002. The two provisions are similar, except that according to the regulation, 48 hours' notice is required to visit premises. Notifications must be accompanied by reasons. The UPB may hold on-the-spot meetings with anti-laundering compliance officers and ask for any information and documentation necessary to confirm that obligations under the legislation and regulations are being complied with. It does not require court approval and there do not appear to be any restrictions on the information it can request (criteria 29.2 and 3).

466. INAF does not conduct inspections, and does not have a specialised department for that purpose. Checks are carried out remotely. The UPB has performed a number of on-the-spot inspections, but only in banks.

467. Even though the meeting with the ML compliance officer must be announced 48 hours in advance, the UPB can in practice visit the entity at any time. This being said, the UPB should also be able to meet institutions' employees and managers, for example to check on their level of knowledge of internal regulations, ask them for explanations and so on. Criterion 29.2 sets a large number of requirements - reviews of policies, procedures, books and records, and sample testing – and the evaluators cannot help thinking that audits are mainly concerned with purely formal requirements.

468. Subject to being given more staffing (UPB) and a specialised department (INAF), these two bodies should carry out more direct inspections, both on-the-spot and remote, and rely less on external audits (see also under FATF recommendation 23).

469. Finally, the UPB has the authority to propose to the government the imposition of penalties for non compliance with the requirements of the LCPI. It would be logical for the UPB – given its important role in the field of AML/CFT supervision - to have a power of sanction of its own (at least for the less serious infringements), which would also give it greater authority.

Recommendation 30

470. INAF does not yet have an inspection body, even though its inspection powers were strengthened in 2003. The work is carried out on behalf of the Institute by audit companies.

471. Section 54 of the LCPI gives the UPB a multidisciplinary membership of up to five persons. Three are from the police and the judicial system. These are mainly concerned with preliminary inquiry work, for which they are qualified. They maintain relations with their institutions of origin, which facilitates access to information and interaction with the judicial services. The head of the UPB is the only member with a financial profile. It has difficulty maintaining a stable team.

472. The Unit is located in a single office. The computer system is basic but the fact that there is no general and systematic requirement to report transactions above a certain value (other than the reports to be made by dealers in high value items) means that there is no information overload or backlog of cases.

473. Consideration should therefore be given to ways of securing a reasonable increase – in the Andorran context – in the UPB's human resources.

Recommendation 32

474. Penalties have never been imposed. INAF does not conduct on-the-spot inspections. The UPB has conducted 3 general inspections and 4 specific inspections (in addition to the annual audit of all the banks, financial houses and insurance company.

European Union Directive

475. Article 10 of the EU directive requires member states to ensure that if, in the course of inspections carried out in credit or financial institutions by the competent authorities, or in any other way, those authorities discover facts that could constitute evidence of money laundering, they inform the authorities responsible for combating money laundering.

476. INAF has stated that the LCPI requires anyone who discovers facts that could constitute evidence of money laundering to inform the authority responsible for combating money laundering (which would apply in particular to INAF itself). The provision in question appears to be section 42, but it would be preferable to introduce a new additional and more explicit provision covering all the authorities, since the wording appears to apply primarily to the private sector.

477. There are no such obligations in Andorra and the fact that INAF considers that, strictly speaking, such issues, including customer/client identification, are outside its purview, could make co-operation difficult. Several countries' anti-laundering laws require sectoral supervisors to inform the FIU of any suspicion of laundering. Andorra would benefit from a similar clause in the LCPI.

3.10.2 Recommendations and comments

478. The system for monitoring obligations suffers from various shortcomings or could be improved in various ways, as discussed above.

479. In the light of these points, the following recommendations are made:

- complete the transfer of general responsibility for supervising the insurance sector from the government to INAF and strengthen AML/CFT supervision of the insurance and non-banking financial sectors;
- review the application of recommendation 23 regarding the transfer of money and securities by post offices and the activities of bureaux de change;
- take measures to implement criteria 23.3 (protection the financial sector from criminal infiltration/control) and 23.4 (applicability of prudential regulations to AML/CFT)
- introduce a more explicit requirement into the LCPI for supervisory authorities and other government departments to report suspicions of laundering (and terrorist financing) to the UPB;
- for the purpose of combating terrorist financing, extend the checks carried out to the customer/client lists of bodies covered by the legislation;
- give the UPB more flexibility in conducting on-the-spot inspections, for example by allowing it to talk to persons other than ML compliance officers;
- review the sanctions system in practice and make sure that the sanctions policy is effectively applied by INAF and the UPB;
- ensure consistency between the LCPI and its regulation with regard to sanctions, since they only appear to apply to the LCPI, despite the significant (and occasionally conflicting) provisions of the regulation;
- give the UPB greater powers and more resources, in particular in terms of staff to enable it in particular to conduct its own inspections more frequently, to select auditors, rather than simply drawing up audit specifications, and to order various measures directly, if necessary after reviewing the nature of the sanctions/penalties specified in the LCPI, which according to the LCPI regulation are apparently of a criminal nature.

3.10.3 Application of recommendations 17, 23 (criteria 23.2, 23.4, 23.6 and 23.7), 29 and 30

	Rating	Summary of reasons presented in section 3.10 for the rating
R.17	**LC**	The failure to apply sanctions in practice raises issues and needs to be discussed.
R.23	**NC**	The effectiveness and scope of the monitoring system is debateable; the system relies too much on external audit reports, and thus second hand information; supervision seems to focus mainly on formal aspects; INAF's responsibilities remained unclear in certain matters connected with identification and due diligence that are nevertheless common to the supervisory and AML/CFT spheres; the fund transfer services offered by the post office are illegal; measures are needed to protect the financial sector from criminal infiltration and to make prudential measures also apply in relation with AML/CFT.
R.25.2	**C**	
R.29	**PC**	UPB inspections are subject to excessively strict conditions; the UPB does not have its own power to impose sanctions.
R.30	**PC**	INAF and the UPB do not have the organisational capacity to undertake direct checks, other than on a sampling basis or focusing on a particular sector; the UPB lacks resources.
R.32	**C**	

3.11 Money or securities transfer services (SR.VI)

3.11.1 Description and analysis

480. There are no money transfer services in Andorra. Such transfers must pass through banks. It does not therefore require specific policies or measures in this area.

481. Individuals or organisations providing such services without authorisation commit a serious administrative offence under section 15 of the Act of 27 November 1997 establishing disciplinary rules for the financial system and are liable to the penalties specified in section 18, namely a fine of from € 150 000 to 300 000 and temporary or permanent restriction of the establishment's activities. They may also be in breach of article 246 of the Criminal Code, which makes it an offence to "develop activities that form part of the financial system, without legal authority". This offence is punishable by four years' imprisonment and a maximum fine of € 150 000, and the court may also order one of the additional consequences specified in article 71 of the code.

482. In principle, therefore, SR VI is "not applicable" to Andorra. However, during the evaluation visit, the President of INAF told the team that the Spanish post office – which operates Andorra's postal service – was offering its customers the services of one of the main international money transfer networks, without any authorisation.

483. To date, the requests to the Spanish authorities for explanations have remained unanswered. Pending other measures, the money transfer services offered by the post office and this international network are therefore illegal[27] (see also the section on recommendation 23). The penalties laid down in law have not been applied.

3.11.2 Recommendations and comments

484. It is recommended that SR VI be taken into account when considering the unlawful money transfer activities that the postal service has recently introduced. If they are granted legal authorisation, additional measures should be taken in accordance with criteria VI.1 to 6.

3.11.3 Compliance with Special Recommendation II

	Rating	Summary of reasons for the rating
SR VI	**PC**	The law is strict and forbids informal money transfer services; in theory the banks have a monopoly of these but in practice the post office also offers money transfer services, illegally.

[27]The UPB has issued a technical communiqué, dated 29 May 2007, requiring from post offices and *correos espanoles* to take into account the existing AML/CFT standards

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12) (application of recommendations 5, 6 and 8 to 11)

4.1.1 Description and analysis

485. Section 45 lists all the establishments and bodies covered by the LCPI. Apart from "financial system" establishments and insurance and reinsurance companies, they include *"other individuals and legal persons who, in the course of their occupation/profession or commercial activity, undertake, oversee or advise on movements of money or securities that could be used for laundering purposes, in particular:*

(1) external accountants and tax assessors

(2) real estate agents;

(3) notaries and members of other independent legal professions when they are involved in planning or carrying out operations on behalf of their clients under the following headings:

a) *purchasing and selling property or commercial enterprises;*

b) *handling client cash, securities and other assets;*

c) opening or managing bank, savings or securities accounts;

d) making the necessary arrangements for the establishment, management or direction of companies;

e) establishing, managing or directing companies, trusts or similar arrangements;

- or acting on behalf of clients in any financial or property transaction.

(4) dealers in high-value items such as precious stones and metals, when payment is made in cash and for an amount of at least € 15 000 or the equivalent in any other currency;

(5) gaming establishments.

486. Notwithstanding the foregoing, the establishments specified in paragraphs 1 and 3 of this section are not subject to the requirements of this Act with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings."

Recommendation 5

487. Criterion 12.1 requires designated non-financial businesses and professions (DNFBPs) to comply with the requirements in recommendation 5 in certain particular circumstances.

488. Casinos, which the Methodology treats as DNFBPs, do not exist in Andorra[28]. There are just two bingo establishments, which are authorised by the government and do not operate via the Internet. Under the legislation governing their activities, these establishments identify and register their customers immediately on entry.

489. Real estate agents are covered by the LCPI list.

490. Dealers in precious metals and stones are covered as dealers in high value items, in accordance with criterion 12.1c.

491. Lawyers, notaries, other independent legal professionals and accountants are generally covered by the LCPI, though it could be more specific. In particular, it does not mention avocats (in French - translated as "lawyers" in criterion 12.1d). The conditions governing these professions' obligations are very similar to those specified in the criterion. The LCPI does not explicitly cover cases where they are involved in the purchase and sale of business entities, and should clarify this point. However, these professions benefit from the exception laid down in the EU directive "with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings".

492. The LCPI covers lawyers and other independent legal professions when they are involved in establishing, managing or directing companies, trusts or similar arrangements or acting on behalf of clients in any financial or property transaction. The part of the wording of section 45 is more restrictive than criterion 12.1e of the Methodology, which specifies:

a) Trust and company service providers when they prepare for and when they carry out transactions for a client in relation to the following activities:

- *acting as a formation agent of legal persons;*
- *acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;*
- *providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;*
- *acting as (or arranging for another person to act as) a trustee of an express trust;*
- *acting as (or arranging for another person to act as) a nominee shareholder for another person.*

[28] also, the state is the sole internet access provider, which enables it to ensure that games are not offered on-line from Andorra.

493. Generally speaking the LCPI does not cover trust and company service providers, even though a number of professions and bodies undertake such activities (see also section 4.6).

494. It should be remembered that – as noted in sections 3 and 3.1 – for establishments outside the "financial system" (banks and other financial establishments), the LCPI only imposes a duty of diligence/oversight and identification if laundering is suspected.

Section 51.e
The duty of financial system bodies to oversee and check identities also concerns other bodies covered by the legislation that have any links with a client involved in an operation whose scale or circumstances raises suspicions that laundering may be taking place.

495. DNFBPs do not therefore have a general obligation to show due diligence and identify clients, which means that Andorran legislation is not in compliance with all the R 5 criteria that are marked*, that is basic obligations.

496. The LCPI regulation however includes an additional element (section 16) for dealers in high value items:

Section 16
When, on account of the scale of the transaction or the way it is conducted, there are suspicions of money laundering, the dealers in high value items specified in section 45.4 of the Act shall check the identity of the purchasers in accordance with section 12.1 of this regulation.

497. This is a curious provision because it adds nothing to section 51e. indeed, by establishing a specific obligation for dealers in high value items to identify certain clients, based on an identity document with photograph, the regulation seems to imply that this is the only category of DNFBP bound by that section. This appears to be an inconsistency/contradiction that needs to be remedied. The representatives of the profession confirmed that it also created doubts as to whether identification was required when laundering was suspected or when the value of the transaction exceeded € 15 000.

EU Directive

498. Article 2a of the directive also applies to trust and company service providers and all dealers in high value items (including precious stones and metals) whenever payment is made in cash, and in an amount of € 15 000 or more. In Andorra, the LCPI covers these cases, though it should be borne in mind that the notion of company services is less demanding in the directive than in the FATF Methodology.

Recommendations 6 and 8 to 11

499. Criterion 12.2 requires designated non-financial businesses and professions to comply with the criteria in recommendations 6 and 8-11.

500. As noted in section 3, on financial institutions, there are no specific measures concerning recommendation 6, on politically exposed persons (other than certain practical steps taken by banks). The same applies to recommendation 8, on risks attached to new technologies.

501. Regarding recommendation 9, it was noted in section 3.3 that the law does not, in theory, authorise reliance on intermediaries or other third parties for diligence and identification purposes.

Institutions are normally required to establish the identity of customers and any real beneficiaries themselves. In practice, though, intermediaries may refuse to disclose information about clients on whose behalf they perform transactions, as in the case of non-banking financial establishments. Such matters are less relevant in the context of DNFBPs because in their case the duty of diligence and the requirement to identify clients is limited to situations where laundering is suspected.

502. The situation concerning recommendation 10 – preservation of documents – is the same as for financial institutions (see section 3.5). Here the LCPI (51f) and its regulation (22) apply to all the bodies and establishments concerned – maintenance of all documents for ten years – which is to be welcomed. Apart from the incompatibility between the LCPI and its regulation (the first only covers the establishment of business relationship whereas the second includes documentation concerning occasional clients) and the fact that the duty to preserve documents is relatively limited (commercial correspondence and account books are not explicitly covered), the failure to apply recommendation 5 to DNFBPs other than where laundering is suspected further reduces the scope of recommendation 10. The only documents that must be legally preserved are ones concerned with client identification when laundering is suspected. In practice, as far as the evaluators could see, compliance with this obligation is somewhat varied. Accountants, for example, said that they did not keep any documents about their clients, while jewellers and watchmakers said that they kept duplicates of their invoices for differing periods, depending on the individual concerned – from five years to indefinitely, though that is for the purposes of countering any legal action rather than to satisfy the LCPI. Members of the bar said that they had to preserve case files and other information about clients, but were unaware of the time periods applicable. Finally, account must be taken of certain distinctive features of Andorra, for example the lack of any obligation to issue invoices or to keep accounts, in many – if not most – cases.

503. The regulations governing recommendation 11 – following up transactions and the business relationship – are the same as for the "financial system". In principle, this recommendation is covered by section 15 of the LCPI regulation (see section 3.6 of this report). Considered in isolation, section 15 is applicable to all persons covered by the legislation, and therefore includes DNFBPs.

Recommendation 17

504. Criterion 12.3 requires designated non-financial businesses and professions to comply with the criteria in recommendation 17 on sanctions.

505. As already noted in section 3.10, sections 58 and 59 of the LCPI provide for penalties for non-compliance. These apply to all the provisions of the LCPI (though not to those of the LCPI regulation, which sometimes differ from the Act), and offer a wide range of penalties depending on whether the breaches constitute, minor, serious or very serious offences. The penalties in sections 58 and 59 have never been applied.

506. The UPB is the only authority with power to initiate the sanctions procedure, which must then be ordered by the government. According to the LCPI, this is an administrative procedure (criminal according to the regulation), which is applicable to all the bodies and institutions covered by the legislation.

4.1.2 Recommendations and comments

507. The list of DNFBPs in the Andorran anti-laundering legislation is fairly similar to that in recommendation 12 (FATF criterion 12.1). However in the case of lawyers, notaries and so on, the wording does not cover the purchase and sale of business entities. The LCPI should take more account of the bodies covered by criterion 12.1e of the Methodology.

508. The penalties for breach of the LCPI (but not its regulation, as noted in section 3.10) are equally applicable to DNFBPs.

509. Currently, DNFBPs have no general obligation to undertake customer due diligence (recommendation 5) or identify clients, except for transactions where laundering is suspected. This is a significant gap in Andorran legislation, which also fails to cover recommendations 6 and 8. The application of recommendations 9 to 11 to DNFBPs is equally problematic, because of the general failure to apply due diligence measures.

510. The following recommendations concern the specific problems of the DNFBP sector. Other more general inadequacies, and ones specifically concerned with the financial sector, are covered in part 3 of the report.

511. In view of the foregoing, the following recommendations are made:

- apply the due diligence rules in recommendation 5 to DNFBPs beyond cases of suspected laundering and ensure that the provisions on dealers in high value items are consistent and understood by those concerned;
- ensure that national legislation on recommendations 6 and 8 (once approved) and 9 to 11 is applicable to all the sectors covered by the LCPI, including DNFBPs;
- ensure that the LCPI reflects more closely criterion 12.1 d in the case of lawyers, notaries and so on by including the purchase and sale of business entities;
- review the value of section 16 of the LCPI regulation and repeal it if necessary, since it creates ambiguities;
- ensure that the LCPI takes account of all the bodies and circumstances covered by criterion 12.1 e, on trust and company service providers.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of reasons (relating specifically to section 4.1) for the rating
R.12	PC	The list of DNFBPs in Andorran law is fairly compatible with the Methodology but there are gaps regarding the categories and circumstances of criteria 12.1 d (*avocats* (in French) are not mentioned explicitly and the purchase and sale of legal persons are not covered) and 12.1 e (no reference to trust and company service providers). The penalties provided for apply to DNFBPs. In the legislation, the due diligence requirement (recommendation 5) only applies to suspicions of laundering. Recommendations 6 and 8 are not yet covered by Andorran legislation; the transposition of recommendations 9 to 11 – already noted as posing problems in the case of financial institutions - is very limited in practice because of the very restricted application of recommendation 5. Incompatibles between section 16 of the LCPI regulation and section 51 e of the LCPI.

4.2

4.3 Declaration of suspicious operations (R. 16)

(in accordance with R. 13 to 15 and R. 21)

4.3.1 Description and analysis

512. DNFBPs are subject to the same reporting requirements as financial institutions (criterion 16.1). The LCPI does not lay down any particular conditions, other than those considered in the last section. This means that real estate agents are bound by the reporting obligation, which goes beyond the requirements of criterion 16.1. As noted earlier, there are no casinos in Andorra. Nor is there any specific reference, in French, to avocats (translated as "lawyers" in criterion 12.1d), the purchase and sale of business entities or trust and company service providers (apart from notaries and other independent legal professions).

513. As noted under the financial sector, the LCPI imposes no obligation to report suspicions of terrorist financing.

514. Section 46 of the LCPI requires dealers in high-value items such as precious stones and metals to report cash transactions in excess of € 15 000.

515. As noted earlier, section 46 requires declarations of suspicion to be made where laundering is suspected, whereas criterion 13.1* refers to suspected proceeds of a criminal activity, which implies a lower level of suspicion and allows the problem of laundering to be tackled at an early stage, before it actually takes place.

516. Reports are made directly to the UPB. There is no provision in law or practice for lawyers, notaries, other independent legal professionals and accountants to reports declarations of suspicion via their respective self-regulatory organisations (criterion 16.2). In principle they must report suspicions directly. Strangely, however, the representatives of the bar association, a profession deemed by the authorities to be co-operative and aware of its obligations, said that the question of whether declarations should be made directly to the UPB or via the bar had not yet been resolved. This should therefore be clarified.

517. Turning to criterion 16.4, section 3.10 has shown that there is a wide range of sanctions for breaches of the LCPI, though not of its regulation, which is somewhat vexing, since the latter sometimes goes further than the Act itself. This includes failure to report suspicions transactions. The UPB is the only authority with power to initiate the sanctions procedure, which must then be ordered by the government. According to the LCPI, this is an administrative procedure (criminal according to the regulation), which is applicable to all the bodies and institutions covered by the legislation.

Criterion 16.3

518. In the case of recommendation 14, while section 49 of the LCPI (non-disclosure of declarations of suspicion to customers and others) applies to DNFBPs, this is not necessarily the case with section 50 (protection against the consequences of such declarations). This provision in any case lacks prominence and although it refers to all institutions concerned it appears in the middle of a section devoted to banks and financial establishments. The Andorran authorities maintain that this protection applies equally to DNFBPs, but this is not clear from the wording of this section.

519. The provisions relating to recommendation 15 and section 52 on internal anti-laundering procedures and training programmes and their applicability to DNFBPs are clear. Section 15 applies to "all establishments, and in particular those in the financial system". The shortcomings are discussed in section 3.8. It should be noted, however, that section 48 of the LCPI, on the appointment of anti-laundering officials/compliance officers, limits this obligation to the "financial system" and insurance and reinsurance companies. DNFBPs are not, therefore, required to appoint someone to ensure compliance with the LCPI.

520. As noted in section 3.6, there is no general requirement for DNFBPs to give special attention to at-risk countries and territories, in accordance with recommendation 21.

521. As noted in the previous section, the penalties laid down in the LCPI also apply to DNFBPs.

Effectiveness

522. The following table, already seen in connection with UPB statistics, summarises declarations of suspicion received:

	2001	***2002***	***2003***	***2004***	*Total*
Banks	6	9	13	15	43
Financial institutions	1	0	1	2	4
Lawyers	0	1	2	1	4
Notaries	0	1	1	0	2
Real estate agencies	0	0	1	2	3
Total	**7**	**11**	**18**	**20**	**56**

523. Over the period 2001-2004, there were just nine declarations from lawyers, notaries and real estate agencies. So despite the catch-all approach of section 45, which requires any business to report suspicions of laundering, the results are very modest.

524. Accountants and tax advisers, dealers in high value items and the various professions offering a range of services and to companies and individuals (consels, financiarias, economistas, gestorias and so on - section 4.6) have never reported any declarations of suspicion. In the last named case, this may reflect the absence of technical communiqués and other initiatives aimed at them (see the next section), which raises considerable doubts as to how far they are subject to the LCPI and the real impact of sections 45 and 46 (cash transactions worth over € 15 000).

525. The lack of reports from the earlier categories is also quite surprising, partly because the absence of any ban on cash transactions means that such payments are quite frequent, even for large sums, and partly because the reporting requirement covers dealers not just in precious metals and stones (in practice jewellers) but also in other high value items such as antiques and cars. The jewellers' and watch makers' representatives said that their clientele in Andorra were generally at the more modest end of the spectrum and that large purchases were rare. This was somewhat at variance with the more elitist comments of certain representatives of the financial sector.

526. The UPB is quite conscious of this and has indicated that it has not yet had sufficient time to carry out all its planned or hoped for awareness raising activities, for example with luxury car dealers.

4.3.2 Recommendations and comments

527. The following recommendations concern the specific problems of the DNFBP sector. Other more general inadequacies, and ones specifically concerned with the financial sector, are covered in part 3 of the report.

528. In view of the shortcomings identified, the following recommendations are made:

- Analyse the reasons for the small number of declarations of suspicion and reports of cash transactions in excess of € 15 000, and draw any necessary consequences;
- further clarify the obligation to report suspicions direct to the UPB, rather than through self-regulatory and professional bodies, with any DNFBPs, such as lawyers, where doubts remain;
- extend protection against the consequences of declarations of suspicion unambiguously to DNFBPs;
- make it an obligation for DNFBPs to appoint at least one anti-laundering official;
- once FATF recommendation 21 on special attention to at-risk countries and territories has been transposed, make it applicable to DNFBPs.

4.3.3 Compliance with Recommendation 16

	Rating	Summary of reasons (relating specifically to section 4.3) for the rating
R.16	**PC**	Further clarify the obligation to report suspicions direct to the UPB with any DNFBPs, such as lawyers, where doubts remain; DNFBPs do not have protection against the consequences of declarations of suspicion; DNFBPs not obliged appoint anti-laundering officials. Issue of how effective the measures are in practice.

4.4 Regulation, supervision and monitoring (R. 17, 24 and 25)

4.4.1 Description and analysis

Recommendation 17

529. As already noted, sections 58 and 59 authorise penalties for non-compliance with the LCPI (criterion 17.1). These apply to all the provisions of the LCPI (though not to those of the LCPI regulation, which sometimes differ from the Act), and offer a wide range of penalties depending on whether the breaches constitute, minor, serious or very serious offences, in accordance with criterion 17.4. The penalties in sections 58 and 59 have never been applied.

530. The issue of effectiveness may or may not apply, depending on standpoint, since as seen below no particularly checks or supervision – whether audit or direct UPB inspection or remote or on-site checks – have ever been applied to DNFBPs. Penalties have never been imposed and in the case of DNFBPs the opportunity has probably never arisen.

531. It appears from meetings on the spot that DNFBP compliance with the LCPI varies greatly, but it should also be borne in mind that the requirements they face are minimal. Due diligence and client identification are only applicable in cases of suspicion and although they must introduce internal anti-laundering procedures and training they do not have to appoint anti-laundering officials.

532. In the case of criterion 17.2, the UPB is the only authority with power to initiate the sanctions procedure, which must then be ordered by the government. According to the LCPI, this is an administrative procedure, but criminal according to the regulation.

533. As already noted in section 3, sanctions apply to both the institution and the managers or professionals concerned, depending on the nature and scale of the undertaking (criterion 17.3).

Recommendation 24

534. Criterion 24.1 is irrelevant in Andorra. There are no casinos in Andorra. Games of chance are banned by law, other than bingo establishments, of which there are currently two. These are governed by the Act of 28 November 1996 and can only be opened with government approval and after a deposit has been lodged with the Andorran national finance institution (INAF). The law governs the rules of the game, such as the prize money and the cost of cards, which must be purchased from the Andorran government, and obligations concerning the identification of customers, with players required to present an identity document when entering the bingo hall. The last paragraph of section 4§3 specifies that the company's annual accounts must be closed on the last day of each civil year and must be audited by external auditors practising in Andorra. Copies of the annual report and the auditors' report, duly signed by all the company directors, must be presented to the government before 31 March of each year. The prizes are fairly small – some € 100 – and the jackpot of about € 12 000 must be paid by non-transferable cheque in the winner's name. There have been no significant changes since the last assessment. The section of the finance ministry responsible for overseeing this activity monitors these external audits and carries out annual inspections. No failures to meet legal requirements have been reported.

535. Criterion 24.2 requires countries to *"ensure that the other categories of DNFBP are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. In determining whether the system for monitoring and ensuring compliance is appropriate, regard may be had to the risk of money laundering or terrorist financing in that sector i.e. if there is a proven low risk then the extent of the required measures may be less."*

536. As noted earlier, the UPB has general responsibility for AML/CFT regulations, supervision and monitoring, and this includes DNFBPs. The following table summarises the measures taken to deal with DNFBPs at the time of the visit.

	Inspections/audit	Training and awareness raising	Others
External accountants and tax assessors	No	Discussion have taken place with the profession (the best known operators on the spot)	All the technical communiqués sent to the entire profession
Real estate agents;	No	Training organised by the UPB; satisfactory collaboration from members of the professional association.	*Idem*.
Lawyers and notaries	No	UPB awareness raising activities.	*Idem*.
Other advisory professions	No	No	No
Dealers in high value items	No	Training activities	*Idem*.

537. Nearly all the categories of DNFBPs have been targeted in one way or another, be it awareness raising and training or technical communiqués.

538. However, the steps taken are still very modest and nothing has been done, either remotely or on the spot, to monitor any type of DNFBP, despite the low level of co-operation in practice. No action at all had been taken in connection with groups such as "other advisory professions" (see also the next section of this report).

539. This has to be seen in the context of the UPB's limited resources. Most of its staff time – particularly of the police officers and judge – is taken up with declarations of suspicion and exchanging information with these officials' departments of origin (police and judiciary). Even though the UPB has not complained of a lack of resources, this question should be reviewed (it was raised in section 2.5).

540. No reference was made to any (alleged) risk factor associated with DNFBPs – apart from bingo establishments – which explains the absence of supervision of or checks on them.

541. DNFBPs also have very limited obligations under the LCPI: general due diligence and client identification measures are not required and although they must introduce internal anti-laundering procedures and training they do not have to appoint anti-laundering officials to apply them.

Recommendation 25

542. The UPB prepares technical communiqués, which have been distributed to DNFBPs, other than professions not explicitly named in the LCPI. Only one of the communiqués supplied to the evaluators included a typology or examples of suspicious transactions (about fifteen, common to all or nearly all types of activities). Additional communiqués, adapted to specific DNFBPs and their particular activities, might well increase the likelihood of identifying transactions linked to the proceeds of crime.

543. The communiqués do not specify any additional measures that financial institutions could take to make their AML/CFT activities more effective. Once again, there is no particular policy regarding DNFBPs.

544. Generally speaking, the evaluators found the professional associations of the institutions concerned fairly passive about AML/CFT issues. None had produced material in everyday language or specifically geared towards their own members, even though in theory they are well placed to do so, since they have a good knowledge of their particular sectors. The DNFBPs rely exclusively on the UPB for training and awareness raising.

545. The UPB provides feedback on a case by case basis to institutions reporting transactions, including information on whether inquiries are under way. Once again, there is no particular policy regarding DNFBPs.

4.4.2 Recommendations and comments

546. The Andorran authorities could do more to supervise DNFBPs and involve them in AML/CFT activities. (Too) much reliance is placed on the UPB. The following recommendations are therefore made:

- strengthen supervision of DNFBPs;
- do more to raise awareness among DNFBPs and supply them with information;
- involve DNFBP professional associations in AML/CFT efforts, such as informing and educating their members; the system relies too much on the FIU, whose resources are limited.

4.4.3 Compliance with Recommendations 17 (DNFBPs), 24 and 25 (criterion 25.1 DNFBPs)

	Rating	Summary of reasons (relating specifically to section 4.5) for the rating
R.17	**PC**	The required measures exist on paper but the issue loses relevance because DNFBPs have never been supervised in practice, despite the shortcomings that clearly emerged during discussions. Issue of effectiveness.
R.24	**PC (NA to casinos)**	A clearly designated authority – the FIU – is responsible for all DNFBPs but in practice there is a complete lack of supervision or inspection.
R.25	**LC**	Professional associations seem to react purely passively to AML/CFT issues; too much reliance on the FIU.

4.5 Other non-financial businesses and professions / Modern and secure techniques of money management (R. 20)

4.5.1 Description and analysis

547. According to criterion 20.1, countries should consider applying recommendations 5, 6, 8-11, 13-15, 17 and 21 to non-financial businesses and professions (other than DNFBP) that are at risk of being misused for money laundering or terrorist financing.

548. It should be noted firstly that section 42 of the LCPI seems to extend its coverage to the whole of Andorran society.

Section 42
With the specific exception of subjects specified in section 45, this Act applies to all individuals and legal persons whose economic or financial activities could act as a channel for or facilitate laundering.

549. If this interpretation is correct, the evaluators believe that such general forms of wording should be avoided and be replaced with as precise a listing as possible of the operatives concerned, since the legislation specifies practical obligations, accompanied by penalties.

550. Bingo establishments are governed by the Act of 28 November 1996 and can only be opened with government approval and after a deposit has been lodged with the Andorran national finance institution (INAF). The law governs the rules of the game, such as the prize money and the cost of cards, which must be purchased from the Andorran government, and obligations concerning the identification of customers, with players required to present an identity document when entering the bingo hall. The last paragraph of section 4§3 specifies that the company's annual accounts must be closed on the last day of each civil year and must be audited by external auditors practising in Andorra. Copies of the annual report and the auditors' report, duly signed by all the company directors, must be presented to the government before 31 March of each year. The prizes are fairly small – some € 100 – and the jackpot of about € 12 000 must be paid by non-transferable cheque in the winner's name. There have been no significant changes since the last assessment. The section of the finance ministry responsible for overseeing this activity monitors these external audits and carries out annual inspections. No failures to meet legal requirements have been reported. It is not totally clear how far bingo establishments are covered by the LCPI. The evaluators have received two versions of the Act, one containing a reference to establishments offering games of chance, but not the other. The team was told that in view of the low level of risk, these establishments had not been the subject of any initiatives (awareness raising or other).

551. As noted in the introduction (section 1.3.2), a certain number of professions with various titles (*consels, financiarias, economistas, gestorias*, and so on) that are not always officially recognised offer a range of services in the fields of advice, asset management, the constitution, management and domiciliation of companies and tax optimisation. Some of them consider themselves to be subject to the LCPI but the Act makes no express reference to them, although section 45 does refer to advice on movements of money or securities in general given by tax assessors, real estate agents, notaries and members of other independent legal professions. The list in section 45 is not exhaustive and it is likely therefore that some of the activities of these unrecognised professions are in principle already covered. This is to be welcomed since, apart from casinos, which do not exist in Andorra, the list goes beyond FATF's four remaining DNFBP categories.

552. The evaluators have noted that some activities, such as legal advice, accounting, assistance with the purchase of residential or other property are or may also be conducted by other, more generally recognised, professions, such as lawyers and, to a lesser extent, accountants. This is sufficient to justify the inclusion of *consels, financiarias, economistas and gestorias*.

553. Besides, without questioning the nature of the various forms of tax optimisation and international financial packages that might be involved, it has to be acknowledged that the existence of such opportunities in Andorra, via intermediaries, could also attract persons wishing to launder the proceeds of criminal offences. It should be borne in mind that, according to information received on the spot, the main motive of 99% of foreign clients and passive residents is tax optimisation. Yet, to date nothing has been done in Andorra to make these professions aware of the potential problems, with the possible exception of discussions that have taken place with external accountants and tax assessors.

554. It is dangerous, therefore, to rely on these different professions' basic prudence and their willingness to draw a clear distinction between tax optimisation and money laundering. The fact that there is a certain competition in this sector – witness the different terms used in Catalan – is a source of additional pressure.

555. Moreover, as already noted, information about anti-terrorist financing measures has not extended beyond the financial sector so DNFBPs as a whole have had no opportunity to compare their client lists with those of the UN, unless they take the initiative themselves.

556. Criterion 20.2 states that *countries should take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.* Examples in the Methodology of techniques or measures that may be less vulnerable to money laundering include reducing reliance on cash, not issuing very large denomination banknotes and secured automated transfer systems.

557. Nothing was said about specific measures of this sort intended solely to combat money laundering. Electronic payment systems are used extensively in Andorra, as part of banks' commercial policy. According to the UPB, this accounts for the steady decline in cash payments. There are still no provisions on electronic signatures, though proposals are being drawn up.

558. There are currently no restrictions on cash payments, in terms of type, purpose or size of the transaction. It might be useful to introduce such a limit, given that cash transactions above a certain amount do not have to be declared and there is no system for detecting cross-border movements of cash and bearer securities.

559. Andorra does not have a national currency. The currency in circulation is the euro. The question of restricting large denomination banknotes does not arise.

4.5.2 Recommendations and comments

560. FATF recommendation 20 combines two groups of aspects, concerning DNFBPs and modern payment methods, which in an Andorran context might better be treated separately.

561. Regarding the former, the evaluators see an urgent need to bring some order to professions such as consels, gestorias and economistas. They are exposed to significant laundering risks and although the LCPI probably covers a certain part of their most exposed activities (or even all their activities if the universality of section 42 is accepted), steps should be taken to increase their knowledge and awareness of the problem and their compliance with the Act, which should also be monitored. Recommendation 20 is non-binding, but Andorra has already to a certain extent extended the scope of the LCPI beyond DNFBPs through the general and open-ended wording of section 45. It is therefore recommended that steps be taken, by clarifying the legislation and introducing regulations for the professions concerned, to bring consels, gestorias, economistas, financiarias

and others within the scope of the LCPI, in accordance with FATF recommendations 5, 6, 8-11, 13-15, 17 and 21.

562. Electronic payments systems are used extensively, but there are no upper limits on cash payments. Andorra has no provisions relating to SR IX, no requirement to report cash transactions, very underdeveloped accounting requirements and so on. In this context, consideration should be given to introducing regulations or limitations on cash payments.

4.5.3 Compliance with Recommendation 20

	Rating	Summary of reasons for the rating
R.20	**PC**	Certain categories of professions are not covered sufficiently clearly by the LCPI – in law and in practice – even though according to the evaluators they present significant risks. Electronic payments systems are used extensively, but there are no upper limits on cash payments. Given the Andorran situation – no provisions relating to SR IX, no requirement to report cash transactions, very underdeveloped accounting requirements and so on – these should be introduced.

5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis

563. Recommendation 33 invites countries to take measures to prevent the unlawful use of legal persons in relation to money laundering and terrorist financing by ensuring that their commercial, corporate and other laws require adequate transparency concerning the beneficial ownership and control of legal persons. Competent authorities should be able to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons. Competent authorities should be authorised to exchange this information with other national and international authorities. Bearer shares issued by legal persons must be monitored.

564. Because of the absence of direct taxation, accounting and audit requirements in Andorra are limited, although banks and financial establishments, and public establishments are required to keep accounts. In every other case, the keeping of accounts and their auditing are purely voluntary. However, it was not possible to establish from the on-the-spot discussions the precise nature of accounting obligations. The representatives of the profession said that, properly speaking, there was no obligation to keep accounts, only to maintain an accounts book in the case of anonymous, limited and EURL-type companies. The evaluators noted that they thus seemed to be unaware of the obligations in the 1983 company legislation, which is quite detailed on the subject and lays down fairly precise accounting obligations, including the presentation of a balance sheet.

565. There is no requirement to submit invoices.

566. Andorra has a register of companies maintained by the ministry of the economy. From the available statistics, it appears that in 2004 there were 1931 public companies, 3772 private limited companies, and 7091 commercial partnerships. The evaluators were told that about a thousand companies are formed each year and two to three hundred removed from the register.

567. A certain number of undertakings are unregistered de facto companies with no real activity. Article 241 of the Criminal Code prohibits fictitious, or shell, companies.

Article 241 Fictitious companies
It is an offence to establish fictitious companies or undertakings for illicit purposes or to the detriment of others, with no or with simulated objects, punishable by three months' to three years' imprisonment.

568. There is little information about such companies, whether it be their number, their use, their real areas of activity or whatever. It is acknowledged that these shell companies may have subsidiaries abroad. The government is responsible for requesting the winding up or the striking off of such companies, during or after court proceedings, for example when a company has been used for laundering purposes.

569. Anyone may constitute a company on behalf of others, but in 90% of cases the formalities are completed by lawyers. They may also give their own address as the company's registered office, to the extent that the register is unable to refuse such a request. Lawyers may also serve as company directors. It has sometimes happened that a lawyer was the director of several companies, one of which was used for laundering. Information held by lawyers in connection with company activities is covered by professional confidentiality, and must be disclosed on a court order, or directly on request from the UPB.

570. Companies may also be registered and managed in the name of other bodies or professions, such as *gestorias*. The representatives of the companies register said that the latter were covered by the LCPI, though this was denied in other meetings (for more details, see section 4).29

571. The legal instrument creating a company is drawn up and signed before a notary following government authorisation. The notary then notifies the register of its foundation, with supporting documents.

572. Two-thirds of the authorised capital of all Andorran companies, except banks, must be of Andorran origin. Some of those spoken to said that this requirement was sometimes circumvented by the use of Andorran name-lenders ("prête-noms"). The representatives of the register appeared to be unaware of the relevant regulations, since they argued that a legal rule would be necessary to prevent this practice whereas according to other sources it is already forbidden by at least two provisions:

- section 10 of the decree of 10 October 1981 adopted by the minister of the Consell Général: "neither Andorrans nor resident foreign nationals may lend their names in any circumstances. The MI Consell Général reserves the right to establish a commission to secure compliance with this provision."

- section 10 of the companies regulation of 1983: "neither Andorrans nor foreign nationals may lend their names in any circumstances."

573. The banking sector representatives said that the use of name-lenders was common practice when companies were formed.

574. Requests for registration are considered by a committee that meets each week. It assembles relevant information and prepares a file on which the government bases its decision. The team was told that the committee examines candidates' antecedents but not the origin of funds. In any case, there is no strict condition that AML/CFT factors be taken into account by the government in deciding whether to authorise registration. The decision is purely discretionary. Reportedly, when the information is inadequate, the government generally rejects applications. The UPB is sometimes asked for information, particularly in the case of foreign investors or beneficial owners, since it is often difficult to identify the real owners of joint stock companies.

29The Andorran authorities also indicated that *gestorias* have no special and regulated professional or entrepreneurial statute, in accordance with the government regulations on the classification of economic activities; furthermore, the drafting of Section 45 LCPI – by virtue of the rule "as well as other natural persons or entities, who in the exercise of their professions or business activities carry on, control or advise operations involving the movement of money or securities that may be susceptible to be used for laundering, and especially those listed below, are bound by the obligations defined by this Law" – would subject those entities to the anti-money laundering law

575. The procedure leading to registration is recorded in a government agreement which is generally not made public, that is published in the official journal.

576. According to the replies to the questionnaire, the information in the register is kept up to date. Responsibility for submitting updated information rests firstly with the relevant notary, who certifies formal documents and the purchase and sale of shares. However, notaries told the team that they had no statutory duty to notify changes following the sale of shares and that such information was not supplied to the register by notaries, in the interests of confidentiality. This was at variance with the claims of the register representatives that in practice notaries notified them of 90% of the changes. The Andorran authorities indicated, as far as they are concerned, that the registration of changes is mandatory but that the obligation lies with the associates and not the notaries. This issue was first raised several years ago and the introduction of an obligation to supply information on beneficial owners and responsibilities connected with ownership rights has been delayed year after year.

577. According to answers to the questionnaire, the Andorran companies register is public and financial institutions have free access to it (see criterion 33.2 and additional criterion 33.4). It emerged from information received on the spot from register representatives that although the register as such is public, detailed information is kept in confidential files to which only authorities such as the UPB and the police have access. Financial institutions must therefore obtain information needed for due diligence purposes indirectly through these agencies. Lawyers' representatives said that the information was accessible to the public but interested parties had to complete an application form setting out what information precisely was being sought on which particular company. It was reportedly easier to access information before the introduction of the recent data protection legislation.

578. The register is computerised and the information it contains should, in theory, be rapidly available.

579. In the meetings, the evaluators were not convinced that judicial authorities and the police were sufficiently familiar with companies, how they were structured, their financing and so on. As noted earlier, judicial proceedings in connection with anti-laundering and major crime have always focused on material assets and bank accounts. This is considered in section 2.6.

580. Under the commercial companies regulation of 19 May 1983, bearer shares are no longer authorised (criterion 33.3). The law required them to be withdrawn or converted into named shares within twenty years. The answers to the questionnaire indicated that as a result bearer shares no longer existed and this was also the position of several persons to whom the evaluators spoke. However, the register representatives admitted that there were still a few companies whose shares had not yet been converted. Since the main objective is to do away with this form of security, no specific steps have been taken to obtain information on the shareholders/beneficial owners.

5.1.2 Recommendations and comments

581. Overall, and in the light of the information above, the situation needs to be improved in various respects.

582. In view of the risks posed by companies and their occasional use for laundering purposes, it is recommended that the system of registering legal persons be reviewed and strengthened, including:

- the proper enforcement of the ban on the use of name-lenders;
- an obligation for companies and those providing services to companies to declare significant changes, such as the capital structure, and names and addresses of the beneficial owners, for the purpose of identifying those beneficial owners;
- a similar obligation for notaries to report such changes to the register when they come to their notice.

583. The following recommendations are also made:

- launch an investigation into de facto companies – their number, use and foreign subsidiaries – and take any consequent steps to limit the risk of their use for AML/CFT purposes;
- complete the conversion of negotiable instruments in bearer form to named securities and ensure that information on their holders is kept up to date;
- clarify and facilitate access to information in the companies register;

5.1.3 Compliance with Recommendation 33

	Rating	Summary of reasons for the rating
R.33	**PC**	There is a companies register but it is difficult to determine how access is gained to its information; it is unclear how far it is kept up to date in practice; existence of de facto companies in respect of which no AML/CFT initiatives have so far been taken and about which little information is available; information indicating frequent use of name-lenders in this sector; bearer shares have not yet all been converted into named shares despite the twenty year deadline.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and analysis

584. In connection with recommendation 34, the Andorran authorities said that the country's legislation contained nothing on legal arrangements. The discussions generally confirmed that trusts were not recognised in Andorra. However, the evaluators were unable to confirm this with sufficient certainty. This reflects the complex nature of the situation, given the large number of consulting and management professions that are not always recognised and/or clearly and properly covered by the LCPI, the range of services they offer, including ones connected with asset and wealth management, the widespread use of name-lenders despite legal bans and the lack of consistency in the legislation on commercial/banking/professional confidentiality and secrecy. Moreover, the LCPI is concerned with the establishment, management and direction of "trusts or similar arrangements", in the context of which lawyers and other independent legal professions must report suspicious transactions. This constitutes the transposition in full of recommendation 12 and criterion 12.1 and an attempt by the legislation to tackle with a certain diligence transactions conducted in Andorra on behalf of foreign trusts.

5.2.2 Recommendations and comments

585. The issue of legal arrangements is not applicable, as trusts may not be established in Andorra.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of reasons for the rating
R.34	**NA**	

5.3 Non-profit organisations (SR VIII)

5.3.1 Description and analysis

586. In Andorra, non-profit organisations are governed by the Associations Act of 29/12/2000 and the register of associations' regulation of 01/08/2001. At the time of the visit, 184 "general" associations were registered, 159 sports associations and one foreign one, of Catalan origin and devoted to biological studies.

587. Foundations are not recognised – draft legislation was under consideration at the time of the visit – but exist in practice. Since they are not registered, the number of foundations is unknown and no control is exercised over them, unless they receive public funding or open an account.

588. The secretariat general of the government, and its legal services, are responsible for supervising associations.

589. The agreement of at least three persons is necessary to create an association. They must declare their wish to do so and supply the statute setting out the rules governing its organisation and operations. The record of an association's foundation must include the names and addresses of the founders and/or any representatives of the bodies concerned. Foreign nationals must also record their passport numbers and, if necessary, their residence permits or authorisations, in the case of individuals, or evidence that they have been founded in accordance with their national legislation and their registration on the corresponding register, in the case of legal persons. The information is recorded in the register. Registration requires the record of the association's foundation to be notarised, but registration is not constitutive of any rights.

590. Section 8 of the Act grants administrative and judicial institutions unrestricted access to information about non-profit organisations. Associations must maintain certain records and registers, including account books, which must be presented to the register of associations (section 28.1). The government may require associations receiving public funding to submit additional accounting documents (section 28.2). Associations may undertake economic activities if this is provided for in their statutes and they are not intended, explicitly or implicitly, to secure financial benefits to be shared among their members. In the absence of any specific legislation, the Act also covers political parties.

591. Having regard to the risk, criteria VIII.1 to 4 require countries to:

VIII.1 review the adequacy of domestic laws and regulations that relate to non-profit organisations at risk of being misused for terrorist financing. The evaluators should have information to show that such a review has taken place;
VIII.2. take steps to ensure that terrorist organisations cannot pass themselves off as legitimate non-profit organisations, particularly to escape the freezing or seizure of their assets;
VIII.3 ensure that funds and other assets collected or transferred by non-profit organisations are not diverted to assist the activities of terrorists or terrorist organisations;
VIII.4 apply the measures relating to special recommendation VIII in the International Best Practices.

592. It cannot be concluded from the information received that measures have been taken to apply these criteria. There has been no detailed assessment of risks. The representatives of the register have also told the evaluators that they have not received any instructions concerning terrorist financing.

593. The evaluators were told that although associations of legal persons do exist, most associations are sporting or criminal and that the distinctive features of Andorra mean that there is almost no risk of non-profit organisations being used for terrorist financing or laundering. However, these risks have not been formally investigated.

594. The new laws of 2000 and 2001 required all associations to re-register and the new system now makes it possible to a certain extent to monitor voluntary activity. Accounts only need to be presented when associations are registered and wound up. Accounts do not have to be audited or certified by an auditor. There is no obligation for associations only to use bank accounts or for the secretariat general of the government to examine their activities on the ground. Nor are there any rules on the retention of associations' documents and data, though in practice they do so on a permanent basis.

5.3.2 Recommendations and comments

595. No general study has been made of the risks of non-profit organisations' exposure to terrorist financing and nothing has been done to apply FATF SR VIII.

596. Nevertheless, given the importance of SR VIII, it is recommended that consideration be given to which of the measures under SR VIII could reasonably help to strengthen the resistance of non-profit organisations to money laundering and terrorist financing.

5.3.3 Compliance with SR VIII

	Rating	Summary of reasons for the rating
SR VIII	**NC**	No steps seem to have been taken under SR VIII and those responsible for the register have not been involved or consulted. The legal arrangements are not very stringent, for example bank accounts and on-going accounts are not obligatory. The risks are considered to be small, given Andorra's size and the nature of its associations, but there has not been any formal assessment of risks.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31 and R.32.1)

6.1.1 Description and analysis

597. Recommendation 31 deals with co-operation and co-ordination between policy makers, the FIU, law enforcement authorities, supervisory authorities and other relevant agencies.

598. The small size of the country is an aid to national co-operation, both between different authorities and between the authorities and institutions covered by the legislation. It leads to time saving and promotes contacts at individual level, though inevitably, such a situation also has its drawbacks.

599. Under the LCPI, the UPB co-ordinates, directs and initiates activities to prevent and combat laundering (section 53.1 and 2).

600. Overall, there appears to be satisfactory dialogue. The FIU co-operates nationally with the various AML/CFT agencies. It holds operational meetings with the judicial and enforcement authorities and any other institutions that might come in touch with the problem. Personal contacts are established with bodies covered by the LCPI to improve communication and facilitate relationships between the FIU and the compliance officers appointed under section 48 of the Act. The professional self-governing bodies are not direct interlocutors of the FIU, but according to the authorities they are heavily involved in AML/CFT activities and in frequent contact with the unit. It was also stressed that all the institutions concerned are actively involved in developing government policy in this area.

601. Despite this positive assessment, there are a number of indications that dialogue and concerted action could be strengthened:

- the absence of an overview of the sectors vulnerable to crime and laundering;
- divergent information on a number of important AML/CFT issues, such as whether bearer securities exist in practice, the updating of the companies register and the use of name-lenders in practice;
- lack of cooperation / involvement of the INAF in practice in AML/CFT matters (hindering occasionally the exchange of information, for example in connection with money transfer services offered by post offices) and the need to clarify the respective areas of responsibility between the UPB and INAF;
- the existence of professions and sectors that are potentially exposed to criminal activity and laundering but not yet involved in AML/CFT;
- the absence of AML/CFT policy on controlling international movements of foreign currency and securities;

602. The size of the country and the scale of the crime/laundering problem in Andorra are perhaps not sufficient to justify institutional arrangements for co-ordinating the various bodies concerned.

Currently, however, most exchanges are fairly loosely and personally based and rely heavily on relations between the two parties.

603. The evaluators consider that it would be helpful to establish a multilateral group with varying membership (sometimes with the authorities concerned and on others with relevant institutions) that would enable all those concerned to take part in a more objective and regular dialogue, agree on their responses to problem areas, such as those referred to above, and enter into commitments on action to be taken.

604. This should be accompanied by a review of the UPB's resources, since the management of co-ordination meetings would require an additional investment of time and personnel.

Criterion 32.1

605. Criterion 32.1 requires countries to review the effectiveness of their systems for combating money laundering and terrorist financing on a regular basis. Existing co-ordination arrangements and the FIU's annual report to the government should be opportunities for assessing the laundering situation in Andorra (pending the granting of specific responsibility for anti-terrorist financing activities to the UPB).

606. However, the evaluators were unable to determine whether these opportunities were taken to assess the effectiveness of the AML/CFT arrangements. As noted in connection with recommendation 31, there are numerous indications that further efforts are still required. The UPB's report focuses mainly on its own activities.

6.1.2 Recommendations and comments

607. National co-operation generally seems to be satisfactory but a number of issues have still not been resolved (or there is no common will to resolve them), which casts doubt on how far co-ordination extends. Andorra has had an anti-laundering system for several years and much has been done to develop a climate of co-operation based on personal relations, which is to be welcomed. However, it may now be time to consolidate and strengthen this co-operation.

608. The evaluators recommend the establishment of a multilateral group for more regular dialogue, which would involve both the various authorities and supervisory bodies and the bodies covered by the legislation, with varying participation according to topic. This would permit regular assessments of the effectiveness of the AML/CFT arrangements, based on the experience of those concerned.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of reasons for the rating
R.31	**PC**	National co-operation generally seems to be satisfactory but a number of issues have still not been resolved, which casts doubt on how far co-ordination extends; a co-ordination group should be established in accordance with section 53 of the LCPI. The existence of divergent views on certain major problems raises the issue of effectiveness and pushes the rating down.
R.32.1	**PC**	There is dialogue and the UPB produces an annual report but the evaluators are not convinced that the effectiveness of the AML/CFT system is reviewed regularly, with the various bodies concerned.

6.2 United Nations conventions and special resolutions (R 35 and SR I)

6.2.1 Description and analysis

609. Recommendation 35 requires countries to sign and ratify, or otherwise become a party to, and fully implement, the Vienna Convention, the Palermo Convention and the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention).

610. As noted in section 2.1, at the time of the visit Andorra had ratified the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) on 23 July 1999 and had signed the 2000 United Nations Convention on Transnational Organised Crime and the 1999 UN International Convention for the Suppression of the Financing of Terrorism on 10 November 2001. Andorra therefore has to ratify the last two instruments and incorporate them fully into domestic law.

611. Various aspects of the Vienna Convention, such as criminalisation, sanctions, confiscation, geographical jurisdiction, arrangements for international operational co-operation and controlled deliveries, have already been considered in various parts of this report, together with the strengths and weaknesses of the existing situation. The evaluators have been told that because of Andorra's small size, customs officials have a good knowledge of transporters and importers and exporters entering and leaving the country and can maintain a high level of vigilance. However, no statistics has been forthcoming on the types of goods and assets seized by the customs.

612. There is little information on the transposition of Article 15 of the Convention (on commercial carriers). The same applies to Article 19, on the use of the mails, though it should be borne in mind that postal services in Andorra are organised by the Spanish post office. Concerning Article 17, Andorra has no maritime frontier.

613. Andorra is also a party to the following instruments:

- Council of Europe 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ratified on 28 July 1999);
- International Convention against the Taking of Hostages, signed in New York on 17 December 1979 (effective ratification on 23 September 2004);
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Personnel, signed in New York on 14 December 1973 (effective ratification on 23 September 2004);
- International Convention for the Suppression of Terrorist Bombings, signed in New York on 15 December 1997 (effective ratification on 23 September 2004);
- Convention for the Unlawful Seizure of Aircraft, signed in The Hague on 16 December 1970. This came into force in Andorra on 5 November 2004.

614. The Andorran authorities consider that all the international conventions and treaties adopted by Andorra form an integral part of domestic legislation, once they come into force. Under Article 3 of the Andorran Constitution, international treaties and agreements ratified by Andorra are deemed to form part of the legal system after their publication in the official journal and cannot be modified or repealed by law. This would imply that Andorra has fulfilled its international commitments concerning ratified treaties on terrorist financing, without the need for specific measures in domestic legislation.

615. The evaluators find this line of reasoning debateable in both theory and practice. Certain provisions, for example on co-operation and mutual assistance, are directly applicable, but most require domestic transposition and are not applicable as they stand.

616. Andorra has signed two other anti-terrorist financing conventions:

- The European Convention on the Suppression of Terrorism of 27 January 1977, signed on 8 November 2001;
- The Additional Protocol to the European Convention on the Suppression of Terrorism, signed on 15 May 2003.

SR I

617. The United Nations Convention for the Suppression of the Financing of Terrorism of 9 December 1999 was signed on 10 November 2001.

618. According to the Andorran authorities, the new Andorran Criminal Code that came into force on 23 September 2005 has taken account of all the penal provisions of the treaties in force and anti-terrorist conventions. A new chapter on terrorism offences defines and outlaws terrorist groups and activities. The new Code also make it an offence to belong to a terrorist group, collaborate with one and commit any other offence for terrorist purposes. This will allow all the other international anti-terrorist conventions, whose legal and technical examination is now complete, to be submitted to parliament for ratification when it resumes for its autumn 2007 session.

619. The authorities have also stated that Andorra will apply without restrictions the UN Security Council resolutions on the prevention and suppression of terrorist financing. For example, the Foreign ministry has transmitted the lists issued by the committees established respectively by resolutions 1267(1999) and 1373(2001) to the Laundering Prevention Unit (UPB). Under its legal powers granted by section 53 of the LCPI, the UPB has issued technical communiqués setting out the lists of individuals and legal persons likely to be linked directly or indirectly with Osama bin Laden, al-Qaeda, members of the Taliban or any other terrorist group.

620. The Foreign ministry, in collaboration with the other ministries concerned – finance and interior – and the UPB have also drawn up reports in accordance with their obligations under paragraph 6 of Security Council Resolution 1373 (2001).

621. The Andorran government presented a detailed report on 21 December 2001. In answer to requests from the Committee in letters of 1 April 2002, 7 April 2003 and 15 November 2004, three further reports providing additional information on the subjects dealt with were presented on 10 September 2002, 10 May 2004 and 14 February 2004.

622. At the same time, on 3 June 2002 the Andorran government submitted a report in accordance with UN Security Council Resolution 1390(2002).

623. Finally, the Foreign ministry also submitted a report, on 3 May 2004, in compliance with Resolution 1455(2003).

624. Nevertheless, the evaluators consider that Andorra still needs to take further measures to fully implement Security Council recommendations (see the discussion on SR III).

6.2.2 Recommendations and comments

625. It is recommended that the Palermo Convention and the Convention for the Suppression of the Financing of Terrorism be ratified.

6.2.3 Compliance with FATF recommendations

	Rating	Summary of reasons for the rating
R.35	**PC**	One of the three conventions covered by R 35 (the Vienna Convention) has been ratified.
SR I	**NC**	The Convention for the Suppression of the Financing of Terrorism has not been ratified, and the measures to implement Resolutions 1267 and 1373 are inadequate.

6.3 Mutual legal assistance (R. 32 and 36 to 38, SR V)

6.3.1 Description and analysis

Mutual legal assistance – general rules

626. In addition to the Vienna and Strasbourg conventions already referred to, Andorra ratified the Council of Europe's Convention on Mutual Assistance in Criminal Matters on 26 April 2005, and it came into force the following July. The two protocols to this convention have not yet been signed or ratified.

Recommendation 36

627. Criterion 36.1 of the FATF Methodology requires countries to provide the widest possible range of mutual legal assistance of the following nature: (a) the production, search and seizure of information, documents, or evidence (including financial records); (b) the taking of evidence or statements from persons; (c) providing originals or copies of relevant documents, (d) effecting service of judicial documents; (e) facilitating the appearance of persons for the purpose of providing information or testimony and (f) identification, freezing, seizure, or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for FT, as well as the instrumentalities of such offences, and assets of corresponding value.

628. These issues are mainly dealt with in the LCPI, the first part of which covers international legal assistance, and to a certain extent in the Code of Criminal Procedure, as amended by the LCPI. In principle, this part of the LCPI applies to all legal assistance.

629. Requests for international legal assistance must specify the authority making the request and the one to which it is made. They must also include a sufficient statement of the grounds for the

request and the offence or offences which are being investigated or the subject of charges, with translated copies of these documents. If these requirements are not met, the court may, depending on how much is missing, ask the applicant country to rectify the omissions or refuse to act on the request, giving reasons for the decision, and return the application. At all events, legal assistance is subject to the following conditions:

- the procedure in the requesting country must comply with Andorran constitutional principles on rights and freedoms embodied in part II chapter III of the Constitution;
- the measure requested must not be incompatible with the fundamental principles of the Andorran legal system;
- there must not be sufficient grounds for supposing that proceedings have been taken against a person on account of his/her political opinions, membership of a particular social group, race, religion or nationality;
- all the offences referred to in the request must be criminal offences under Andorran law;
- the subject of the request must not have been sentenced to an unconditional prison term, have completed a sentence or have been acquitted in Andorra in respect of the same matters;
- the grounds for the request must not be political in nature and the request must not have a political purpose;
- as well as constituting an offence under Andorran law, the circumstances underlying the request must be sufficiently serious to justify the intervention of the Andorran judicial system;
- communication of the information must not pose a threat to Andorran sovereignty, security, public order or other essential interests.

630. In addition, information obtained from the Andorran authorities through the legal assistance process may not be used by the requesting state for purposes other than those stated in the request and, more specifically, in connection with offences or circumstances other than those specified, for which the Andorran courts have been able to assess the legal justification under Andorran law. Depending on the nature of requests, the Andorran judicial authorities may make co-operation conditional on the prior agreement of the requesting state that the information provided will not be used for purposes other than those specified in the request.

631. Andorran legislation offers a wide range of options for legal assistance. The LCPI provides for:

- various precautionary measures, such as temporary measures to secure evidence, freezing and seizure, which may involve blocking accounts or a ban on transactions or the disposal of assets of whatever nature (section 20-24);
- transmission of information from criminal records (section 31);
- transmission of instruments, objects, documents and securities that could serve as evidence or "have clear relevance to the case being investigated abroad" (section 21); these are generally certified photocopies but the Andorran courts may authorise the transmission of originals (section 17);
- specifically, the execution of measures concerning bank accounts (section 32);
- hearing victims, experts and witnesses (sections 11 and 16);
- information obtained from the interception of telephone calls and other forms of communications (section 32);
- controlled entry or circulation of drugs or other products or objects, and the use of undercover agents (section 40);
- execution of confiscation requests (sections 36, 38-39).

632. Andorra is thus able to grant a wide measure of legal assistance, including assistance for the purposes specified in recommendation 28 (criterion 36.6). However, the first part of the LCPI, which deals with these matters, is sometimes difficult to understand. The distinction between general conditions and procedures and special provisions is often complex.

633. Section 36 of the LCPI on legal assistance for the purposes of confiscation is also ambiguous. It states that foreign judgments are only enforceable in Andorra on the basis of an international convention, but the same sentence also says that "requests for execution are not accepted in Andorra", except for confiscation orders on the instrumentalities and proceeds of offence.

634. According to the *Tribunal de Corts*, the problem with the execution of foreign confiscation decisions in Andorra is the absence in Andorran legislation of a procedure for validating and recognising foreign decisions, which means that funds sometimes remain frozen for a long time. The team was told that it would be necessary to await the entry into force of other international conventions on the execution of foreign decisions. This raises questions about the scope of sections 38 and 39 of the LCPI, whose wording certainly seems to be confined to the examination of the merits of foreign requests (the issue is dealt with under recommendation 38). In the absence of statistics on the freezing, seizure and confiscation of assets it is difficult to determine whether this is a problem.

635. Legal assistance may be granted for all serious offences, including laundering and terrorist financing.

636. It is subject to the dual criminality principle. In the on-the-spot discussions, the Andorran authorities have not confined themselves to a strict interpretation of what constitutes an offence.

637. The Andorran authorities' responses to foreign requests for legal assistance are governed by various provisions of the LCPI, designed to ensure that they are timely (criterion 36.1.1), and various exceptions are provided for in urgent cases. Except in urgent cases (section 15), requests must be submitted one month in advance. Requests and responses normally pass through the diplomatic channel, or via Interpol in certain cases, but urgent cases can go directly to the judicial authorities or even to the individual concerned. Since July 2005, it has been possible to make systematic use, with the other parties to the Convention, of direct links between justice ministries, thus bypassing the diplomatic channel. The action taken in response to provisional measures must be notified within thirty days.

638. Legal assistance does not appear to be subject to excessively restrictive conditions. The general grounds for admissibility are the traditional ones, and in certain respects are quite flexible: in particular, information about suspects and assets that are the subject of requests must be provided if possible and provisional measures may be ordered at any point in domestic proceedings (criterion 36.2).

639. As noted above, the first part of the LCPI is sometimes difficult to interpret. The urgent nature of requests and measures is taken into account but there is no time limit for the Andorran authorities to impose provisional measures. This problem of time limits was confirmed in meetings with investigating judges. When the LCPI is updated, it might therefore be helpful to specify the time within which Andorra must respond in connection with other aspects of legal assistance. The staffing of sections responsible for legal assistance is a particular problem. Prosecutors and investigating judges drew attention to their lack of personnel, as did the Foreign ministry (see below under recommendation 32). This is likely to affect the time taken to respond to requests (criterion 36.3).

640. Tax evasion is not an offence in Andorra, other than in the case of income from savings. However the evaluators were told that this was not a barrier to providing information in a money laundering context, so long as it was used for laundering prosecutions and not for tax-related ones. The UPB representatives said that they could provide information at their level, so long as requests were not based solely on grounds of tax evasion. Aside from such cases, requests based purely on fiscal matters will clearly be rejected straight off, without the need for any further justification, which could pose problems from the standpoint of criterion 36.4.

641. As noted elsewhere in the report, there are various provisions on professional and banking confidentiality and secrecy and the law on the matter is not always clear. In principle, section 32 of the LCPI authorises the communication of banking information in response to international requests for legal assistance (criterion 36.5). However, section 35 places certain restrictions on the communication of information covered by articles 222 to 224 and 226 of the Criminal Code. Documents requested from Andorra may then be supplied in photocopied form after deletion of information that might affect persons not involved in the proceedings, or which might harm the person concerned and have no bearing on the request, if that information does not pertain to activities that are offences under Andorran law. The evaluators consider that this section can be interpreted in a number of ways, making it not unfavourable to AML/CFT or alternatively excessively restrictive. The rules governing the communication of information should be reviewed as part of the general review of the law on confidentiality/secrecy recommended in section 3.4.

642. The Andorran authorities have not reported any specific provision for "exporting" judicial cases if this is in their best interests or to avoid conflicts of jurisdiction.

Recommendation 37

643. As already noted, legal assistance is subject to the dual criminality principle, but to a certain extent Andorra applies this flexibly, both in cases that also involve an element of tax evasion (which is only an offence in connection with income from savings) and in its interpretation of what constitutes an offence.

644. In addition, section 20 of the LCPI authorises the courts to impose provisional measures with regard to any asset that is liable to confiscation under domestic law or that of the requesting country.

645. From the AML/CFT standpoint, the two main gaps in what constitute offences are that, unlike a growing number of countries, Andorra has not yet made all offences predicate offences to laundering and that terrorist financing is not yet a distinct offence in its own right with all the required elements.

Recommendation 38

646. As noted under recommendation 36, Andorra is able to provide assistance related to the identification, freezing, seizure and confiscation of proceeds from and instrumentalities used in laundering, terrorist financing and other predicate offences. This is one of the main objectives of the LCPI, whose first part applies to all areas of legal assistance in criminal cases, whatever the offence. However, as noted under recommendation 36, the question remains of how far Andorra is

able to respond to foreign requests for confiscation. It should therefore clarify the situation and introduce the necessary arrangements.

647. As noted in section 2.3, domestically, there are certain uncertainties and gaps in the system of provisional measures and confiscation. In particular, the confiscation of equivalent assets is not possible, whereas provisional measures may be applied (at least in practice) to all an accused person's assets. However, in the context of legal assistance, section 38 of the LCPI explicitly authorises the confiscation of the corresponding value. Finally, as noted earlier, section 20 of the LCPI authorises the courts to impose provisional measures with regard to any asset that is liable to confiscation under domestic law or that of the requesting country. In many respects, therefore, the confiscation arrangements encourage co-operation, which is to be welcomed from the standpoint of criterion 38.2, though there are also apparent problems with the implementation of foreign confiscation decisions.

648. The LCPI also extends co-operation to include joint activities. For example, the courts may authorise representatives of the requesting country to take part in the execution of a request for assistance. The team was told that there had been several successful requests for legal assistance in laundering cases. Some of these requests concerned searches, seizures and the identification of bank accounts or financial transactions. In practice, foreign judicial or police officials are authorised to take part in the measures ordered by the Andorran courts. This is consistent with criterion 38.3, even though there is nothing in the LCPI on other possible forms of co-ordination on seizure and confiscation.

649. In principle, confiscated assets go to the Andorran state, unless there is an international treaty or agreement on sharing the assets (section 39 of the LCPI). There is no special fund in which confiscated assets are placed and no plans to establish one.

650. The evaluators were told that non-criminal confiscation decisions in English-speaking countries based on the civil confiscation procedure were enforceable in Andorra, following a special validation/recognition procedure (criterion 38.6). But as noted earlier, there is no procedure of this type, which the evaluators consider to be a major shortcoming.

Special Recommendation V

651. According to special recommendation 5, each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations. Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals.

652. As indicated in the sections of the report on terrorism offences and the application of provisional measures to terrorist assets, terrorist financing is not yet as such a criminal offence and there are no special procedures for freezing the assets of persons subject to international sanctions. The preventive part of the LCPI does not yet apply to terrorist financing. However, as noted earlier,

the first part of the Act provides for fairly extensive legal assistance in combating various forms of crime, without distinguishing between different types of offence.

653. Andorra has only experienced rare cases of this type in the past, in the context of investigations in Spain and France into the activities of ETA. It is difficult to say how the provisions on legal assistance in general, particularly concerning seizure and confiscation and the issue of dual criminality, apply in practice to terrorist financing.

654. The strengths and weaknesses observed earlier regarding the transposition of recommendations 36 to 38, also apply to terrorist financing. The law on banking and financial confidentiality and secrecy lack consistency, even though they do not seem to raise problems in practice. Similarly, the provisions on seizure and confiscation, which are sometimes ambiguous, are more "generous" in the context of legal assistance than in the purely national context.

Recommendation 32: statistics

655. Andorra acknowledges that it has difficulties responding to requests or obtaining assistance within a reasonable time. The Foreign ministry has a total of 15 staff. The international co-operation and legal assistance section comprises two officials and two support staff. In 2005, at the time of the visit, these officials had to deal with more than 900 international requests for judicial assistance, as well as their other duties such as following up UN resolutions on terrorism, current negotiations on new instruments and so on.

656. According to the judicial authorities, there had been 72 legal assistance cases and the response time averaged between 9 and 11 months. Cases concerning serious offences and requests for provisional measures are always given priority.

657. According to those whom the team met, there were also far fewer problems connected with the translation of documents.

658. The following statistics are available

Requests for legal assistance issued by Andorra in connection with money laundering:

Requested state	Predicate offence
Costa Rica	Laundering the proceeds of drug trafficking
Spain	Laundering the proceeds of drug trafficking
Spain	Laundering the proceeds of drug trafficking

Requests for legal assistance received by Andorra in connection with money laundering:

Requesting state	Predicate offence
Spain	Tax offence and "*apropiació indeguda*" [30]
Germany	Murder, theft of identity documents, credit cards and vehicles belonging to a missing person, fraud and forging of documents
Spain	Fraud
United States	Money laundering
France	Organised fraud
United States	Money laundering
Belgium	Drug trafficking
Spain	Tax offence and "*apropiació indeguda*"
Cyprus	Smuggling
Spain	Laundering the proceeds of drug trafficking and drug trafficking
France	Laundering the proceeds of drug trafficking
Spain	Money laundering
Spain	Fraud, *apropiació indeguda* and forging documents.
Netherlands	Laundering the proceeds of drug trafficking
Spain	Fraud and *apropiació indeguda*
United Kingdom	Laundering the proceeds of drug trafficking
France	Fraud
United Kingdom	Drug trafficking
Liechtenstein	Organised crime, laundering the proceeds of drug trafficking and drug trafficking
France	Smuggling and extortion

659. There are no statistics on the amounts seized or confiscated or on the action taken on requests.

6.3.2 Recommendations and comments

660. In principle, Andorra is able to offer considerable legal assistance, other than in the case of action taken on foreign confiscation decisions. The following recommendations would extend these options still further:

- introduce the necessary legislation for the enforcement of foreign confiscation decisions;
- review the staffing of the legal assistance sections of the courts and the Foreign ministry, with a view to establishing reasonable response times to requests for assistance;
- ensure that the wording of section 35 of the LCPI creates no problems of interpretation, leading to unwanted restrictions of legal assistance;
- continue to soften the dual criminality requirements attached to tax offences to allow more assistance to be provided in this field, which in many countries is a significant source of criminal income (particularly VAT fraud);
- maintain statistics on action taken on requests for legal assistance (and any problems arising), on provisional measures and on confiscation.

[30] The Criminal Code defines *apropiació indeguda* as taking possession of items which have been deposited or otherwise entrusted to someone and which the latter is obliged to restore to the owner

6.3.3 Compliance with FATF recommendations

	Rating	Summary of reasons (relating specifically to section 6.3) for the rating
R.32	**PC**	Lack of statistics on action taken on requests and on assets and amounts seized/frozen/confiscated in the context of legal assistance
R.36	**LC**	The LCPI is not always clearly worded; problem of insufficient staff to respond rapidly to requests
R.37	**LC**	Unlike other countries, tax evasion is not generally an offence but Andorra tries to apply the requirements of dual criminality flexibly
R.38	**PC**	No procedure for validating and recognising foreign confiscation decisions
SR V	**LC**	Andorra is able to provide extensive assistance in the areas covered by recommendations 36 to 38. The strengths and weaknesses of the arrangements have been discussed. The ability to co-operate is considerably affected by the fact that terrorist financing is not fully established as an offence.

6.4 Extradition (R. 32, 37 and 39, SR. V)

6.4.1 Description and analysis

661. Andorra has ratified the 1957 European Convention on Extradition, which came into force on 11 January 2001. The Convention is applicable to extradition proceedings between the parties.

662. When international treaties ratified by Andorra are not applicable, the subject is governed by the Extradition Act of 28 November 1996, which is based on the principles of the European Convention on Extradition.

663. Section 2 of the Act authorises extradition when the offences are punishable under the law of the requested **and** (certain translations use the word "or") the requesting state by some form of custodial sentence or order where the maximum penalty is at least one year's deprivation of liberty. Andorra does therefore apply the principle of dual criminality to extradition (criterion 37.2). It was indicated that legal differences in domestic legislation (compared to the law of the requesting country when it comes to the denomination or definition of the offence, e.g. the definition of terrorist financing – which is limited in Andorra to acts connected with a terrorist group) would not be an obstacle, for instance the extradition of a person for terrorist financing in other cases. Likewise, extradition would also be granted for ML in connection with predicate offences not provided for under Andorran law.

664. Extradition may also be sought for persons sentenced to a custodial sentence or order of at least four months. Money laundering, terrorist financing and predicate offences under the Andorran Criminal Code are thus all extraditable offences, in accordance with criterion 39.1. Andorra has entered two reservations and five declarations concerning the 1957 Convention.

665. A distinction must be made between extradition requests made by and to Andorra.

Outgoings requests

666. Extradition requests from Andorra must take the form of a decision of the court hearing the case or one its judges expressly delegated for that purpose.

667. Requests must be accompanied by the supporting documentation required by the requested country or, at all events, the documents required by Andorra to accept an extradition application.

668. They are immediately forwarded to the Andorran government, which then transmits them, through diplomatic channels, to the competent authority, with the necessary documentation.

669. Requests for detention on remand are transmitted to the competent authorities of the requested state through diplomatic channels, directly by post or telegraph, via Interpol or by any other means that offers written evidence or that the requested state will accept. Such requests must include the information required by the requested state's domestic law or at least that required by Andorra to accept an extradition application, the offence to which the request refers, the date and place of its commission and, if appropriate, the sentence handed down or other measure ordered and a description of the person sought.

Entering requests

670. Extradition requests to Andorra must be through diplomatic channels and accompanied by the following documents:

- the original or certified copy of the final sentence, detention order or any other enforceable judgment handed down under the lawful procedure of the requesting state*;*
- a document setting out the grounds for the extradition request, specifying the date and place of commission, the definition of the offence and the applicable law, the length of custodial sentence applicable and, if appropriate, the sentence handed down;
- a copy of the relevant legal provisions under which extradition is sought, and the general rules on extradition or, if appropriate, a declaration on the applicable law;
- the agreement of the requesting state to comply with the rules governing the judicial procedure, trial or detention of the extradited person with the reservations and under the conditions set out in section 3 of the Extradition Act, when the legislation or other domestic law of the country does not expressly provide for this;
- as accurate a description as possible of the person claimed, together with any other information that will help to establish his identity and nationality;
- translations into Catalan, French or Spanish of the aforementioned documents.

671. Regarding criterion 39.2, Andorra does not extradite its own nationals (section 14 of the Extradition Act). Where extradition may not be granted, there is legislation authorising the prosecution of persons in Andorran territory. There are certain provisions on extradition in sections 25 and 30 of the LCPI:

Section 25: At the request of the state in which the offence has been committed, the Andorran judicial authorities may launch criminal proceedings against any perpetrator of the offence, if the presumed perpetrator is in Andorran

territory and his or her extradition is impossible or he or she is already detained in Andorra for more serious offences.

Section 30: When there is evidence that a person has committed an offence in Andorra and that person cannot be located in Andorra, particularly when the domestic law of the other country makes his or her extradition impossible, the prosecutor, with the prior agreement of the investigating judge or, where appropriate, the court with jurisdiction, may transfer the case to the requesting state, so that the person can be tried in that country.

672. The Andorran approach is therefore compatible with criterion 39.2 (b) because when the subject of an extradition request is an Andorran national and cannot therefore be extradited, he or she may be tried in the Andorran courts on a delegated basis.

673. There are no special extradition provisions to enable authorities to cooperate for investigation and prosecution purposes (criterion 39.3). However, as noted under recommendation 38, the LCPI allows the courts to authorise representatives of the requesting country to take part in the execution of a request for assistance (searches, seizures and the identification of bank accounts or financial transactions), and in practice, foreign judicial or police officials are authorised to take part in such measures.

674. Apart from the simplified procedure below (additional criterion 39.5), the Andorran authorities have not reported any measures to ensure that extradition requests are processed rapidly, despite the statutory deadlines. Requests must pass through diplomatic channels, which normally mean additional delays. As noted earlier, the Foreign ministry, which in theory deals with such requests, seems to suffer a lack of resources likely to affect the rate of proceedings.

675. Finally, the Extradition Act does not provide for any specific simplified extradition procedure but does include an urgent procedure that allows the authorities of the requesting state to ask for the person concerned to be detained on remand until the prosecution service receives the full documentation. Such requests for detention on demand may be transmitted through diplomatic channels or directly via Interpol.

676. Under section 16 of the Extradition Act, the person concerned may, at any time, decide to waive the proceedings and agree to be handed over to the requesting state, in which case the court will order his or her extradition.

Special Recommendation V

677. The extradition arrangements do not place any particular conditions on terrorism cases and the general system in force permits extensive co-operation, setting aside certain restrictions that are traditional or specific to Europe, such as political grounds for a request or extradition to countries where individuals could risk capital punishment or ill-treatment.

Recommendation 32

678. The average time needed to process incoming requests is two months and a half, which is fairly short in the examiners' view. The general statistics are available (independently from the type of crime – three cases concerned ML) are the following[31]:

- 2004-2005 judicial year: extradition proceedings: 4
- 2003-2004 judicial year: extradition proceedings: 13
- 2002-2003 judicial year: extradition proceedings: 2
- 2001-2002 judicial year: extradition proceedings: 2

6.4.2 Recommendations and comments

679. The situation in Andorra seems to be satisfactory. The procedure is speedy in practice and the use of the diplomatic channel does not seem to pose problems (direct channels are also used).

6.4.3 Compliance with FATF recommendations

	Rating	Summary of reasons (relating specifically to section 6,4) for the rating
R.32	**C**	
R.37	**C**	
R.39	**LC**	Measures might be necessary to expedite the processing of demands, given the workload of the diplomatic authorities.
SR V	**C**	

6.5 Other forms of international cooperation (R. 32 & 40, SR.V)

6.5.1 Description and analysis

Recommendation 40

The UPB

680. As the financial information unit (FIU), the UPB joined the Egmont Group in June 2002 and has signed several co-operation agreements with its counterparts in Spain, France, Belgium, Portugal, Luxembourg, Monaco, Poland, the Netherlands Antilles, the Bahamas, Thailand and Peru.

681. The unit co-operates with counterpart organisations in accordance with the Egmont Group's Statement of Purpose and sections 55 and 56 of the LCPI, which specify three conditions to be met: reciprocity, use of the information for the LCPI's stated goals and confidentiality.

[31] The statistics supplied relate to judicial years, from September to July.

682. The absence of an agreement need not prevent co-operation, which can also be based on section 11 of the LCPI regulation, on specific or urgent co-operation, subject to reciprocity and so on, as specified in section 56 of the LCPI. As the statistics show, the UPB has collaborated with several counterpart units.

683. The FIU may submit requests to and receive them from its counterparts on laundering and terrorist financing matters. In responding to requests, it uses its own database and other national sources of enforcement, administrative or public data. The Andorran authorities consider that the FIU has access to all the information it needs to satisfy requests received, even if that information is held by other national authorities. This right is laid down in section 53.2 of the LCPI.

684. It was also explained that when requests for FIU collaboration concern information held by a body covered by the LCPI, the unit operates an inquiry procedure to secure the necessary information and, if necessary, identify laundering or terrorist financing operations. Information supplied to foreign counterparts may not be used without the FIU's agreement and must be used for the purpose initially specified. These measures are intended to protect data and privacy in accordance with Andorra's domestic law.

685. Requests made or received by the FIU must be justified and contain all necessary details for them to be answered properly. The FIU has not made any requests in the Egmont group on behalf of other authorities, but if the case arose, it would give the name of the institution originally formulating the request.

686. The team was told that none of the requests made to the FIU had been refused on grounds relating to professional confidentiality or the existence of a tax offence in addition to the predicate offence. As noted earlier, by itself the fact that a request might also concern a tax offence is not sufficient grounds for refusing to collaborate. Requests that only concern tax offences that are not offences in Andorra cannot be met, because they fail to satisfy the reciprocity principle. However, they cannot be refused if another predicate offence of laundering is concerned.

687. The FIU can only exchange information with equivalent bodies. However, other requests are assessed and redirected to the relevant departments. The applicant institution is immediately informed of this and the FIU takes responsibility for contacting the relevant authority.

Other departments

688. The Andorran police force is a member of the International Criminal Police Organisation - ICPO-INTERPOL. It naturally co-operates with the police of its neighbouring countries, France and Spain. The Andorran police also benefit from these countries' experience in organising training activities.

689. The customs department is a member of the World Customs Organisation (WCO). As well as their involvement in harmonising procedures and securing greater international transparency, the Andorran customs take part in the regular meetings of the Enforcement Committee. The Committee identifies the main areas of international fraud, such as drug trafficking, money laundering, cigarette smuggling, arms trafficking and infringements of intellectual property rights and recommends strategies to member countries to overcome these illegal practices. For example, the Andorran customs supply information to the WCO's CEN database, which contains anonymous information on the activities of the various customs services which can be analysed on an international scale. The Andorran customs service is also a member of the Regional Information Liaison Office (RILO) for western Europe. The office co-ordinates and checks

information submitted to the CEN system by the countries of western Europe. It then analyses this information and draws up national, regional and global strategic documents for submission to the member states and the WCO secretariat. Finally, the Andorran customs take part in various multilateral meetings, such as the annual meeting of directors general and meetings of European customs services and of the heads of their information and research departments, all of which help to strengthen links.

690. As noted in the report, there is no particular customs co-operation in the AML/CFT field – information exchanges or other – with Andorra's natural partners, France and Spain.

691. INAF has no agreements with foreign counterparts. Attempts to reach one with Spain did not come to fruition. INAF sometimes receives requests for information from abroad on banks or other financial establishments in Andorra but does not itself make similar requests, on its own behalf or at the request of financial institutions.

692. The evaluators wonder whether, in these circumstances, INAF manages to exercise sufficient vigilance in performing its duties and responsibilities as the financial supervisory body, as well as certain specific functions such as checking on at-risk correspondent banks.

Special Recommendation V

693. Pending the inclusion of terrorist financing in the scope of the LCPI, which also lays down the UPB's responsibilities and areas of co-operation, the latter has no explicit competence in this field. Nevertheless, the wording of section 56 ("laundering and international crime") is sufficiently vague to enable it to co-operate in this field with its international counterparts. Moreover, the Andorran authorities interpret the provisions on co-operation fairly broadly.

694. INAF's modest or non-existent international contacts deprives the country of a valuable channel of communication on anti-terrorist financing matters from the standpoint of supervising the financial sector.

Recommendation 32

695. The UPB keeps detailed statistics on requests for assistance issued and received:

	2002		2003		2004	
	Issued	Received	Issued	Received	Issued	Received
Total	8	12	16	48	25	53

696. The data supplied for this period shows that the majority of requests issued and received concerned, in descending order, Spain (24), France (19), Belgium (9), Switzerland (8), Austria, the United States and Luxembourg (7 each), followed by some thirty countries with whom five or fewer requests were exchanged. None of the requests received was rejected and information was supplied in every case. The average time to process requests is not known.[32]

[32]This kind of information is available, in principle ; data simply need to be compiled ; after the visit, the UPB indicated that its objective is to provide assistance / information requested within 48 hours, but it happens sometimes that the gathering of information to be provided takes 3 to 4 days

6.5.2 Recommendations and comments

697. Apart from FIU to FIU links, Andorra does not appear to use any other channels of communication on a regular basis for anti-laundering purposes, and this includes the more general financial supervisory level. The evaluators think that this should be rectified. They therefore recommend that regular channels for exchanges of information be developed outside the inter-FIU context. In particular, INAF should finalise the draft agreement with its natural partners – and with their assistance – in Spain and France, as well as developing information exchanges for supervisory purposes with the relevant institutions – central banks and others – of other countries, particularly concerning at-risk situations, such as corresponding banks in countries at risk, relations with shell banks, countries at risk from the standpoint of terrorist financing and so on.

6.5.2 Compliance with Recommendations 32, 40 and SR V

	Rating	Summary of reasons (relating specifically to section 6.5) for the conformity assessment
R32	**LC**	Only the UPB appears to maintain regular exchanges of information in both directions.
R40	**LC**	The UPB co-operates with its foreign counterparts but there does not appear to be any other relevant co-operation in the AML/CFT field, even though such initiatives would be welcome in the customs service and INAF.
SR V	**PC**	As for recommendation 40

7 OTHER ISSUES

7.1 Other relevant AML/CFT measures and issues

698. The Andorran authorities acknowledge that the property sector is particularly popular for laundering purposes. It is therefore surprising that more has not be done so far in the field of prevention[33]. The evaluators note that numerous shortcomings make this sector particularly vulnerable: no sanctions for transactions below the real value of the property, the existence of well-known name-lenders, lack of a centralised land register and a pronounced culture of confidentiality among notaries. Transactions may also be completed orally, although in practice parties generally prefer written agreements as being more secure (including vis-à-vis third parties).

699. To ensure that the LCPI is taken into account by all the bodies covered by it, when it is amended particular care should be taken to make sure it is clearly drafted. The LCPI regulation should explain and clarify the Act, not contradict or amend it.

700. Ethical standards are not very well developed in Andorra and rarely take account of the need to prevent serious crime. The Andorran authorities should fill these gaps and/or encourage the sectors and professions concerned to do so. One example is notaries, who are required by law to adopt ethical rules but have not yet done so.

7.2 General structure of the AML/CFT system (see also 1.1)

(not relevant)

[33] The Andorran authorities advised after the visit that some brainstorming had been initiated on the subject

IV. TABLES

Table 1: Compliance with FATF recommendations
Table 2: Recommended action plan to improve the AML/CFT system

8 TABLE 1: COMPLIANCE WITH FATF RECOMMENDATIONS

Forty recommendations	Rating	Summary of reasons for the rating[34]
Legal systems		
1. The offence of money laundering	PC	Even though the Andorran authorities interpret laundering broadly, the offence does not include all the necessary physical elements: more predicate offences have been added but the list still fails to meet international requirements;self laundering not covered.
2. The offence of money laundering – element of intention and responsibility of legal persons	LC	The offence of laundering has been narrowed in a number of areas, including the criminal liability of legal persons although certain accessory sanctions can be applied to legal persons (in the framework of a case against a legal person).
3. Confiscation and interim measures	LC	Inconsistency in the wording of articles 70 and 411 of the Criminal Code concerning the obligatory nature of confiscation; impossibility of confiscating equivalent assets; need to clarify the rules on provisional measures for the purposes of confiscation and the applicability of measures specified in criterion 3.6; extend the application of provisional measures and confiscation beyond material assets and bank accounts to include all forms of assets, including shareholdings in companies, other financial arrangements and less tangible forms of assets. Nevertheless, available measures do seem to be fairly extensively applied, with positive effect (positive effectiveness criterion).
Preventive measures		
4. Laws on professional confidentiality compatible with recommendations	LC	The UPB and the judicial authorities do not report any particular difficulties arising from the rules on the confidentiality of financial information but the legal framework, which is highly protective of such confidentiality, is heterogeneous and, on paper, imposes restrictions
5. Customer Due Diligence	NC	Existence of omnibus accounts (several clients

[34] These reasons only need to be given when the assessment is not "compliant".

		associated with one single bank account and who are kept secret by the intermediary) and name-lenders (or "straw-men") preventing the identification of ultimate beneficiaries; need to extend all the provisions of the LCPI and its regulation to insurance companies and other financial institutions defined as such by the Methodology; need to extend the duty of due diligence, including such measures as identification, to suspected terrorist financing; no requirement for diligence concerning identification and so on when there are suspicions about the veracity or relevance of client identification data; need to cover explicitly criteria 5.5.2 and 5.7; no obligation to obtain information on the nature and purpose of business relationships; no requirement that documents, data and information are kept up-to-date and relevant; no risk-based approach on the basis of criteria 5.8* (and to a lesser extent 5.9 to 5.12) no ban on conducting operations or establishing relationships if the body concerned cannot satisfy its duty of diligence; no duty of diligence to existing customers.
6. Politically exposed persons	NC	No measures concerning politically exposed persons; proposals were under consideration at the time of the visit.[35]
7.Banking correspondent relations	NC	No measures on relationships with correspondent banks.
8.New technologies and remote business relationships	NC	No specific measures on risks associated with new technology.
9. Third parties and business generators	NA	(strictly speaking there is no third parties and introduced business system in place in Andorra, although certain situations are, in practice, a sources of concern)
10.Keeping of documents	LC	The requirement to preserve documentation and records needs to be spelled out more clearly in the AML/CFT regulatory framework and training/awareness raising is needed in this field (entities are not aware of their obligations); need for a specific requirement that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.
11.Unusual transactions	LC	No formal obligation to examine the background and purpose of transactions and keep a written record of the findings for at least five years
12.DNFBPs (R. 5, 6, 8-11).	PC	The list of DNFBPs in Andorran law is fairly compatible with the Methodology but there are gaps

[35] On the issue of PEPs, a technical communiqué was circulated and training events organised after the visit

		regarding the categories and circumstances of criteria 12.1 d (*avocats* (in French) are not mentioned explicitly and the purchase and sale of legal persons are not covered) and 12.1 e (no reference to trust and company service providers). The penalties provided for apply to DNFBPs. In the legislation, the due diligence requirement (recommendation 5) only applies to suspicions of laundering. Recommendations 6 and 8 are not yet covered by Andorran legislation; the transposition of recommendations 9 to 11 – already noted as posing problems in the case of financial institutions - is very limited in practice because of the very restricted application of recommendation 5. Incompatibilies between section 16 of the LCPI regulation and section 51 e of the LCPI.
13.Declarations of suspect operations	LC	The requirement to report suspicious transactions does not yet cover terrorist financing, only suspected laundering (and not suspicions relating to the proceeds of crime)
14.Protection and prohibition of tipping off	LC	The provision on the protection of bodies making declarations of suspicion should be clarified and made more clearly applicable to all establishments (by separating it from the rest of the section)
15.Internal controls and other measures	PC	the required content of internal anti-laundering procedures, the duties and powers of compliance officers and the content and purpose of training should be more clearly spelt out; no machinery for internal testing or auditing of procedures; no regulations on appropriate procedures for recruiting employees
16.DNFBPs (R. 13-15 and 21)	PC	Further clarify the obligation to report suspicions direct to the UPB with any DNFBPs, such as lawyers, where doubts remain; DNFBPs do not have protection against the consequences of declarations of suspicion; DNFBPs not obliged appoint anti-laundering officials. Issue of how effective the measures are in practice
17.Sanctions	LC	The failure to apply sanctions in practice raises issues and needs to be discussed The required measures exist on paper but the issue loses relevance because DNFBPs have never been supervised in practice, despite the shortcomings that clearly emerged during discussions. Issue of effectiveness
18.Shell banks	PC	Relationships with shell banks are not forbidden. Such relationships are treated as high-risk ones. There is no obligation to monitor shell banks' use of accounts with client institutions of Andorran financial establishments
19.Other forms of declaration	NC	No consideration was given to the introduction of a duty to report all transactions above a certain threshold

20.Other DNFBPs and safe techniques for managing funds	PC	Certain categories of professions are not covered sufficiently clearly by the LCPI – in law and in practice – even though according to the evaluators they present significant risks. Electronic payments systems are used extensively, but there are no upper limits on cash payments. Given the Andorran situation – no provisions relating to SR IX, no requirement to report cash transactions, very underdeveloped accounting requirements and so on – these should be introduced.
21.Particular attention to higher-risk countries	NC	In practice, only banks exercise a certain level of vigilance, based on their own lists (this is not provided for in legislation); no obligation to examine the background and purpose of transactions that have no apparent economic or lawful purpose, and make the findings available to the competent authorities; no counter-measures in accordance with criterion 21.3.[36]
22.Foreign branches and subsidiaries	PC	the spirit of R 22 is largely reflected in the LCPI regulation but the wording is not sufficiently detailed
23.Regulation, control and monitoring	NC	The effectiveness and scope of the monitoring system is debateable; the system relies too much on external audit reports, and thus second hand information; supervision seems to focus mainly on formal aspects; INAF's responsibilities remained unclear as regards certain matters connected with identification and due diligence that are nevertheless common to the supervisory and AML/CFT spheres; the fund transfer services offered by the post office are illegal; ; measures are needed to protect the financial sector from criminal infiltration and to make prudential measures also apply in relation with AML/CFT; measures are needed to protect the financial sector from criminal infiltration and to make prudential measures also apply in relation with AML/CFT.
24.DNFBPs - Regulation, control and monitoring	PC (NA to casinos)	A clearly designated authority – the FIU – is responsible for all DNFBPs but in practice there is a complete lack of supervision or inspection
25.Guidelines and feedback	LC	Relatively little seems to be done to raise awareness of terrorist financing; the UPB could do more to provide laundering typologies Professional associations seem to react purely passively to AML/CFT issues; too much reliance on the FIU
Institutional and other measures		
26.FIU	PC	The FIU's responsibilities in the field of terrorist financing have not yet been laid down in the LCPI,

[36]The Andorran authorities advised after the visit that the draft revised LCPI takes into account FATF Recommendation 21

		though in practice it does exercise certain functions; the annual report is not published[37]; the authority and independence of the FIU and its director must be strengthened.
27.Criminal prosecution authorities	C	
28.Powers and competent authorities	C	
29.Supervisory authorities	PC	UPB inspections are subject to excessively strict conditions; the UPB does not have its own power to impose sanctions
30.Resources, integrity and training	PC	Turnover and number of staff is problematic (FIU) Alleged problems concerning the status and careers of prosecutors and judges, lack of personnel (police responsible for laundering, prosecutors and judges), inadequate police salaries and the management of investigating judges' workload INAF and the UPB do not have the organisational capacity to undertake direct checks, other than on a sampling basis or focusing on a particular sector; the UPB lacks resources
31.Cooperation at national level	PC	National co-operation generally seems to be satisfactory but a number of issues have still not been resolved, which casts doubt on how far co-ordination extends; a co-ordination group should be established in accordance with section 53 of the LCPI. The existence of divergent views on certain major problems raises the issue of effectiveness and pushes the rating down
32.Statistics	LC	There is dialogue and the UPB produces an annual report but the evaluators are not convinced that the effectiveness of the AML/CFT system is reviewed regularly, with the various bodies concerned Lack of statistics on action taken on requests and on assets and amounts seized/frozen/confiscated in the context of legal assistance Only the UPB appears to maintain regular exchanges of information in both directions
33.Legal persons – actual beneficiaries	PC	There is a companies register but it is difficult to determine how access is gained to its information; it is unclear how far it is kept up to date in practice; existence of *de facto* companies in respect of which no

[37] It has become public after the evaluation visit

		AML/CFT initiatives have so far been taken and about which little information is available; information indicating frequent use of name-lenders in this sector; bearer shares have not yet all been converted into named shares despite the twenty year deadline
34.Legal constructions – actual beneficiaries	NA	
International co-operation		
35.Conventions	PC	One of the three conventions covered by R 35 (the Vienna Convention) has been ratified
36.Mutual judicial assistance	LC	The LCPI is not always clearly worded; problem of insufficient staff to respond rapidly to requests
37.Dual criminality	LC	Unlike other countries, tax evasion is not generally an offence but Andorra tries to apply the requirements of dual criminality flexibly
38.Mutual assistance in confiscation and freezing	PC	No procedure for validating and recognising foreign confiscation decisions
39.Extradition	LC	Measures might be necessary to expedite the processing of demands, given the workload of the diplomatic authorities
40.Other forms of cooperation	LC	The UPB co-operates with its foreign counterparts but there does not appear to be any other relevant co-operation in the AML/CFT field, even though such initiatives would be welcome in the customs service and INAF
Nine special recommendations		
SR I Application of UN instruments	NC	The Convention for the Suppression of the Financing of Terrorism has not been ratified, and the measures to implement Resolutions 1267 and 1373 are inadequate
SR II Criminalisation of the financing of terrorism	PC	The offence covers various forms of support, including financial support, for terrorist groups, but not terrorist financing more generally outside this context, such as isolated terrorist acts and terrorists; various aspects are not mentioned explicitly; various general provisions do not apply (attempt, conspiracy, the criminal liability of legal persons). These aspects must be covered as part of an autonomous offence with aggravating circumstances and additional consequences, as in the case of laundering.
SR III Freezing and confiscation of terrorist funds	PC	No clearly designated body, no arrangements for freezing all assets without delay (even without a transaction taking place), no specific and detailed regulations on such matters as the listing and delisting of persons, the conditions for unfreezing assets and information to the public, no apparent wider awareness raising efforts (apart from the banking sector), no legal basis for the preventive system in the form of an extension of the LCPI to terrorist financing.

SR IV Declarations of suspect operations	NC	No requirement to report suspicions of terrorist financing
SR V International co-operation	LC	Andorra is able to provide extensive assistance in the areas covered by recommendations 36 to 38. The strengths and weaknesses of the arrangements have been discussed. The ability to co-operate is considerably affected by the fact that terrorist financing is not fully established as an offence
SR VI AML/CFT obligations applicable to agencies transferring moneys or securities	PC	The law is strict and forbids informal money transfer services; in theory the banks have a monopoly of these but in practice the post office also offers money transfer services, illegally.
SR VII Rules applicable to electronic transfers	PC	In practice, the banks apply certain of the measures required under SR VII but there is no single law or regulation making this a legal requirement, covering all aspects of SR VII
SR VIII Non-profit organisations	NC	No steps seem to have been taken under SR VIII and those responsible for the register have not been involved or consulted. The legal arrangements are not very stringent, for example bank accounts and on-going accounts are not obligatory. The risks are considered to be small, given Andorra's size and the nature of its associations, but there has not been any formal assessment of risks
SR IX Cash couriers	NC	Funds enter and leave Andorra freely and no specific measures have been taken to apply SR IX; for the time being, there do not appear to be any alternative measures.

9 TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

The FATF 40+9 recommendations	Recommended action (in order of priority)
1. In general	* * *
2. Legal system and related institutional measures	
Criminalisation of Money Laundering (R.1 & 2)	- bring the definition of laundering into line with UN instruments and the criteria in FATF Recommendation 1, - extend the list of underlying predicate offences, for example to all serious offences, or all offences liable to maximum terms of imprisonment of more than a year or minimum terms of at least six months, - reintroduce self-laundering and possibly also (explicitly) laundering by negligence, - reintroduce criminal liability for legal persons.
Criminalisation of Terrorist Financing (SR.II)	- establish a separate offence of terrorist financing, in a broader form than collaboration with a terrorist group, and, - review the transposition of international requirements and SR II on the criminalisation of terrorist financing, particularly by extending the offence to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part, to carry out a terrorist act or acts, by a terrorist organisation or by an individual terrorist; - ensure that attempt and conspiracy apply to terrorist financing; - reintroduce criminal liability for legal persons and extend it to terrorist financing; - introduce further provisions on aggravating circumstances and additional consequences, such as winding up the body concerned.
Confiscation, freezing and seizure of proceeds of crime (R.3)	- bring Article 411 of the Criminal Code into line with Article 70 by making confiscation obligatory, since this appears to be a clear error in the legislation;

	- authorise the confiscation of equivalent assets; - clarify the rules on the temporary freezing and seizure of the proceeds of crime by making it explicit that they are applicable to assets held by third parties and for the purposes of confiscation; - consider reversing the burden of proof for the purposes of confiscation after a conviction; - extend the application of provisional measures and confiscation beyond material assets and bank accounts to include all forms of assets, including shareholdings in companies, other financial arrangements and less tangible forms of assets; -maintain statistics on freezing, seizure and confiscation for criminal cases other than laundering ones.
Freezing of funds used to finance terrorism (SR.III)	- pursue actively the application of Security Council resolutions and FATF SR III and transpose them into appropriate national regulations.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	- extend the scope of the LCPI to make the FIU responsible for terrorist financing matters, as is already planned; - publish the FIU's annual report and include in it a survey of laundering risks in the country typology of methods used, as already planned; - authorise more extensive direct access to databases, for example of the police and the register of property of non-residents; - consider ways of strengthening the UPB's authority, for example concerning technical communiqués, which are not binding, and its lack of direct powers to impose penalties for non-compliance with the LCPI; - consider possible ways of reducing the UPB's staff turnover; - make the UPB and its director more independent of the government, with a renewable term of office of a number of years for the director and the latter's right to select his staff.
Criminal prosecution and investigation authorities or other competent authorities (R.27, 27, 30 & 32)	- to consider amend the legislation to explicitly allow authorities investigating money laundering cases to defer the arrest of suspects and/or the seizure of funds, or not to make such arrests and seizures, if this is necessary to identify persons involved in these activities or to collect evidence;

	- undertake an active and detailed study of the risks of laundering (and terrorist financing) in Andorra; - give close consideration to the various expectations and claims of the judiciary and the police and make any reforms necessary, bearing in mind the special demands created by serious crime, including laundering, such as the difficulties of investigation, the volume of work, the need for special expertise and motivation and the need for extra support.
3. Preventive Measures - Financial Institutions	
Secrecy or confidentiality of financial institutions (R.4)	The law on confidentiality and the protection of financial information should be reviewed to: make it more coherent; ensure that the judicial authorities and the UPB have access to this information in accordance with FATF Recommendation 4, in connection with terrorist financing; permit explicitly exchanges of information between financial institutions in accordance with FATF recommendations 7, 9 and SR VII.
Duty of vigilance, including stronger or reduced identification measures (R.5 to 8)	- to transpose into Andorran law recommendations 6 to 8 on politically exposed persons, relationships with correspondent banks and risks associated with new technology; - the application of recommendation 5 should be subject to wide-ranging review, given the various gaps. In particular the Andorran authorities should: 1) make sure a definition of beneficial owners(hip) is provided for, that would reflect the FATF glossary definition; 2) review the application of recommendation 5 to omnibus accounts; 3) review the application of recommendation 5 to services offered – despite the existing legal prohibitions - by name-lenders; 4) extend all the provisions of the LCPI and its regulation to insurance companies and to any other institution covered by FATF's definition of "financial institution", rather than Andorra's definition of "financial system"; 5) extend the duty of due diligence, including such measures as identification, to suspected terrorist financing; 6) require diligence concerning identification and so on when there are suspicions about the veracity or relevance of client identification data; 7) cover explicitly criteria 5.5.2 and 5.7;

	8) make it obligatory to obtain information on the nature and purpose of business relationships; 9) make it a requirement that documents, data and information are kept up-to-date and relevant; 10) introduce provisions on the principle of risk, in accordance with criteria 5.8 to 5.12; 11) introduce a ban on conducting operations or establishing relationships if the body concerned cannot satisfy its duty of diligence; 12) introduce provisions to apply the duty of diligence to existing customers; 13) introduce a requirement that institutions consider filing and STR in instances in which they are unable to complete the CDD process.
Record keeping and wire transfer rules (R.10 & SR.VII)	- to specify more clearly in the LCPI or its regulation the records and documentation to be kept in accordance with FATF Recommendation 10 and to provide for training and awareness-raising actions in this area; - to require that records should be maintained for longer periods as may be required by competent authorities; - make it a specific requirement that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority. - regulations should be established to ensure the application of all aspects of SR VII.
Monitoring of transactions and business relationships (R11 & 21)	- ensure that section 15 of the LCPI regulation is applied to all institutions covered by the legislation and not just those of the "financial system"; - make it a formal obligation to examine the background and purpose of transactions and keep a written record of the findings for at least five years; - incorporate into Andorran legislation a requirement for all the institutions concerned to give special attention to business relationships and transactions with persons, particularly legal persons and financial institutions, from or in countries with weaknesses in their AML/CFT systems, examine, as far as possible, the background and purpose of transactions that have no apparent economic or visible lawful purpose, and make the findings available to the competent authorities, such as supervisors, law enforcement agencies and the FIU, and to auditors; - give the Andorran government or the FIU statutory authority to apply appropriate counter-measures.
Suspicious transaction and other reporting (R.13, 14, 19, 25 & SR.IV & IX)	- include in the wording of the LCPI, as is already planned, the requirement to make declarations of suspicion where it is suspected or there are reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism or terrorist acts, or by terrorist organisations or those who finance terrorism;

	- extend the protective provisions of section 50 to take account of criterion 14.1, and make it clear that this protection applies to all the establishments concerned by making it a separate provision; - consider the feasibility and value of a system in which banks and other financial institutions and intermediaries reported all national and international transactions in cash above a certain level; - circulate more information, typologies and good practices concerning AML/CFT issues. - review the application of FATF special recommendation IX in its entirety; - involve the customs service more clearly – in law and in practice – in AML/CFT machinery.
Internal controls, compliance and foreign branches (R.15 & 22)	- describe in more detail the requirements of internal anti-laundering procedures, the duties and powers of anti-laundering compliance officers and the content and objectives of training; - introduce internal testing or auditing of procedures; - establish regulations on appropriate procedures for recruiting employees; - ensure that the various requirements of FATF recommendation 22 are specified more clearly in Andorran legislation.
The supervisory and oversight system - competent authorities and self-regulating organisations: role, functions, obligations and powers (including sanctions) (R.17, 23, 29 & 30)	- complete the transfer of general responsibility for supervising the insurance sector from the government to INAF and strengthen AML/CFT supervision of the insurance and non-banking financial sectors; - review the application of recommendation 23 regarding the transfer of money and securities by post offices and the activities of bureaux de change; - take measures to implement criteria 23.3 (protection the financial sector from criminal infiltration/control) and 23.4 (applicability of prudential regulations to AML/CFT) - introduce a more explicit requirement into the LCPI for supervisory authorities and other government departments to report suspicions of laundering (and terrorist financing) to the UPB; - for the purpose of combating terrorist financing, extend the checks carried out to the customer/client lists of bodies covered by the legislation; - give the UPB more flexibility in conducting on-the-spot inspections, for example by allowing it to talk to persons other than ML compliance officers; - review the sanctions system in practice and make sure that the sanctions policy is effectively applied by INAF and the UPB; - ensure consistency between the LCPI and its regulation with regard to sanctions, since they only appear to apply to the LCPI, despite the significant (and occasionally conflicting) provisions of the regulation;

	- give the UPB greater powers and more resources, in particular in terms of staff to enable it in particular to conduct its own inspections more frequently, to select auditors, rather than simply drawing up audit specifications, and to order various measures directly, if necessary after reviewing the nature of the sanctions/penalties specified in the LCPI, which according to the LCPI regulation are apparently of a criminal nature.
Fictitious banks (R. 18)	- to review the transposition of recommendation 18: financial institutions should not be permitted to enter into, or continue, correspondent banking relationships with shell banks; financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
Money or securities transfer services (SR.VI)	SR VI should be taken into account when considering the unlawful money transfer activities that the postal service has recently introduced. If they are granted legal authorisation, additional measures should be taken in accordance with criteria VI.1 to 6.
4. Preventive Measures – Designated Non-Financial Businesses and Professions	
Duty of diligence and keeping of documents (R. 12)	- apply the due diligence rules in recommendation 5 to DNFBPs beyond cases of suspected laundering and ensure that the provisions on dealers in high value items are consistent and understood by those concerned; - ensure that national legislation on recommendations 6 and 8 (once approved) and 9 to 11 is applicable to all the sectors covered by the LCPI, including DNFBPs; - ensure that the LCPI reflects more closely criterion 12.1 d in the case of lawyers, notaries and so on by including the purchase and sale of business entities; - review the value of section 16 of the LCPI regulation and repeal it if necessary, since it creates ambiguities; - ensure that the LCPI takes account of all the bodies and circumstances covered by criterion 12.1 e, on trust and company service providers.
Monitoring of transactions and business relationships (R11 & 16)	- analyse the reasons for the small number of declarations of suspicion and reports of cash transactions in excess of € 15 000, and draw any necessary consequences; - further clarify the obligation to report suspicions direct to the UPB, rather than through self-regulatory and professional bodies, with any DNFBPs, such as lawyers, where doubts remain; - extend protection against the consequences of declarations of suspicion unambiguously to DNFBPs; - make it an obligation for DNFBPs to appoint at least one anti-laundering official; - once FATF recommendation 21 on special attention to at-risk

	countries and territories has been transposed, make it applicable to DNFBPs.
Regulation, supervision and monitoring (R.17, 24-25)	- strengthen supervision of DNFBPs; - do more to raise awareness among DNFBPs and supply them with information; - involve DNFBP professional associations in AML/CFT efforts, such as informing and educating their members; the system relies too much on the FIU, whose resources are limited.
Other non-financial businesses and professions (R.20)	- steps should be taken, by clarifying the legislation and introducing regulations for the professions concerned, to bring consels, gestorias, economistas, financiarias and others within the scope of the LCPI, in accordance with FATF recommendations 5, 6, 8-11, 13-15, 17 and 21. - consideration should be given to introducing regulations or limitations on cash payments.
5. **Legal persons and Arrangements & Non-Profit Organisations**	
Legal persons – Access to beneficial ownership and control information (R.33)	- it is recommended that the system of registering legal persons be reviewed and strengthened, including: a) the proper enforcement of the ban on the use of name-lenders; b) an obligation for companies and those providing services to companies to declare significant changes, such as the capital structure, and names and addresses of the beneficial owners, for the purpose of identifying those beneficial owners; c) a similar obligation for notaries to report such changes to the register when they come to their notice. - launch an investigation into de facto companies – their number, use and foreign subsidiaries – and take any consequent steps to limit the risk of their use for AML/CFT purposes; - complete the conversion of negotiable instruments in bearer form to named securities and ensure that information on their holders is kept up to date; - clarify and facilitate access to information in the companies register;
Non-profit organisations (SR.VIII)	- give consideration to which of the measures under SR VIII could reasonably help to strengthen the resistance of non-profit organisations to money laundering and terrorist financing.
6. National and international co-operation	
National co-operation and coordination (R.31)	- establish a multilateral group for more regular dialogue, which would involve both the various authorities and supervisory bodies and the bodies covered by the legislation, with varying participation according to topic. This would permit regular assessments of the effectiveness of the

	AML/CFT arrangements, based on the experience of those concerned.
Special UN conventions and resolutions (R. 35 & SR. I)	- ratify the Palermo Convention and the Convention for the Suppression of the Financing of Terrorism
Mutual legal assistance (R. 32, 36-38, SR. V)	- introduce the necessary legislation for the enforcement of foreign confiscation decisions; - review the staffing of the legal assistance sections of the courts and the Foreign ministry, with a view to establishing reasonable response times to requests for assistance; - ensure that the wording of section 35 of the LCPI creates no problems of interpretation, leading to unwanted restrictions of legal assistance; - continue to soften the dual criminality requirements attached to tax offences to allow more assistance to be provided in this field, which in many countries is a significant source of criminal income (particularly VAT fraud); - maintain statistics on action taken on requests for legal assistance (and any problems arising), on provisional measures and on confiscation.
Other forms of co-operation (R.32)	- regular channels for exchanges of information be developed outside the inter-FIU context. In particular, INAF should finalise the draft agreement with its natural partners – and with their assistance – in Spain and France, as well as developing information exchanges for supervisory purposes with the relevant institutions – central banks and others – of other countries, particularly concerning at-risk situations, such as corresponding banks in countries at risk, relations with shell banks, countries at risk from the standpoint of terrorist financing and so on.

V. ANNEXES

10 DETAILS OF ALL BODIES MET ON THE ON-SITE MISSION

- Ministry of Foreign affairs, Culture and Cooperation
- Ministry of the Economy
- Ministry of Justice and the Interior
- Financial intelligence unit
- Customs
- INAF (Institut National de Finances)
- Police
- Tribunal de Corts
- Public Prosecutor's Office
- Investigative judges
- Bar Association
- Notaries Chamber
- Banks
- Compliance officers
- Auditors
- Financial counsellors
- ABA (Association des Banques d'Andorre)
- Association of accountants
- Association of non-banking financial institutions
- Association of insurance companies
- Association of metals and precious stones dealers
- Associations of real estate agencies
- NPOs

11 LAW ON INTERNATIONAL CRIMINAL COOPERATION AND THE FIGHT AGAINST LAUNDERING OF MONEY AND SECURITIES DERIVING FROM INTERNATIONAL DELINQUENCY

Law on International Criminal Co-operation and the Fight against the Laundering of Money and Securities Deriving from International Delinquency

At its session held on December 29, 2000 the General Council has passed the following
Law on International Criminal Co-operation and the Fight against the Laundering of Money and Securities Deriving from International Delinquency.

Stated purpose

The State of Andorra, by virtue of its history and tradition, has always respected measures for the prevention of, and the fight against the laundering of money, without renouncing its sovereignty and the

guarantees offered by its legal system on the matter of banking secrecy and security in relations between the institutions of the financial system and their customers.

It is almost five years since the passing of the Law of May 11, 1995 on the protection of bank secrets and the prevention of the laundering of money or securities deriving from crime, and in this period, the internationalisation of the world economy, as well as the internationalisation of crime have led the international community to establish preventive and restrictive rules, the efficiency of which depends on the homogeneity of their simultaneous application in all the countries of the world. Money laundering takes on different forms, according to the development of the legislative system and the level of application of this system in each country. It is true to say that the international instruments employed in the fight against laundering share common principles, but differences in national situations make it very difficult, not only to bring about a process of regulatory uniformity but also to achieve a process of harmonisation and assimilation of the regulations.

With this will for harmonisation in mind, the stated purpose of the law for the protection of banking secrets and the laundering of money and securities deriving from crime already demonstrated the will of the State of Andorra to subscribe to the conventions of Vienna, the United Nations, Strasbourg and the Council of Europe.

The provisions of the Andorran Criminal Code, the Law for the Protection of Banking Secrets and the Laundering of Money and the procedures of Andorran internal law contain an important degree of convergence with the philosophy inherent in the provisions of these conventions. However, it is advisable to adopt these laws to the conventions, as is the usual practice in neighbouring countries and the directives of the bodies involved in the fight against money laundering.
This Law attempts to achieve this aim with the traditional straightforwardness of the Andorran legal texts, but with the reaffirmed desire for efficiency. The recently-signed ratification of the Vienna and Strasbourg conventions requires the amendment of current Andorran legislation in order to adopt it to the precepts of the two aforementioned conventions, and to make sure our rules offer maximum levels of efficiency and are uniform with the rules applied in other countries.

Confiscation, which is the aim of the majority of the provisions of the Strasbourg Convention, has been detailed with Andorran specifications in mind.

The aspect dealing with the prevention of the laundering of money or securities deriving from organised crime is the part requiring the most far-reaching amendments so as to offer greater guarantees of efficiency to the mechanisms for the statement, control and denouncement of suspicious acts, whilst safeguarding the principle of banking secrecy. For this purpose, the Unit for the Prevention of Laundering was created to act as a centralising body for all declarations on matters concerning money laundering.

This law has a double purpose. Title 1 refers to the regulation of the organisation of international criminal judicial help by means of rules that are applicable to all procedures relating to this material, irrespective of the offences to which they refer. Title II refers to the fight against the laundering of money or securities deriving from international delinquency. This involves two matters with each covering a different area, whose joint regulation is justified, but being a phenomenon with implications for international delinquency mentioned above, it is the basis for the majority of the possible cases of international judicial co-operation.

Title I. Organisation of international judicial help

Preliminary chapter. Area of application

Article 1

This title applies to all procedures concerning international co-operation on criminal matters.

Chapter 1. Conditions of judicial help

Section One. General conditions.

Article 2
Except for notifications and citations, an international rogatory commission must state:

a. The transferring authority and the authority to which it is addressed.

b. A sufficient exposition of the facts covered by the proceedings and an exposition of the grounds for the action.

c. The offence or offences being investigated or prosecuted together with a translated copy.

d. Whenever possible, the civil status, address and nationality of the persons affected by the measure and also detailed information concerning the assets affected by the action.

Article 3
If an action does not contain the requirements mentioned in Article 2, and depending on the nature of the shortcomings the bailiff may ask the authority of the claimant country to complete it or refuse the execution of the rogatory commission by motivated order and return the actions to the claimant party.

Article 4
In all cases, the judicial help is subject to the following preliminary conditions:

a) The proceedings abroad must conform to the constitutional principles of the Principality, making reference to the rights and liberties guaranteed under Chapter III of Title II of the Constitution.

b) The measure requested must not be contrary to the fundamental principles of the Andorran legal system.

c) There must be sufficient reasons to ensure that the proceedings have not been taken against a person because of his or her political opinions, membership of a particular social group, race, religion or nationality.

d) All the offences on which the rogatory commission are based must be criminally punishable as offences under Andorran law.

e) The person who is the object of the action should not have been convicted by resolute sentence in the Principality and have completed the sentence, nor have been acquitted in Andorra for the same facts.

f) The facts giving rise to the action should not be of a political nature nor should the action be taken for political purposes.

g) The facts giving rise to the action, although constituting an offence under Andorran law, should be of sufficient importance as to justify the intervention of the institutions of the Andorran justice system.

h) The communication of the information should not prejudice the sovereignty, the security, public order or other essential interests of the Principality.

Article 5
No information obtained from the Andorran authorities through judicial help may be used in the claimant state for purposes other that those that have been expressed in the rogatory commission, and more especially, should not be used for punishable offences or facts other than those that have been indicated and whose origin the Andorran judge has been able to evaluate in the context of Andorran law.

Article 6
Considering the nature of the request for help, the Andorran judicial authorities may condition their co-operation upon the claimant state previously offering guarantees to respect the principle laid down in article 5.

Article 7
If the act charged against a person is punishable under various criminal provisions of the law of the country making the request, the rogatory commission may only be executed using the aspects referring to the infractions for which there is no cause of inadmissibility in the context of the Law herein.

Article 8
In any case, in the opinion of the judicial authority it is possible to agree to judicial help with the agreement of the person being charged, when the requested acts are intended to acquit the person who has been charged.

Section 2. Procedure.

Article 9
It is the responsibility of the Ministry for Foreign Affairs to receive the petitions and to send them back as soon as they have been formalised. When the Ministry for Foreign Affairs receives a petition, it sends it to the President of the Bailiffs Court, sending a copy to the Attorney General's Office for purposes of formality.

Article 10
In cases of urgency, the petitions of the judicial authorities of the claimant state may be addressed to the Andorran judicial authorities, either directly, through diplomatic channels, or through the International Police Organisation (Interpol).

The Andorran judicial authorities return the rogatory commissions, whether they have been carried out or not according to the case, through the diplomatic channels and in urgent cases and without prejudice it may also be transferred through Interpol or handed over in person to the authorities of the claimant state which has expressly stated powers to this effect.

Article 11
When the purpose of the rogatory commission implies a summons to court as a defendant, expert or witness, the commission may be made directly by rogatory letters addressed to the bailiff, or by registered letter if the legislation of the claimant state so allows.

Article 12
Any person detained provisionally, or under arrest in Andorra, and whose appearance is requested by a foreign state to serve as a witness, may be transferred temporarily to the territory of that state, provided that the interested person agrees to this, and that his or her presence is not required in Andorra for reasons relating to criminal proceedings in progress, and the transfer does not cause unnecessary prolongation of his or her detention, and neither should there be practical reasons or reasons of substance to oppose it in the opinion of the Andorran judicial authority.

The Andorran judicial authorities may require guarantees for the return of the person whose appearance is required by the requesting state.

It is necessary to have the consent of the interested person as indicated in the provisions of article 207.3, paragraphs 1, 2 and 4 of the Code for Criminal Procedure.

Article 13
The rogatory commissions are carried out free of charge, except where a procedural requirement of the claimant state causes extraordinary expenses.

Article 14
Travel expenses and other concepts of the witnesses and those giving expert evidence, as well as the transfer charges outlined in article 12 are always the responsibility of the claimant state.

Section 3. Applicable law

Article 15
The procedures followed in compliance with the rogatory letters, rogatory commissions and other petitions must follow Andorran procedural laws. Requests for sittings must be received by the Andorran authority at least one month before the indicated date, except where there is a stated urgency.

Article 16
On the matter of oaths taken by witnesses and persons giving expert evidence who have been expressly requested by the claimant state, the promise will resemble the oath taken under Andorran law.

Article 17
The procedures followed by the judicial authority or any other evidence requested by a rogatory commission are issued as certified photocopies that have been authenticated by the Secretariat of the Bailiff, except in cases where a claimant state puts in a motivated request for the transfer of originals, to be considered by the bailiff.

Article 18
The Andorran judicial authority may allow the agents of the foreign authority to attend the execution of the rogatory commission.

Article 19
Notwithstanding the provisions of article 15, when a request mentions a procedural obligation required by the legislation of the claimant state, the Andorran judicial authority will satisfy this imperative provided the requested act does not go against the fundamental principles of Andorran law and there are no important practical reasons to oppose it.

This article applies to requests that require the presence of defence and prosecution counsel as well as a representative of the foreign Attorney General's office and the power to ask questions or counter-questions through the bailiff.

Section 4. Special procedure.

A) Precautionary measures

Article 20
At any moment during an internal procedure, the bailiff may adopt the resolutions that he or she considers necessary to guarantee the return of stolen objects and the preservation of evidence, and also to ensure the civil and criminal responsibilities arising from the offence.

At the petition of a foreign state which has commenced criminal proceedings and formulated a request for freezing, seizure or confiscation, the bailiff may also order the adequate precautionary measures, such as the blocking of accounts or preventive confiscation, prohibition of any operation or the alienation of any asset that may be subject to subsequent confiscation under Andorran or foreign legislation.

The Bailiff must notify the resolutions taken on matters concerning all affected persons within a maximum period of 30 working days and decide on the requests to lift the measures within a maximum period of fifteen working days after hearing the Attorney General and the parties. The decision of the bailiff may be appealed in keeping with the provisions of article 194 of the Code for Criminal procedure.

Article 21
At the request of the claimant state the instruments, objects, documents and securities may be embargoed by the Andorran judicial authorities and sent to the claimant state if conviction evidence is involved, or if there is an obvious interest in the criminal case being prepared abroad. The claimant state is informed previously that in all cases where the criminal proceedings lead to the filing or dismissal of the case, or the acquittal of the person concerned, these objects must be returned to their owners by the claimant state when the resolution closing the proceedings is established.

Article 22
Other objects, documents or securities resulting from a criminal infraction, including those for criminal proceedings brought abroad, may be returned immediately by the Andorran judicial authorities to their owners or holders.

Article 23
When any rogatory commission received by the Andorran judicial authorities leads to the appearance of assets, money or securities deriving from a criminal infraction or which do not have identified legitimate owners, the bailiff orders their preventive confiscation.

Article 24
In cases concerning the carrying out of a request for preventive confiscation resulting from open criminal proceedings, the Andorran judicial authorities may condition this measure to the confiscation not lasting more than a reasonable period, taking the seriousness of the infraction and the complexity of the affair into consideration, and the claimant state must be informed of the term set by the bailiff at the moment of the return of the rogatory commission, without this preventing the claimant state from requesting an extension of the term for serious reasons. In this case the bailiff takes the matter into account.

B) Reporting an offence or delegation of a criminal action.

Article 25
At the request of the state where a criminal infraction has been committed, the Andorran judicial authorities may commence criminal proceedings against any person responsible for the infraction, if the person suspected of the infraction is on Andorran soil and if the extradition of the person is not possible, or if the person has already been arrested in Andorra for more serious offences.

Article 26
In any case, the claimant state guarantee that it will not bring a criminal action for the same acts after a firm decision has been passed in Andorra; or else it must justify the existence of legal texts to this effect.

Article 27
The request of the claimant state is always send through diplomatic channels, although if there is an urgency this should not prevent a copy being sent simultaneously to the Attorney General's Office together with the useful elements for the proceedings that are to be brought.

If the legal requirements coincide, the Attorney General then exercises the criminal action in conformity with the Code for Criminal Procedure, and if not, returns the request stating the reasons for refusal.

Article 28
Andorran criminal law is applicable to facts reported, and the sentences passed are those laid down in the Andorran Criminal Code.

Article 29
Under no circumstances may criminal proceedings be commenced or continued by delegation of another state if the person against whom the proceedings are addressed is in contempt of court.

Article 30
Where there is evidence of criminal behaviour for an offence committed in Andorra against a person who can not be located in the Principality, and especially when his or her extradition is not possible for reasons relating to the internal law of the foreign country, the Attorney General, with the prior agreement of the instructing bailiff, or if necessary, that of the appropriate Court, may send the action to the claimant state so that the person may be tried there.

C) Records of previous convictions

Article 31
At the request of the foreign judicial authorities, the Andorran judicial authorities issue certificates showing the records of previous convictions of persons residing in Andorra under the following conditions:

When the person has been tried or called to trial as a defendant

When the request is for an offence criminally punishable in Andorra

Where there is no reason to suppose an eventual infraction of the rights of the person as established under article 5 of this Law.

Where the record of previous convictions has not been subject to a judicial decision exempt from registration or cancellation.

D) Requests affecting the right to intimacy

Article 32
Rogatory commissions that refer to bank accounts and the interception of personal means of communication such as telephone or telewriters and other analogue means are executed by the competent Court bailiff, upon hearing the Attorney General, and following prior verification of the conformity of the request with Andorran law, without prejudice to the preservation of banking secrets.

Article 33
Requests must contain sufficient elements to indicate that the control that has been requested is legal under Andorran law, and the decision of the judicial authority of the claimant state ordering the measures mentioned in the previous article must be attached.

Article 34
In view of the object and the reasons for the request, and before communicating the recordings or transcriptions to the claimant state, the bailiff must destroy or cause to be destroyed by an agent of the judicial authority designated for that purpose, the parts of those recordings or transcriptions that are of no interest to the criminal proceedings for which the measures have been requested.

Article 35
If, in addition to the information that may be communicated abroad, a written document contains elements within the scope of the secrets contained in articles 222 to 224 and 226 of the Criminal Code, the bailiff may make, or cause to be made by a judicial police agent delegated for that purpose, an authenticated copy or photocopy which should omit any indications that may affect persons alien to the proceedings, or which may affect the person concerned, but which bears no relation to the request, provided they do not reveal criminal actions punishable under Andorran criminal law.

E) Enforcement of foreign sentences

Article 36
In the absence of a specific international treaty, foreign sentences passed by criminal courts are not enforceable in Andorra under any circumstances, and petitions for the enforcement in Andorra of criminal provisions of this type of sentences are not admitted except in the case of decisions involving the confiscation of the instruments or products of the offence that has been committed abroad which are located in Andorra, as provided for in Paragraph A of Chapter II.

F)Resources

Article 37
Any opposition or incident in the course of judicial help proceedings must be resolved immediately by writ of the judicial authority in charge of the measure. This writ is immediately enforceable, provided that in the opinion of the judge its enforcement does not bring about irreparable consequences such as the transfer of information abroad.

An appeal may be presented against this writ in the manner and terms outlined in article 194 of the Code for Criminal Procedure.

Chapter II. Special provisions on matters of criminality

Confiscation

Article 38
In cases of requests made by a foreign judicial authority for the confiscation of the instruments of the offence or their products, money, securities, or assets acquired with these or their equivalent as referred to in article 147 of the Criminal Code or deriving from any other major offence, the request is presented by the Attorney General's office to the Criminal Court, which after previously hearing the interested parties, decides by writ which may be appealed before the Superior Court of Justice.

The Tribunal may not revise or amend a foreign confiscation decision, although it must decide on the claims of bona fide third parties, which have not been decided upon in the aforementioned decision.

The same procedure applies generally, officially or at the petition of the claimant state to the assets, money or securities deriving from any criminal infraction that have no identifiable legitimate owners.

Article 39
Without prejudice to international conventions or agreements that provide to the contrary, the confiscation will always be to benefit of the state of Andorra.

Special forms of police co-operation

Article 40
Within the framework of international judicial co-operation, the bailiff may agree to the circulation or supervised entry of drugs or other products or objects as well as the participation of an undercover agent, under the terms described in the Code for Criminal Procedure.

Title II. Fight against the laundering of money or securities

Chapter III. Area of application

Article 41
For the purposes of this Law, a laundering offence is defined as the commission of any of the acts defined as such in the Criminal Code.

Article 42
Apart from the precepts specifically applicable to the persons under obligation mentioned in article 45, this law comprises all natural persons or legal entities whose economic activities may channel or facilitate a laundering operation.

Article 43
Any persons acting on behalf of third parties are obliged to duly inform themselves of the origin of the funds they receive, and the identity of their true owner, in order to avoid laundering operations.

Article 44
The branch offices, subsidiaries or delegations of Andorran companies located abroad, as well as companies with addresses abroad which are under the control of Andorran natural persons or legal entities, and also persons resident in Andorra involved in commercial or financial operations must act with due care to prevent acts of laundering.

The Govern (Government of Andorra), on receiving a report from the Unit for the Prevention of Laundering (UPB), is empowered to regulate this obligation.

Chapter IV: System for the prevention of laundering

Section Five. Persons under obligation and the obligation to declare

Article 45
Operative institutions of the Andorran financial system, insurance and reinsurance companies, as well as other natural persons or entities, who in the exercise of their professions or business activities carry on, control or advise operations involving the movement of money or securities that may be susceptible to be used for laundering, and especially those listed below, are bound by the obligations defined by this Law:

1. External professional accountants and tax advisors

2. Real estate agents

3. Notaries and independent members of other juridical professions when they participate in:

   assisting the planning or execution of operations for their clients within the framework of the following activities

   a) the purchase and sale of property or commercial companies
   b) the handling of the money, deeds, or other assets of their clients
   c) the opening or management of bank accounts, savings accounts or securities
   d) the organisation of the contributions necessary to incorporate, manage or control companies
   e) the establishment, management or control of companies, trusts or similar structures.
   or else when they act on behalf of their clients in financial or real estate transactions

4. Sellers of articles of great value, such as precious stones and metals, when payment is made in cash, for an amount equal to, or exceeding 15,000 euros, or the equivalent in any other currency

5. Casinos or similar establishments

Notwithstanding the provisions mentioned hitherto, the persons under obligation, mentioned in paragraphs 1 and 3 of this article are not subject to the obligations defined in this Law when the matter refers to information received from one of their clients, or else information obtained concerning one of their clients when it determines the juridical situation of their client, or when they are carrying out their duty to defend or represent their client in judicial proceedings or in relation to these, and this shall include advice concerning the commencement or the form to avoid proceedings, irrespective of whether this information has been received or obtained before, during or after these proceedings.

Article 46
For all relevant effects, the persons under obligation must declare any operation or project for an operation related to money or securities which raises suspicions of laundering to the Unit for the Prevention of Laundering.

The obligation to declare must be fulfilled irrespective of the country where the presumed laundering offence has been committed, or may be committed, or of the origin or destination of the funds.

Article 47
The declaration must be made before the person under obligation has carried out the dubious financial or economic operation. In such cases, if the Unit for the Prevention of Laundering considers that sufficient evidence exists, it orders the provisional freezing of the operation.

This freezing action must not exceed five days, the maximum period before the Unit for the Prevention of Laundering must lift it if this evidence have been invalidated, and authorise the carrying out of the operation or if not, transfer the actions to the Attorney General's office.

In any case, irrespective of whether the operation has been carried out or not, the declaration must be accompanied by all the information concerning the operation or the request for the operation. The person who is under obligation must send any new element of which he or she is aware and which might have a bearing on the evaluation of the declared operation to the Unit for the Prevention of Laundering.

Article 48
The institutions of the Andorran financial system and the insurance and reinsurance companies appoint the person or persons responsible for organising and overseeing the fulfilment of the rules against money laundering within each institution and authorised to make declarations and be the regular representative before the Unit for the Prevention of Laundering. This appointment must be communicated to the Unit for the Prevention of Laundering.

Article 49
Under no circumstances may the person or persons affected or third parties inform others of the existence of the declaration, nor may they inform of the procedure in progress.

Article 50
The administrators, leaders, and employees of the bank or financial institution are obliged to keep secrets regarding information affecting their customers within the framework of the banking or financial activity. To this effect, they must adopt any prudent and precautionary measures necessary to safeguard the concept of professional secret. Violation of the professional secret rule, except where there is a legally justifiable reason, constitutes an offence under the terms outlined in the Criminal Code.

Financial institutions may only provide information concerning relations with their clients, and the accounts or deposits of these, within the framework of proceedings and upon the bailiff's written instructions. Otherwise, the declarations of suspicious operations made to the Unit for the Prevention of Laundering by the persons under obligation are by no means incompatible with the obligation to preserve the traditional professional secret, which offers general protection to the confidentiality of the financial affairs of their clients. Consequently, revealing information to this entity releases the persons under obligation and their personnel from any responsibility for the violation of the rules of both of a general nature and a contractual nature covering secrecy and confidentiality, even when an illegal activity reported as suspicious is not actually confirmed as being so.

The provisions of the previous paragraph should be interpreted without prejudice to the administrative patrimonial responsibility, which, if appropriate, should remain duly established.

The banking secret mentioned in the first paragraph of this article is not opposable to the Unit for the Prevention of Laundering. In the event of opposition or incidents in the development of their investigations and prerogatives, the Unit for the Prevention of Laundering submits the case to the bailiff on duty, who makes his or her immediately executable decision by writ within a period of 48 hours after the hearing of the Attorney General and the interested parties.

Section Six. Other obligations of the persons under obligation.

Article 51
Persons under obligation must also respect the following obligations:

a) The persons under obligation must maintain special vigilance over all operations, whether suspicious or not, when they are presented under complex or unusual conditions, and do not appear to have an economic justification or a licit objective, and this is specially applicable to operations defined as susceptible to laundering operations, and classified as meriting special vigilance by the Unit for the Prevention of Laundering by means of technical communiqués.

b) Provide the Unit for the Prevention of Laundering with any information it requests in the exercise of its powers.

c) As far as the institutions of the financial system are concerned, request a client to identify himself/herself by showing an official document at the moment a business relationship is established.

1 If the client is a natural person, the person under obligation must confirm the identity of the client, his or her domicile and professional activity. To this effect he or she must ask the client to show an item official identification containing a photograph, and he or she must keep a copy of this.

2 If the client is a legal entity the person under obligation must request:

- A certificate of the inscription of the entity in the Registry of Companies.

- Justification, in the same way indicated in paragraph c) 1 of this article, of the identity of the natural person who the document presented shows to have powers to represent the entity.

d) In any case, before any transaction is established, the institutions of the financial system must take due care to verify the identity of the real beneficiaries behind the transaction requested.

e) The obligations to supervise and verify the identity of the institutions of the financial system also includes the other persons under obligation concerning any client with an interest in any operation that raises suspicions of an act of laundering due to the quantity or conditions in which it is carried out.

f) Without prejudice to the fulfilment of the general rules regulating obligations to conserve accounting and contractual documents, the persons under obligation must keep the documents referred to in this article for a period of at least ten years, counting from the date relations are finalised with the clients.

Article 52
The persons under obligation, and particularly the entities of the financial system must establish adequate and sufficient procedures of control and internal communication to prevent and impede laundering operations. For this purpose, they must conduct specific training programmes for their personnel.

The external auditors of the entity verify the fulfilment of the provisions covered by this article and at the end of each financial year they deliver a specific report to the Unit for the Prevention of Laundering on the fulfilment of the precepts of this Law.

Section Seven. Body to prevent the laundering of money and securities

Article 53

1. An independent body known as the "Unit for the Prevention of Laundering" (UPB), is created for the purpose of promoting and co-ordinating preventive measures against laundering, and the budget of this body is the responsibility of the Ministry of the Interior.
2. The Unit for the Prevention of Laundering has the following functions for investigations, decisions and proposals.
   a. Direction and promotion of preventive activities and the fight against the use of the institutions of the country's financial system, or those of any other kind for laundering, using the necessary instrumental procedures and technical rules.

   b. With this aim in mind, request within reason any information or documents that are needed to verify the application of this Law from the persons under obligation. For these purposes, the members of the Unit for the Prevention of Laundering may interview the employees of the persons under obligation as provided for in Article 48 of this Law and they present themselves their offices.

   c. Request and receive certificates of conviction records from the competent judicial authorities.

   d. Collect, gather and analyse the declarations of the persons under obligation as well as any written and oral communications received, and make an evaluation of the facts.

   e. Request and receive any information within the limits of its mission from the Police Service or any official body.

   f. Co-operate with other equivalent foreign organisms in accordance with the rules established in section eight.

   g. Transfer the prepared dossier containing facts that may constitute an administrative offence, together with a proposal for a sanction to the competent administrative authority.

   h. Submit to the office of the Attorney General, for the appropriate purpose, the cases in which there are reasonable suspicions of the commission of a criminal offence.

   i. File remaining cases and keep the dossiers for a period of at least ten years.

   j. Inform the body exercising disciplinary power over the financial system of all transfers of dossiers, to the Attorney General's Office or to the Govern when institutions of the financial system are implicated.

   k. Submit legislative or regulatory proposals to the Govern on the matter of the fight against laundering.

Article 54

The composition of the Unit for the Prevention of Laundering is as follows:

   a. A maximum of two persons of recognised competence in the financial field who are appointed by the Minister of Finance.

   b. A bailiff appointed by the Superior Council of Justice.

c. A maximum of two members of the Police Service appointed by the Minister of the Interior acting on the proposal of the Director of Police.

d. The Interior and Finance Ministers jointly appoint the person with maximum responsibility, from among the members of the UPB appointed by them.

e. The members appointed by the Minister of the Interior and the Minister of Finance must dedicate themselves full time to the functions entrusted to them, and they may not perform any other public or private activity. The bailiff, in addition to his or her own jurisdictional functions, exercises the functions of overseeing the juridical integrity of the dossiers presented within the framework of the UPB, facilitating contacts with the administration of justice and other magistrates and sending the dossiers on suspicious operations to the competent authorities.

f. The Govern regulates the modalities concerning the organisation and functioning of the Unit for the Prevention of Laundering.

g. The members of the Unit for the Prevention of Laundering and its appointed administrative personnel are bound to professional secrecy and subject to the penalties provided for in article 226 of the Criminal Code.

Section Eight. Co-operation between financial information units (FIU)

Article 55
The Unit for the Prevention of Laundering mentioned in the previous articles co-operates with the other corresponding foreign bodies.

Article 56
Information concerning operations, or projects for operations related to the laundering of money and international delinquency including the extracts from the register of previous convictions may be sent to equivalent foreign bodies by the Unit for the Prevention of Laundering upon the initiative of the aforementioned unit, or at the request of those bodies, always with the prior authorisation of the maximum responsible of the UPB and this is subject to the party receiving the information previously guaranteeing the despatch, and satisfying the following conditions.

a. reciprocity in the exchange of information

b. the receiving state must undertake not to use the information for any other end than that intended by this Law.

c. the foreign services receiving the information are subject, under threat of criminal sanction, to keep professional secrecy.

Section Nine. Administrative responsibilities

Article 57
The administrative infractions and the corresponding sanctions established in this chapter are imposed by the Govern acting on the proposal of the Unit for the Prevention of Laundering, and are applicable without prejudice to responsibilities that may be dealt with by the criminal process.

Article 58
Infractions are classified as very serious, serious and less serious, in the following manner:

The following constitute very serious infractions:

a. omission of the requirement of persons under obligation to declare
b. the infraction of the prohibition established in article 49
c. Refusal, giving excuses and resistance to supply information to the Unit for the Prevention of Laundering as provided for in paragraph b of article 51 except in the cases covered by the last paragraph of article 45.
d. The reiteration of a serious infraction in the same year

The following constitute serious infractions

a. not making sure of the identity of clients in the terms laid down in paragraph c of article 51 or not having requested the documents required under the provisions of the same article.
b. insufficient verification of the real beneficiary behind the operation that is to be executed as provided for in paragraph d of article 51
c. lack of vigilance and verification of identity as established under the provisions of paragraph e of article 51
d. the non-conservation of documents for the period established under paragraph f of article 51
e. not having adequate and sufficient internal procedures of control and internal communication in order to prevent and impede laundering operations, and not carrying out the specific audit established in article 52.
f. the reiteration of a less serious infraction in the same year
g. The less serious infractions are:
h. the not communicating the names of authorised persons to the Unit for the Prevention of Laundering as provided for in article 48
i. any infraction of the rules of this Law not covered in the previous paragraphs

Article 59
The less serious infractions are sanctioned with a written warning and a fine of between six hundred and six thousand euros: serious infractions with the prohibition to carry out certain types of financial or commercial operations and/or a temporary suspension of directors of the institution or the professional concerned, of between one and six months and a fine of between six thousand and one and sixty thousand euros, while the very serious infractions carry a temporary suspension of the directors of the entity or of the professional involved of up to three years or the definitive suspension of directors of the institution or of the professional concerned and a fine of between sixty thousand and one and six hundred thousand euros.

In order to classify the sanctions within the established limits, account should be taken of the seriousness of the case, the lack of vigilance, the shortcomings or insufficiencies of the forecast mechanisms and the intention or the degree of negligence incurred.

Section ten. Complementary rules.

Article 60
As a general rule, the infractions expire after three years. If there have been acts aimed at overlooking the organs of control, they expire after ten years.
The expiry term starts on the date the infraction is committed. For infractions resulting from a continuous activity, the starting date is that corresponding to the end of the activity or the last act constituting the infraction.
The expiry is interrupted by the start of the corresponding sanctioning enquiry.

Additional provision
A new section is added to chapter IV of the second title of the Code for Criminal Procedure with the following signatures and content.

Section Sixteen. Controlled delivery of criminal objects and undercover agent.

Article 122 (ii)
At the request of the Director of the Police Service, the instructing bailiff, or if appropriate, the bailiff on duty, may authorise the circulation or delivery of toxic drugs, narcotics or psychotropic substances, as well as firearms, works of art, counterfeit money, images of children participating in sexual activities or of their sexual parts, human organs, objects or money and securities proceeding from a money laundering operation. To adopt these measures, account must be taken of their necessity in relation to the importance of the offence and the possibilities of vigilance.

Circulation or controlled delivery involves allowing the illicit transfer of drugs, objects, or of the substances mentioned in the previous paragraph, as well as the items and securities that have substituted them, and a follow up of the circulation, exit or entry, without any hindering interference by the authority or of its agents, under its vigilance. The aim of this operation is to discover or identify the persons committing an offence related to the said drugs, objects or substances, or to assist the foreign authorities pursuing the same ends.

Police officials must give account of their immediate action to the appropriate bailiff.

Article 122 (iii)
At the request of the director of the Police Service, the instructing bailiff, or the bailiff on duty, if appropriate, may authorise the active participation of an undercover agent in offences related to drugs, firearms, counterfeit money, pimping, terrorism, the sale of children, child prostitution and the use of children in pornography, the traffic of human organs and money laundering.

This undercover agent must be a member of the Police Service acting directly under the orders of the courts.

Article 122 (iv)
By application of the two previous articles, and without prejudice to the provisions of the international conventions covering these matters, the relevant bailiff may condition the agreement given to the foreign authorities upon the fulfilment of certain requirements related to the organisation and control of the measure by the Andorran authorities.

In all cases, the Police Service and the Andorran judicial authorities must be informed with due care and attention of the development of the measure, and every event that may have a bearing on the operation.

Unique transitory transaction.
Insofar as the Unit for the Prevention of Laundering, in the exercise of the prerogatives given to it by article 53, paragraph 2, first subparagraph, does not define the specific transactions susceptible to cause money laundering operations covered by article 51 a) of this Law, the definition of these transactions to be applied will be that approved by the decree of the Govern.

Repealing provision
Upon the coming into force of this Law, the Law for the Protection of Banking Secrets and the Prevention of Laundering of Money or Securities Deriving from Crime of May 11, 1995 shall be repealed.
Final provisions
First final provision
The Govern is empowered to establish the specific rules concerning any part of this Law that may require a regulatory measure in order to become operative.
Second final provision
This Law will come into force six months after its publication in the Official Gazette of the Principality of Andorra.

Casa de la Vall, December 29, 2000

Francesc Areny Casal
Síndic General

We the co-princes, sanction, promulgate and order publication in the Official Gazette of the Principality of Andorra.

Jacques Chirac
President of the Republic of France
Co-Prince of Andorra
Joan Marti Alanis
Bishop of Urgell
Co-Prince of Andorra

12 DECREE APPROVING THE REGULATIONS FOR THE LAW ON INTERNATIONAL CRIMINAL COOPERATION AND THE FIGHT AGAINST THE LAUNDERING OF MONEY AND SECURITIES DERIVING FROM INTERNATIONAL DELINQUENCY

Stated purpose

The Law on International Criminal Co-operation and the Fight against the Laundering of Money and Securities Deriving from International Delinquency of 29 December 2000 empowers the Government to set up specific regulations in connection with any aspect of the Law, which may require the setting up of regulations. Starting from these considerations, these Regulations cover organizational and working aspects of the Unit for the Prevention of Laundering Operations set up by the Law, which is the body having as its mission the promotion and co-ordination of preventive measures against money laundering. In order to comply with legal requirements, these Regulations fix the manner in which bodies liable have to comply with the obligations fixed by the Law, the procedures which they must follow in cases where an operation or projected operation is detected, which may be related to the laundering of moneys coming from criminal activities, the training to be undergone by persons forming part of the internal control and communications bodies, their staff, the duty for professional secrecy, international co-operation and the exchange of information and the procedure for sanctions.

In view of the new circumstances it has become necessary to modify certain articles of the Regulations approved on 27 March and, for reasons of legal security, the regulatory text is republished in its entirety.

On a proposal from the Minister for Finance and the Minister for Home Affairs and Justice and in accordance with the Government in session on 31 July 2002,

I. Decree

Single article

The Regulations for the Law on International Criminal Co-operation and the Fight against the Laundering of Money and Securities Deriving from International Delinquency is approved and will come into force fifteen days after its publication in the Official Gazette of the Principality of Andorra.

Repealing provision

The Regulations for the Law on International Criminal Co-operation and the Fight against the Laundering of Money and Securities Deriving from International Delinquency of March 27, 2002 shall be repealed.

13 Regulations for the Law on International Criminal Co-operation and the Fight against the Laundering of Money and Securities Deriving from International Delinquency

Chapter I – General provision

Article 1
The aim of these Regulations implementing the precepts established by the Law on international criminal co-operation and the fight against the laundering of money and securities deriving from international delinquency, hereinafter the Law, is to define the tasks, organization and working of the Unit for the Prevention of Laundering Operations, hereinafter UPLO, the obligations of those liable and the procedure for sanctions.

Chapter II. Tasks of the Unit for the Prevention of Laundering Operations

Article 2
The UPLO initiates, directs and co-ordinates measures for the prevention of using the financial system and other sectors of economic activity for the laundering of money coming from criminal activities, in pursuance of the provisions of laws and regulations.

Article 3
By means of a decision giving reasons which shall be communicated to the bank concerned at 48 hours' notice, the UPLO may decide to visit the premises of those liable or delegate certain of its members to do so in order to interview the person or persons in charge of organizing and watching over compliance with the rules for the prevention of money laundering and to obtain all the information and documents which it needs to prove compliance with the duties imposed by laws and regulations.

Article 4
The UPLO issues technical communiqués in which it describes the operations which it considers likely to be used with a view to money laundering and which require special vigilance by those obliged in pursuance of article 51 of the Law.

Article 5
The UPLO informs the body exercising disciplinary powers for the financial system of all transmission of dossiers whether to the Public Prosecutor's Office or the Government, when banks in the financial system are implicated. The information shall contain in a precise manner the date of transmission, the reference number and the person to whom the dossier in question has been sent.

Chapter III. Organization and working of the Unit for the Prevention of Laundering operations

Article 6
The chief officer of the UPLO as provided for by article 54 of the Law is the person responsible for managing and co-ordinating the unit on the administrative and technical levels. He watches over the security of the documents and premises in general and over compliance with procedures and the law by members and staff attached to the Unit.

He acts as the representative of the UPLO for those obliged, equivalent foreign information units and national and international bodies where its presence is required.

In case of absence, he delegates his duties to another member of the UPLO other than the magistrate.

Article 7
In case of absence of the magistrate appointed to the UPLO, the Upper Council of Justice appoints a locum magistrate with the same duties as the appointed magistrate.

Article 8
The UPLO holds periodical meetings to examine the dossiers deriving from declarations of suspicion and the reports of financial information carried out by foreign financial information units.

Article 9
All members of the UPLO are subject to professional secrecy with regard to all information coming to their knowledge during their time with the UPLO. This subjection to professional secrecy continues even when the persons subject to this obligation are no longer part of the UPLO. Subjection to professional secrecy may not be used against the judicial authorities.

Article 10
The UPLO co-operates with the judicial authorities at the latters' request both in criminal investigations and in the carrying out of rogatory commissions related to acts of money laundering.

Article 11
The UPLO may sign co-operation agreements with other foreign financial information units.

The UPLO may in specific cases and in emergencies co-operate with these foreign financial information units without a co-operation agreement so long as the precepts laid down by article 56 of the Law are respected.

Chapter IV. Obligations for diligence and declaration by those liable
Article 12
Before setting up any business relationship, a bank in the financial system shall ascertain the identity of the other contracting party from whom it shall require, if it is an individual, an original official document bearing his photograph and proving his identity.

In order to ascertain the domicile and professional activity of an individual, the bank in the financial system requires whatever document of proof it may consider necessary and, if it has any doubts about the truthfulness of these points, it shall require him to sign a specific declaration. The bank keeps a copy of all these documents.

In the same conditions as those set out in paragraph 1 of this article, the bank ascertains the identity of any occasional customer requesting it to perform any operation for an amount equal to or in excess of 1250 euros.

Article 13
In the case of legally constituted bodies, the banks in the financial system require the presentation of the original or a certified true copy of any deed or extract of a deed in an official register which gives the name, company aim, legal form and registered offices thereof as well as the powers of attorney of the persons acting in the name of the legally constituted body. With regard to the empowered representatives of legally constituted bodies, the banks in the financial system require the same documents as for individuals other than those referring to their profession. They shall also identify the true owners by obtaining a signed declaration from the representatives. The banks in the financial system keep a copy of all these documents.

In the case of legally constituted bodies under incorporation, the bank in the financial system may open an account, identifying as provided for in the first paragraph of this article the individual or individuals making the request but it may not authorize any sort of operation other than lodgements and sums charged to account in connection with the incorporation of the company until such time as the body is legally constituted and the documents provided for in the foregoing paragraph have been produced.

Article 14
The banks in the financial system have a duty to know the origin and the destination of their customers' funds. Consequently, when for any reason a bank in the financial system suspects that a person requesting the opening of an account or the carrying out of an operation, whether he be an occasional or a regular customer, might not be acting on his own behalf, it requires the presentation of whatever document or proof it may consider necessary in order to ascertain the true identity of the orderer and the beneficiary. Should it not obtain the aforesaid proof, it shall require the customer to make a signed declaration containing the identity of the orderer and the beneficiary and the amount and motive of the operation.

Article 15
If because of the amount or the conditions of execution an operation requested does not tally with the normal activity or operational track record of the customer, those liable require whatever document they consider necessary to justify the operation.

Article 16
If because of the amount or the conditions of execution of an operation, suspicions arise that it may be an act of money laundering, the sellers of article of great value provided for in article 45.4 of the Law check the identity of the purchasers in the manner laid down in article 12 paragraph 1 of these Regulations.

Article 17
The procedures and internal control bodies mentioned in article 52 of the Law are set up in writing and are considered sufficient when they adequately satisfy the principles of speed, security, co-ordination and efficacy, both with regard to internal prevention and transmission and to analysis and communication to the UPLO. The UPLO may suggest corrective measures for these procedures and internal bodies to those liable.

Article 18
The banks operating the financial system and insurance and re-insurance companies notify the UPLO in writing of the identity of the persons entrusted with organizing and watching over compliance with the rules against money laundering provided for by article 48 of the Law. They also notify any change in the officers so entrusted.

Article 19
Those liable shall declare to the UPLO any operation requested of them with regard to which there exists a suspicion of its coming from an act or being an act of money laundering. Whenever possible, the declaration shall be made before carrying out the operation in question.

The declaration is also made in the case of operations already carried out if it has not been possible to halt their execution. A declaration is also made when, after the carrying out of the operation, it is considered that the amounts might come from a money laundering operation.

All information connected with an operation dealt with in a declaration, obtained by a body liable after the initial declaration and likely to affect the estimation thereof, is immediately brought to the notice of the UPLO.

Declarations are always made in writing and, in emergencies, may also be made beforehand by any means available.

Article 20
Declarations contain at least the following information:

- Listing and identification of the individuals or legally constituted bodies taking part in the operation and the motive for their participation in said operation.
- Listing of the operations, noting the date, aim, currency, amount, form and place or places of execution.
- Copy of the documents by which the customer requesting the suspect operation has been identified.
- Copy of the documents by which the customer justifies the operation.
- Note of all the circumstances of the suspect operation available to the body liable.

If the body liable does not have at its disposal any part of the above-mentioned information, it specifically notes this.

Article 21
In the case of indications that the operation has its origin in money laundering or is aimed at money laundering, the UPLO issues a provisional written order blocking the operation covered by the declaration for at most five working days.

During this time, those liable carry out no act affecting blocked operations without the prior written consent of the UPLO and no operation connected in any way with the suspect operation.

Chapter V Other provisions

Article 22
The period of ten years for the conservation of document referred to by article 51 f) of the Law begins on the date on which relations with the customer cease in the case of regular customers, on the date of the operation in the case of occasional customers and on the date of the declaration to the UPLO in the case of declarations made.

Article 23
The specific training programs referred to by article 52 of the Law are aimed in general at the staff of those liable and in particular at persons who by their office are in a position to detect suspicious facts or operations.

Article 24
After an agreement with those liable, the UPLO may itself program or give training courses specifically aimed at those entrusted with the internal checking of those liable.

Article 25
The branches, daughter companies or delegations of Andorran companies located abroad as well as companies domiciled abroad, the control of which is in the hands of individuals or legal bodies which are Andorran or resident in Andorra, the aim of which is commercial or financial operations, act with due diligence to forestall any act of money laundering and shall maintain the level of checking and internal procedures laid down by Andorran legislation.

If the legislation of the country in which the bank is domiciled is defective compared to Andorran legislation, the Andorran or resident individual controlling it shall inform the UPLO of this fact.

Chapter VI Procedure for sanctions

Article 26
The procedure for the exercise of the power to sanction deriving from the provisions of section nine of the Law, is that provided for by the Regulations for the procedure for sanctions of 21 October 1998, the UPLO being empowered to begin and examine procedures for sanctions and also, where necessary, to take precautionary measures to ensure the efficacy of the decision which may be taken.

Article 27
Once the examination is concluded, the UPLO transmits to the Government the dossier and all documents contained therein together with a proposal for sanctions.

Article 28
The decision taken by the Government may be appealed against in accordance with the provisions of article 124 of the Administrative Code.

All of which is made public for general knowledge.

Andorra la Vella, 31 July 2002

Marc Forné Molné
Head of Government