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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

Third Round Detailed Evaluation Report on
ANDORRA¹

ANTI-MONEY LAUNDERING
AND COMBATING THE FINANCING OF TERRORISM

Summary

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

Summary of the 3rd evaluation round report on Andorra

Situation concerning the laundering of capital and the funding of terrorism

1. Despite its small size, today the country has a developed state institutional system.
2. 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.
3. 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.
4. 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).
5. 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)
6. 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.

Judicial system and related institutional measures

7. 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.
8. 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.
9. 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 record².
10. 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

² 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.

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

11. 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.

Preventive measures: financial institutions

12. 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).
13. 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.
14. 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' priorities³. 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.

³ Certain measures have been taken after the on-site visit (e.g. concerning the matter of politically exposed persons)

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

15. 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.

Legal entities, legal structures and non-lucrative bodies

16. 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.

National and international cooperation

17. 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.
18. 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.