COMMITTEE OF EXPERTS ON THE EVALUATION
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Andorra

Fifth Round Mutual Evaluation Report

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

The fifth round mutual evaluation report on Andorra was adopted by the MONEYVAL Committee at its 54th Plenary Session (Strasbourg, 28 September 2017).

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EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering (AML) and countering the financing of terrorism (CFT) measures in place in the Principality of Andorra (Andorra) as at the date of the on-site visit (between 6 and 18 March 2017). It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of Andorra's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

- Andorra adopted its national risk assessment (NRA) and action plans for addressing the risks in December 2016. It is a candid assessment, and, taking into account that it is its first wholesale exercise to consider the money laundering (ML) and financing of terrorism (TF) risks it faces, it is reasonably comprehensive. Where there are shortcomings, it is in relation to the activities of foreign subsidiaries of Andorran banks.
- It is evident that there has been the political commitment to make sweeping changes to Andorran legislation. It was not clear though what political oversight will apply in relation to monitoring implementation of key aspects of the action plans. Despite this, legislation to criminalise tax crimes and revise the Law on international cooperation in criminal matters and the fight against money laundering and the financing of terrorism 20 December 2000, as amended (AML/CFT Act), all part of action plans, was already well advanced at the time of the on-site visit.
- The authorities systematically use financial intelligence and other information provided by the *Unitat d'Intelligència Financera d'Andorra* (the UIFAND) in developing investigations of ML cases. The good ratio of suspicious activity report (SARs) submitted against the number of investigations initiated based on them supports law enforcement authorities' (LEA) view that the UIFAND's analyses/disclosures are of a high quality.
- Cooperation and communication between the UIFAND and LEAs seems to be intensive and fruitful. It, inter alia, includes face-to-face meetings which enable the interlocutors to discuss all aspects of the case(s) and to preserve the confidentiality of information.
- Andorra has a small law enforcement and magistrates' community, which has facilitated good cooperation and coordination, effective investigation and prosecution of complex cases. These cases have generated uniform ML case law and reflect high professional standards. Currently, the criminal justice system investigates and prosecutes a wide range of ML cases which are consistent with the country's threats and risk profile. Nevertheless, the ratio between investigations/prosecutions initiated and subsequent convictions obtained appears to be modest.
- The ML threats that the country faces, the current workload judiciary and law enforcement are exposed to, the complexity of cases, certain shortcomings in the legal framework, and court proceedings that appear to be exceptionally long are key concerns which call for further reforms by the authorities.
- Imprisonment sanctions imposed by the courts on natural persons are proportionate and dissuasive and are cumulated with fines which can amount up to 3 times the value of the laundered funds.
- The authorities seem to apply a reasonably proactive approach in pursuing the confiscation of assets. This means that assets obtained or laundered are pursued even in cases when the dual

criminality principle could prevent that.

- Searching for criminally obtained property is quite a complex process. Although parallel financial investigations are systematically carried out, a lack of human resources and limited access to databases by some LEAs cast doubt on effectiveness in identifying proceeds.
- Cash smuggling has been identified as a vulnerability in the NRA. Nonetheless, the cross-border identification and seizure of cash does not seem to be sufficiently prioritised by *Duana d'Andorra* (Customs Department).
- Andorra has enacted a robust legal framework for criminalising TF, which is largely in line with international standards.
- The absence of prosecutions and convictions for TF appears to be broadly in line with the risk-profile of the country.
- The authorities have conducted a detailed analysis of wire transfers with other jurisdictions, including high-risk countries, within the framework of the NRA. However, the possibility to monitor wire transfers data to and from high-risk jurisdictions from the TF perspective has not been fully explored by the UIFAND prior to the NRA.
- The framework for targeted financial sanctions (TFS) seems complete, and capable of applying sanctions promptly. Nevertheless, the possibility of recognising TFS lists of the European Union (EU) and neighbouring countries (Spain and France) has not been considered by Andorra, despite close political, economic and social ties.
- A limited regulatory regime for registration and supervision of non-profit organisations (NPOs) does not fully target, and does not seem to be proportionate to, the risk of abuse of NPOs for TF purposes.
- There is a system in place to freeze property and assets of persons identified under United Nations Security Council Resolutions (UNSCR) lists for financing of proliferation of weapons of mass destruction (PF). However, Andorra is not taking sufficient steps to address all the issues surrounding proliferation.
- Large financial institutions (FIs) assess and broadly understand their ML/TF risks, but it seems that they may be down-played to some extent. Smaller FIs and designated non-financial businesses and professions (DNFBPs) appeared less clear about risks, but operate straightforward business models for a limited number of customers. Most FIs and DNFBPs classify their clients into risk categories in order to apply appropriate customer due diligence (CDD) measures. However, some of the methodologies followed for classifying risk are not yet fully adapted to the specificities of their customers and their activities. FIs and DNFBPs generally demonstrated a strong commitment to applying AML/CFT obligations.
- There are some technical deficiencies in the licensing and registration controls to prevent criminals and their associates from holding positions of control or management in FIs and DNFBPs. Except for banks, those holding senior compliance roles are not vetted by supervisors.
- Taking into account the size of the UIFAND's supervisory unit during the period under review, the UIFAND is to be commended on what it has achieved since the last evaluation. Nevertheless, the limited resources available to the UIFAND have hampered supervision and there is significant key-man risk present. The UIFAND had to curtail a large part of its inspection programme in 2015 and 2016 to deal with a bank failure and the NRA. Risk-based supervision is not fully applied to FIs and DNFBPs.

- There is a need for better strategic engagement and coordination of activities between the supervisory authorities. Whereas the UIFAND relies extensively upon the cooperation of the *Institut Nacional Andorrà de Finances* (the INAF) with foreign regulators in order to exercise consolidated supervision of the significant overseas activities of subsidiaries, it does not seem that there is adequate engagement on AML/CFT matters between the prudential supervisor and its counterparts abroad.
- The NRA includes quite a comprehensive assessment of ML risks involved in the use of shell companies created in Andorra. It also considers TF risks presented by foundations and associations (NPOs). It does not consider how companies may be used more generally for TF. The past and current involvement of banks, lawyers, accountants and *gestorias* in the formation of legal persons, and possibility that some professional trustees resident in Andorra are administering foreign legal arrangements have not been considered sufficiently.
- Measures are in place to prevent misuse of Andorran companies. A combination of: (i) controls exercised over foreign investment by the Ministry of Tourism and Commerce; (ii) use of notaries (which are subject to AML/CFT Act); and (iii) requirement for companies with foreign ownership to hold a bank account (nearly always in Andorra) are the key elements of a comprehensive process for mitigating the risk of misuse.
- Gestorias are commonly used to incorporate companies in Andorra. Whilst they are subject to the AML/CFT Act, supervision of this sector is insufficient.
- International cooperation constitutes a significant part of the Andorran AML/CFT system, given that most of the predicate crimes to ML are committed abroad. Andorra proactively seeks legal assistance from foreign authorities. All competent authorities demonstrated a very good level of direct communication with their counterparts. However, the use of diplomatic channels with countries with which Andorra does not cooperate frequently sometimes takes a slower course.
- Although being a formal reason for which mutual legal assistance (MLA) requests can be refused, the dual criminality requirement in cases of tax crimes is strictly applied only if no link with another predicate offence can be identified.

Risks and General Situation

2. Andorra has a low level of domestic crime. Its main ML threat originates from foreign criminals who use the Andorran financial system to launder proceeds from foreign predicate crimes. The NRA identifies that tax evasion, fraud, corruption, drug trafficking and tobacco smuggling pose a threat to Andorra. Many predicate offences are committed in Spain and France, and Andorra cooperates closely with these countries. Tobacco smuggling is the only domestic threat rated as high.

3. Andorra's position as a regional financial centre, with an increasingly international dimension, presents a potential for illicit funds to enter the Andorran economic system, particularly as part of the layering process. Tax evasion was not a predicate crime to ML at the time of the on-site visit and this increases Andorra's vulnerability to ML. As a finance centre, it could also be used to collect funds and then to transfer them to foreign countries in order to use them for terrorist purposes.

4. The banking sector offers a broad range of services, including private banking, to a significant pool of non-residents. It is involved in more than 80% of ML cases and has had greatest exposure to the proceeds of tax crime. Whilst the failure of a bank during the period under review is considered by the authorities to be an isolated case, it serves to highlight the threats and vulnerabilities to which banks are exposed.

Overall Level of Effectiveness and Technical Compliance

5. Andorra was rated "partially compliant" with five core Recommendations in the 4th Round mutual evaluation report (MER). It has taken a number of steps to enhance compliance with the requirements set under former Recommendation (R.) 1 and former Special Recommendation (SR.) II: (i) the physical elements of ML have been brought more into line with the United Nations (UN) Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the UN Convention Against Transnational Organised Crime (Palermo Convention), and most predicate offences are now covered; (ii) provisions of Law 9/2005 of 21 February of the Penal Code, as amended (CC) now apply most of the requirements of the International Convention for Suppression of the Financing of Terrorism (TF Convention); and (iii) steps have been taken to enhance the institutional capacities of the judiciary, e.g. an investigative section has been established within the Justice Administration to deal with economic crimes. However, criminal liability for legal persons has still not been introduced. The authorities have also addressed many of the deficiencies identified under former R.5 (CDD measures) and former R.13 and former SR.IV (reporting).

6. Andorra was rated "non-compliant" or "partially compliant" with four key Recommendations in the 4th Round MER. Steps have been taken by the authorities to address deficiencies under former R.23. In particular: (i) a supervisory unit has been established in the UIFAND; and (ii) natural and legal persons engaged in insurance activities are now subject to fit and proper requirements. Concerning former R.35 and SR.I, whilst amendments to the CC have addressed a number of technical deficiencies, a number of shortcomings remain with regard to implementation of the Vienna and Palermo Conventions. Andorra has introduced a framework to implement UNSCRs 1267(1999) and 1373(2001) – as required by SR.III.

7. In terms of effectiveness, Andorra achieves substantial results with respect to four of the Immediate Outcomes (IO) and moderate results with respect to seven IOs.

8. Changes to legislation have been made since the on-site visit. However, these could not be taken into account in this MER for procedural reasons[1]. These are: (i) further amendments to the CC which makes tax evasion punishable by a fine and term of imprisonment of between three months and five years - adopted by the Andorran parliament on 13 July 2017[2]; (ii) further amendments to the AML/CFT Act, transposing Directive (EU) 2015/849 on the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and Regulation 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds - adopted on 22 June 2017 and now in force; and (iii) new insurance legislation - adopted on 22 June 2017 and now in force but applicable from 1 January 2018.

Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)

9. Andorra adopted its NRA and action plans for addressing risks in December 2016. It is a candid and reasonably comprehensive assessment of the ML and TF threats and vulnerabilities in Andorra. Nevertheless, certain shortcomings were noted in relation to the assessment of risk in the

[1] These legislative amendments are not referred to elsewhere in this MER, which considers legislation in place at the time of the on-site visit.

[2] Articles concerning tax crimes apply to these crimes committed *(i) from the date of entry into force of the amendments (July 2017) - for taxes without taxable period; and (ii) from 1 January 2018, for taxes with taxable period.*

activities of foreign subsidiaries of Andorran banks. The NRA identifies the lack of a clear AML/CFT Strategy, though this had not hindered the implementation of priority actions identified in the NRA.

10. It is evident that there has been political commitment to make sweeping changes to Andorran legislation. It is not clear though what political oversight will apply in relation to monitoring implementation of key aspects of the NRA action plans.

11. The objectives and activities of the UIFAND's operational unit and LEAs appear to be fully consistent with the NRA and action plans. However, strategic co-operation and co-ordination of supervisory activities need to be improved.

12. Two permanent committees have been established to co-ordinate AML/CFT work: (i) the Permanent committee on the Prevention of ML/TF (PC1); and (ii) the Permanent committee for the prevention and fight against terrorism and its financing and the proliferation of weapons of mass destruction and its financing (PC2). In practice, they act as discussion fora and their role is limited to the revision of legislation in line with international standards. However, work on the NRA and in resolving the failure of a bank provide recent evidence that there is cooperation and coordination at policy level.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)

13. The authorities systematically use financial intelligence which LEAs consider to be of a high quality. Cooperation and communication between the UIFAND and LEAs features different forms and aims at producing good results. The modest number of suspicious activity report (SARs) submitted by FIs and DNFBPs appears to be a result of intensive and direct informal communication between them and UIFAND before a SAR is submitted. The authorities deem that such practice has contributed to the quality of SARs and also reduced their numbers. So far, two SARs concerning TF have been submitted.

14. The UIFAND has access to a wide range of databases. LEAs consider that the quality of intelligence and the analysis provided by the UIFAND is high.

15. Although being well structured, the UIFAND is exposed to vulnerabilities that usually characterise units of its size. Law 10/2012 of 21 June on foreign investment in the Principality of Andorra (Foreign Investment Act) imposing the UIFAND the obligation to check and approve each new foreign application to invest in Andorra, seriously impacts the operational unit's workload. Nonetheless, the operational analyses carried out upon receipt of the SARs are always prioritised against the checks of the foreign applications to invest in Andorra.

16. Andorra has a small law enforcement and magistrates' community, which has facilitated good cooperation and coordination, effective investigation and prosecution of complex cases. These cases have generated uniform ML case law and reflect high professional standards. Recent reforms – most notably amendments to the ML offence and appointment of the specialised investigative judges to deal exclusively with serious economic crimes - have had a positive effect.

17. Currently, the criminal justice system investigates and prosecutes a wide range of ML cases which are consistent with the country's threats and risk profile. Nevertheless, the ratio between investigations/prosecutions initiated and subsequent convictions obtained appears to be modest.

18. The ML threats that the country faces, the current workload, complexity of cases, lack of human resources, limitations imposed by non-incrimination of certain FATF-listed predicate offences, and the court proceedings that appear to be exceptionally long, call for further strengthening of the institutional and legal framework.

19. Terms of imprisonment imposed by the courts are proportionate and dissuasive. However, Andorra does not have criminal liability for legal persons and, to date, existing alternative measures have only been applied once.

20. Prosecutors and police may obtain financial information in the framework of a criminal investigation, with the prior approval of an investigative judge. This legal condition is not an obstacle per se, but could trigger the obligation to notify the suspect about the investigation and the content of the file, which could seriously impede the investigation.

21. The ML offence combined approach[3] triggers supplementary requirements in establishing the foreign predicate offence, which is challenging for the judiciary in stand-alone ML. Certain FATF-listed predicate offences not criminalised in Andorra (primarily tax crimes) were usually being reported by the foreign authorities as the predicate offence.

22. Legislative and institutional reforms carried out in recent years have had a positive impact on the effectiveness of the country's confiscation regime. The authorities seem to apply a reasonably proactive approach in pursuing confiscation of assets, even in cases when the dual criminality principle could prevent that. However, a lack of resources and restricted access to databases cast doubt on the effectiveness of LEAs in identifying proceeds. The lack of comprehensive aggregated statistics from the different judicial authorities and LEAs also hampers the authorities' ability to assess the degree to which the country's confiscation objectives are achieved.

23. Cash smuggling has been identified as vulnerability in the NRA. Nonetheless, the cross-border identification and seizure of cash does not seem to be prioritised by the Customs Department.

24. Andorra does not have comprehensive asset-sharing mechanisms with other countries, apart from the United States (US). Given the country's risk profile, this might negatively influence co-operation from other jurisdictions in seizing and confiscating the proceeds of crime.

Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9-11; R.5-8)

25. Andorra has enacted a robust legal framework for criminalising TF, which is largely in line with international standards, and has conducted a candid national TF risk assessment. The authorities have not prosecuted any type of TF activity in the period under review. One investigation indirectly related to terrorism has been carried out by the authorities and there is one ongoing investigation of TF suspicion. The absence of prosecutions and convictions for TF appears to be broadly in line with the risk-profile of the country.

26. Being geographically located between France and Spain, Andorra naturally relies on close cooperation with these countries for combatting terrorism and TF. Excellent relations and information exchange exist with relevant counterparts in Spain, France and Italy.

27. Concerning foreign TF risk, LEAs appear to have a good understanding of the threat of recruitment, radicalisation and self-radicalisation of individuals. No evidence has been found to date suggesting that Andorran residents have travelled to conflict zones abroad to help foreign terrorist groups. The NRA and on-site interviews have confirmed that LEAs make efforts (especially at the intelligence level) to identify the sources of funds that can potentially be used for the purpose of TF, such as tobacco smuggling. The authorities have conducted a detailed analysis of wire transfers with other jurisdictions, including high-risk countries, within the framework of the NRA. However, the

[3] A specific list of predicate offences in conjunction with a threshold of a minimum of 6 months of imprisonment as a sanction.

possibility to monitor wire transfers data to and from high-risk jurisdictions from the TF perspective has not been fully explored by the UIFAND prior to the NRA.

28. The framework for TFS under UNSCRs 1267/1989 and 1988, and pursuant to UNSCR 1373 seems complete, and capable of applying sanctions promptly. Listing in Andorra is automatic following the UN designation and without delay. However, the assessment team could not assess the effectiveness in designating foreign or domestic terrorists since no formal request for designation pursuant to UNSCR 1373 has ever been submitted to/by the competent authorities. The evaluation team believes that Andorra could have considered the possibility of recognising terrorists and terrorist organisations designated by the EU and neighbouring countries, given the close relationship that Andorra has with those jurisdictions and risk of terrorism and TF that is found there. In practical terms, this would mean that any EU, Spanish or French designations (once in force in those jurisdictions) could have direct effect in Andorra.

29. A limited regulatory regime for the registration and supervision of NPOs is in place that does not fully target and does not seem to be proportionate to the risk of abuse of NPOs for TF purposes. Besides some financial accounting requirements, NPOs are not supervised or monitored by the authorities. NPOs met on-site had not been trained by the authorities on possible misuse of the NPO sector for TF purposes, and, as a result, there was a lack of awareness on TF risks even by NPOs operating close to conflict areas.

30. Andorra has a complete framework for TFS pursuant to UNSCRs 1718, 1737 and their successor resolutions. No PF-related assets or funds have been frozen so far. PC2 coordinates activities and provides a platform for cooperation amongst the relevant authorities on, inter alia, PF issues. However, insufficient evidence has been provided by the authorities to demonstrate: (i) a satisfactory level of coordination and cooperation in relation to PF matters; and (ii) that Andorra has robust export controls over proliferation-sensitive goods and technologies. Accordingly, it remains unclear if the authorities have an adequate understanding of PF risks.

Preventive Measures (Chapter 5 - IO4; R.9-23)

31. FIs and DNFPBs have explained that they have a low risk tolerance, in part as a result of action taken by the authorities in respect of a banking failure. Notwithstanding this, use of cash in the financial sector continues to be quite extensive and action against tax evasion (not a criminal offence at the time of the on-site visit) has been taken quite recently.

32. Large FIs assess and broadly understand their ML/TF risks, but it seems that they may be played down to some extent. Smaller FIs and DNFBPs appeared less clear about risks, but operate straightforward business models for a limited number of customers.

33. Most FIs and DNFBPs classify their clients into risk categories in order to apply appropriate CDD measures. However, some of the methodologies followed for classifying risk are not yet fully adapted to the specificities of their customers or their activities. There is quite a large variation amongst banks in the percentage of customers considered to present a higher risk.

34. FIs and DNFBPs generally demonstrated a strong commitment to applying AML/CFT obligations and a number of factors have encouraged most to strengthen their AML/CFT policies and procedures. Not all parts of the DNFBP sector appear aware of their AML/CFT responsibilities.

35. The extent to which CDD held for existing customers has been remediated is variable. Nevertheless, FIs and DNFBPs had measures in place to “regularise” their client base ahead of the criminalisation of tax evasion and to accommodate new tax reporting requirements. One bank reported losing a significant proportion of its client base as a result of tax regularisation.

36. There is some evidence of under-reporting of suspicious activity. In cases where accounts were terminated under tax regularisation programmes, it appears that few SARs were submitted. The NRA notes that some have involved third parties in analysing and deciding whether SARs should be submitted.

37. Banks have expanded into foreign markets. They appear to understand the risks inherent in such "internationalisation" and have developed quite comprehensive group-wide programmes against ML/TF risk.

Supervision (Chapter 6 - IO3; R.26-28, R. 34-35)

38. Taking into account the size of the UIFAND's supervisory unit during the period under review, it is to be commended on what it has achieved since the last evaluation. Nevertheless, the limited resources available to the UIFAND have hampered supervision and there is significant key-man risk present. The UIFAND had to curtail a large part of its inspection programme in 2015 and 2016 to deal with a bank failure and the NRA.

39. There are some technical deficiencies in the licensing and registration controls to prevent criminals and their associates from holding positions of control or management in FIs and DNFBPs. Except for banks, those holding senior compliance roles are not vetted by supervisors.

40. Risk-based supervision is not fully applied to FIs and DNFBPs by the UIFAND. AML/CFT supervision is largely focused on checking: (i) that policies and procedures are in place; and (ii) CDD applied, rather than on an assessment of the effectiveness of the governance and business models. The UIFAND's off-site supervision of FIs is more effective and based on reviews by external auditors of FIs' level of compliance with the AML/CFT Act. The scope of this work is set by the UIFAND.

41. There is a need for better strategic engagement and coordination of activities between the supervisory authorities to: (i) leverage off the overlap between prudential and AML/CFT supervision in relation to governance and internal controls; and (ii) share expertise, knowledge, experience and information. Whereas the UIFAND relies extensively upon the INAF's cooperation with foreign regulators in order to exercise consolidated supervision of the significant foreign activities of subsidiaries, it does not seem that there is adequate engagement on AML/CFT matters between the prudential supervisor and its counterparts abroad.

42. There is limited supervisory engagement by the UIFAND with the DNFBP sector, including the on-going collection of data for off-site analysis.

43. It is clear that action being taken in respect of major ML cases has been dissuasive of non-compliance with AML/CFT requirements. Except for withdrawal or modification of an authorisation, it is the Government rather than the UIFAND which determines the sanctions to be imposed for serious and very serious breaches of the AML/CFT Act, based on proposals made by the UIFAND.

Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)

44. The NRA includes quite a comprehensive assessment of ML risks involved in the use of shell companies created in Andorra. It also considers TF risks presented by NPOs (foundations and associations). It does not consider how companies may be used more generally for TF. The past and current involvement of banks, lawyers, accountants and *gestorias* in the formation of legal persons, and possibility that some professional trustees resident in Andorra are administering foreign legal arrangements have not been considered sufficiently.

45. Measures are in place to prevent misuse of Andorran companies. A combination of: (i) controls exercised over foreign investment by the Ministry of Tourism and Commerce; (ii) use of notaries (which are subject to the AML/CFT Act) when there is a change in ownership; and (iii) requirement for a company with foreign ownership to hold a bank account (nearly always in Andorra) are the key elements of a comprehensive process for mitigating the risk of misuse. However, it is noted that: (i) controls over foreign investment may not identify all "controllers"; (ii) changes in ownership may be kept private for some time (though they are not enforceable against third parties until notarised) and there has been limited supervision so far of compliance by notaries with AML/CFT requirements; and (iii) there have been cases when banks have failed to apply CDD requirements in accordance with the AML/CFT Act.

46. The application of the Foreign Investment Act to collective investment schemes is very limited. Instead, such schemes must be authorised by the INAF and distributed and managed by an Andorran FI subject to the AML/CFT Act. Significant assets are held in such investment schemes.

47. Relaxation of controls over foreign investment appears to have eradicated the historical use of "name-lenders" – Andorran nationals fronting the ownership and control of companies by foreigners. Gestorias are commonly used to incorporate companies in Andorra. Whilst they are subject to the AML/CFT Act, supervision of this sector is insufficient.

48. Sanctions have not been applied for failing to provide information to the Companies Registry or historical use of nominee companies.

International Cooperation (Chapter 8 - IO2; R. 36-40)

49. International cooperation constitutes a significant part of the Andorran AML/CFT system, considering that most of the predicate crimes to ML are committed abroad. Andorra has a sufficiently comprehensive legal system for conducting formal international cooperation.

50. Given that most of the predicate offences to ML are committed abroad, Andorra proactively seeks legal assistance from foreign authorities. All competent authorities, including the judicial authorities and the LEAs, demonstrated a very good level of direct communication with their counterparts in Spain and France predominantly, but also Portugal, the US and some countries in Latin America, which is consistent with Andorra's ML/TF risk profile. The use of diplomatic channels with countries with which Andorra does not cooperate frequently sometimes takes a slower course.

51. The establishment of specialised investigative sections in the Courts has contributed to the prioritisation of ML cases and ML-related international cooperation.

52. Although being a formal reason for which MLA requests can be refused, the dual criminality requirement in cases of tax crimes is strictly applied only if no link with another predicate offence can be identified.

53. When a judge receives an MLA request with regards to a particular individual, that individual can ask for detailed information to be provided to them about the case where they become aware of the request. Even though it is possible to delay responding to the individual for 6 months in the case of serious offences, this can impair cooperation in so much that undercover investigations being conducted in other countries could be jeopardised.

Priority Actions

54. The prioritised recommended actions for Andorra, based on these findings, are:

- As identified in the NRA, the authorities should develop and implement an AML/CFT strategy and policy based on the high level objectives set in the NRA. This strategy should be approved by the Government.
- The role and powers of the country's coordinating committee (PC1) should be enhanced to enable it to drive the structural changes that the action plans propose. The authorities should take action to strengthen cooperation and coordination within PC2.
- The Government should assess the resourcing needs of each agency arising from implementation of the national and sectoral action plans, e.g. staffing and information technology (IT), ensure that each is adequately resourced for their role, and hold PC1 accountable for delivery of the various plans.
- Human and IT resources of the operational unit of the UIFAND should be reviewed taking into account the amount of work it is currently assigned. Access to the cadastral and tax databases should be granted to the UIFAND.
- The UIFAND should strengthen its case study analysis on the basis of a summary of cases prepared for NRA purposes. Typologies of the most common ML trends should be prepared and subsequently discussed by PC1 and with the private sector.
- Andorra should significantly reinforce human and technical resources (IT tools) of relevant authorities involved in ML investigations, especially the Police Department and specialised investigative judges (*Batllia d'Andorra*), in order to effectively combat complex stand-alone ML schemes.
- Andorra should criminalise: (i) tax evasion in a manner that covers all the elements related to direct and indirect tax crimes; (ii) bribery in private sector; and (iii) smuggling of goods other than tobacco, and make them a predicate offences for ML.
- Andorran authorities should consider, in line with the European Convention on Human Rights (ECHR) obligations, what further measures should be taken to simplify the appellate procedure or to otherwise significantly expedite the timely conclusion of criminal proceedings.
- The authorities should keep comprehensive statistics, including: (i) data on the amount of property seized and confiscated; (ii) type of confiscation; and (iii) breakdown of figures by predicate offence.
- The authorities should make legislative steps to increase of the secrecy measure beyond 6 months period and thus minimise the threats originating from the current, overly broad, regulations to notify the suspect(s) of the proceedings against them and provide them access to the criminal files.
- The authorities should strengthen the mechanism for cross-border control of cash and adequately apply measures provided in the national action plan.
- Regular, or at least periodic, assessments of aggregated wire transfers with countries having a high-risk of terrorist activities to detect any potential TF suspicion should be continued by the UIFAND.
- In light of the close economic and political ties with neighbouring jurisdictions, the authorities should consider recognising lists of terrorists and terrorist organisations designated in

particular by the EU, France and Spain.

- Andorra should conduct proper and comprehensive periodical monitoring of all NPOs operating in the jurisdiction to identify those NPOs at risk from terrorist abuse and conduct outreach and exercise oversight of those identified as presenting a risk.
- Training on possible misuse of the NPO sector for TF purposes should be provided to the entire NPO sector as a matter of priority.
- The work of PC2 should be enhanced through: (i) more active participation of the Police Department; and (ii) ensuring that its agenda routinely covers TFS issues, including the ways in which TF and PF sanctions could be evaded.
- Authorities with competences for countering PF (CPF), as well as FIs and DNFBPs, should be trained on the risks of PF in order to develop capacity in this area.
- FIs and DNFBPs should be required to: (i) identify, assess and document ML/TF risks inherent in their own activities through a periodic and formal business risk assessment; and (ii) to share that assessment with the UIFAND from time to time.
- The UIFAND should issue high level guidance on: (i) the types of criteria to be taken into account by FIs, corporate service providers (CSPs) and other DNFBPs when determining customer risk profiles, in order to encourage more bespoke and tailored assessments of risk; and (ii) risk classification groupings, in order to encourage a more graduated application of CDD measures
- There should be consistent market entry and on-going "fit and proper" controls for DNFBPs and "fit and proper" checks for senior compliance officers. Supervisors should complete their retrospective application of "fit and proper" controls to FIs.
- The UIFAND should develop and implement a comprehensive risk-based approach to on-site and off-site supervision of FIs and DNFBPs which is sufficiently resourced and more focussed on governance and business models. This should reflect: (i) findings from the NRA; (ii) data collected in business risk assessments and annual returns; and (iii) information held by other supervisors.
- There should be greater coordination of supervision amongst supervisors in order to: (i) pool the expertise and knowledge that is held in the different supervisors; and (ii) promote consolidated AML/CFT supervision of group activities conducted abroad.
- ML/TF risks present in the formation and administration of companies by lawyers, *gestorias* and other CSPs should be assessed and addressed.
- Andorra should consider, as a matter of priority, signing and ratifying: (i) the UN Convention against Corruption (UNCAC); and (ii) Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism in order to enhance its mechanism for international cooperation (CETS 198).
- In line with the FATF methodology Andorra should not make dual criminality a condition in rendering MLA at least for requests which do not involve coercive actions.
- Additional resources should be allocated to international cooperation in judicial authorities and LEAs in order to eliminate undue delays. The case management system should be improved in judicial authorities and LEAs to promote the timely management and execution of all MLA requests.

Effectiveness and Technical Compliance Ratings

Effectiveness Ratings

IO.1	IO.2	IO.3	IO.4	IO.5	IO.6	IO.7	IO.8	IO.9	IO.10	IO.11
Sub.	Sub.	Mod.	Mod.	Mod.	Sub.	Mod.	Mod.	Sub.	Mod.	Mod.

Technical Compliance Ratings

R.1	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	R.10
LC	PC	PC	C	LC	LC	C	PC	LC	LC

R.11	R.12	R.13	R.14	R.15	R.16	R.17	R.18	R.19	R.20
LC	PC	LC	LC	PC	PC	LC	LC	C	LC

R.21	R.22	R.23	R.24	R.25	R.26	R.27	R.28	R.29	R.30
LC	PC	PC	LC	PC	PC	LC	PC	LC	C

R.31	R.32	R.33	R.34	R.35	R.36	R.37	R.38	R.39	R.40
PC	PC	LC	PC	LC	PC	LC	LC	LC	LC

MUTUAL EVALUATION REPORT

Preface

55. This report summarises the AML/CFT measures in place in Andorra as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Andorra's AML/CFT system, and recommends how the system could be strengthened.

56. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country from 6 to 18 March 2017.

57. The evaluation was conducted by an assessment team consisting of:

Evaluators

- Mrs Dana Cristina Burduja, Prosecutor, General Prosecutor Office, Romania (legal evaluator)
- Ms Arpi Harutyunyan, Chief Specialist in the Department for the Relations with the European Court of Human Rights, Ministry of Justice, Armenia (legal evaluator)
- Mr Romain Bugnicourt, Chef de Section, Service d'information et de Contrôle sur les Circuits Financiers, Monaco (law enforcement evaluator)
- Mrs Fiona Crocker, Director of Financial Crime Supervision and Policy, Financial Services Commission, Guernsey (financial evaluator)
- Mr Franck Oehlert, Legal Expert, AML/CFT and Internal Control Law Division, Autorité de Contrôle Prudentiel et Résolution, France (financial evaluator)

MONEYVAL Secretariat

- Mr Lado Lalicic, Head of AML/CFT Monitoring, Typologies and Conference of the Parties to CETS no. 198 Unit
- Mr Andrey Frolov, Administrator
- Mr Andrew Le Brun, Administrator
- Mr Alexandre Deschamp, Legal Assistant

58. The report was reviewed by the FATF Secretariat, Mr Lajos Korona (Hungary) and Mr David Parody (Gibraltar).

59. Andorra previously underwent a MONEYVAL Mutual Evaluation in 2012, conducted according to the 2004 FATF Methodology. The 2012 evaluation and 2015 follow-up report have been published and are available at http://www.coe.int/en/web/moneyval/jurisdictions/andorra.

60. That Mutual Evaluation concluded that the country was compliant with 4 Recommendations; largely compliant with 22; partially compliant with 18; and non-compliant with 4. One Recommendation (R.34) was considered to be not applicable. Andorra was rated compliant or largely compliant with 7 of the 16 Core and Key Recommendations.

61. Andorra was placed under the regular follow-up process immediately after the adoption of its 4th round MER and enhanced follow-up in March 2015. Ahead of its fifth round mutual evaluation, Andorra's reporting under the 4th round follow-up process was discontinued in September 2015.

CHAPTER 1. ML/TF RISKS AND CONTEXT

62. Andorra is a landlocked country located high in the Mediterranean side of the Eastern Pyrenees Mountains between France and Spain. It covers an area of 468 km^2 (of which only 1.3% are urban areas) and has a population of approximately 70 000. The official language is Catalan. The euro is the official currency, although Andorra is not a member of the EU.

63. The Andorran gross domestic product (GDP) was EUR 2,525 million in 2014. The Andorran economy is largely based on tourism, commerce and financial services which account for most of its GDP. In global terms, the Andorran financial sector is relatively small. Nevertheless, financial activities, including cross-border business, are important, accounting for 22% of GDP.

64. Andorra has two co-princes who are joint Heads of State. These co-princes are the President of France and the Bishop of Urgell. However, it is the Head of Government in Andorra that has executive power and not the co-princes. In 1981, the Government, consisting of the Head of Government and seven ministers, was established. The General Council (Andorran parliament) elects the Head of Government for a 4-year term who, in turn, chooses from six to twelve ministers. Andorra has an independent judiciary and a mixed legal system of civil and customary law. Legislative power is vested in both the Government (e.g. through regulations) and the parliament (*Consell General).*

65. Andorra experienced a period of economic growth between 2000 and 2005 with an average annual GDP growth of approximately 7.6%. However, the 2008 economic crisis halted this growth and, in 2009, Andorra initiated a transformation process with the objective of stimulating economic growth, ensuring its competitiveness in the global economy and demonstrating renewed commitment to international standards.

66. Andorra is a full member of the UN, International Criminal Court, Organisation for Security and Cooperation in Europe, International Criminal Police Organisation (Interpol) and the World Trade Organisation (WTO).

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks

67. The Andorran NRA[4] classifies the overall ML risk in Andorra as medium-high and the overall TF risk as medium-low. With low levels of domestic crime, it identifies the main ML threats as originating from foreign criminals who use the Andorran financial system to launder proceeds from foreign predicate crimes. The NRA identifies that: (i) tax evasion, bribery and corruption present a high threat to Andorra; and (ii) fraud and drug trafficking pose a medium-high threat. Many predicate offences are committed in Spain, France and Latin America (reflecting commercial links), and Andorra cooperates closely with these countries. Consistent with this risk assessment, all ML convictions to date have been based on predicate offences committed abroad.

68. Tobacco smuggling is the only domestic threat rated as high, which is often committed by organised crime groups.

69. Case analyses used by the authorities point to: (i) some evidence of the use of complex structures to launder the proceeds of corruption; (ii) cash transfers between bank accounts held for

[4] The NRA report comprises of: (i) national level NRA; (ii) sectoral level NRA; and (iii) back-up for sectoral level NRA.

the same customer in order to break audit trails (all crimes); and (iii) use of tobacconists by organised criminal groups to launder the proceeds of tobacco smuggling. There is also some evidence to suggest that there have been attempts to circumvent new requirements to exchange tax information automatically (relevant to the enforcement of tax offences committed outside Andorra). All of these areas are considered in the country's NRA.

70. Andorra's position as a regional financial centre, with an increasingly international dimension, presents a potential for illicit funds to enter the Andorran economic system, particularly as part of the layering process. Tax evasion was not a predicate crime to ML at the time of the on-site visit and this increases Andorra's vulnerability to ML.

71. Taking account of threats and vulnerabilities, the NRA identifies risks at both national and sectoral level. These are classified as: (i) general and structural risks; (ii) tax crime-related risks; (iii) cash-related risks; (iv) smuggling-related risks; (v) risks with legal structures; (vi) TF risk; (vii) NPO-related risk; and (viii) other risks. Key risks (derived from threats and vulnerabilities) include: (i) the absence of a clear AML/CFT policy and strategy; (ii) lack of human and technical resources; (iii) failure to criminalise tax offences; (iv) inadequate cross-border cash controls; (v) limitation in scope of smuggling offence; (vi) use of shell companies; and (vii) absence of comprehensive and clear mechanism and tools to manage and collect statistics.

72. In March 2015, the US Financial Crimes Enforcement Network (FinCEN) listed a domestically-owned bank as a FI of "primary money laundering concern" pursuant to the USA PATRIOT Act. FinCEN reported that several of the bank's high-level management had facilitated financial transactions on behalf of third party money launderers, providing services to individuals and organisations involved in organised crime, corruption, human trafficking, trade-based ML, and fraud. In February 2016, FinCEN withdrew its finding following significant action taken by the Andorran authorities (see boxes 4 and 13). A large number of on-going ML cases are linked to this failed bank.

73. Although the TF risk is rated as medium-low, the NRA emphasises Andorra's position as a regional financial centre. Its financial sector could be used to collect funds and then to transfer them to foreign countries in order to use them for terrorist purposes. However, the authorities state that financial flows to, and from, higher risk countries are negligible. Tobacco smuggling, which is a significant domestic crime, is a method used in other countries to fund terrorist activities and so this could pose a TF threat. So far, there have been no cases of domestic TF detected.

Country's risk assessment & Scoping of Higher Risk Issues

Andorra's risk assessment

74. Andorra's NRA was adopted in December 2016. It includes a national level NRA and a sectorial NRA. Both are based on the World Bank methodology, and the World Bank assisted the authorities with its use. The NRA exercise brought together a wide range of authorities, FIs and DNFBPs and several workshops were held with the World Bank. Different working groups were established to assess ML/TF vulnerabilities and threats (including groups for banking, insurance and DNFBP sectors).

75. The NRA is reasonably comprehensive and candid about the present ML/TF risks. However, the NRA does not fully consider the risk that is inherent in the activities of foreign subsidiaries of Andorran banking groups. Also, information on the geographic origin of beneficial owners of customers of banks and DNFBPs[5] was not available for the risk assessment.

[5] However, information was collected from DNFBPs about the beneficial ownership of legal persons created.

Scoping of issues of increased focus

76. The assessment team identified those areas which required an increased focus through an analysis of information provided by the authorities, including the NRA, and by consulting various open sources.

(i) ML prosecution and confiscation

77. The assessment team considered: (i) whether law enforcement focuses its collective efforts on criminal activities that present the greatest ML/TF risk; and (ii) why most judicial investigations do not lead to ML prosecutions. In light of findings in the 4th Round MER, the assessment also considered whether the authorities now take provisional measures and confiscate the proceeds of crime where ML has been prosecuted in Andorra but there has been no prosecution for the underlying predicate offence (autonomous ML).

78. The effectiveness of the Asset Recovery Office (ARO) was considered in light of some "big challenges" noted in the NRA. Also, resources available to law enforcement were considered.

(ii) International cooperation

79. The assessment focussed on how proactive the Andorran authorities have been: (i) collecting information from outside Andorra in order to support domestic ML investigations; and (ii) sharing information with foreign authorities in order to initiate and support foreign investigations.

80. As the Andorran legal system makes dual criminality a condition for rendering assistance and the country is not a signatory to a number of conventions designed to support international co-operation, the assessment considered whether these factors have limited cooperation in practice.

(iii) Cash controls

81. At the time of the 4th Round MER, Andorra had not put in place any measures to detect the physical cross-border transportation of currency. Measures subsequently introduced were an increased area of focus in light of the issues identified under the National level NRA concerning reported levels of cross-border interceptions of cash at the Spanish border.

(iv) Preventive measures

82. As noted elsewhere in this chapter, "internationalisation" of the Andorran finance sector is considerable. Accordingly, the assessment focussed on drivers for international expansion and how well cross-border ML/TF risks were understood and managed by banking groups.

83. The assessment considered the circumstances surrounding the banking failure and level of deposits that had yet to be vetted and cleared by the authorities (and reasons therefore), and level of reporting of ML/TF suspicion in respect of these deposits.

84. Given that tax evasion was not fully recognised as a crime in Andorra at the time of the on-site visit, the assessment considered the extent to which tax that is payable in other countries could be evaded.

(v) Regulation and supervision

85. The assessment focussed on how effectively supervisors were responding to cross-border risks, in particular, the extent to which: (i) different domestic supervisors work together; and (ii) apply consolidated group supervision for AML/CFT purposes, including interaction with host supervisors.

86. The assessment considered the extent to which risks in the establishment and administration of legal persons and legal arrangements is understood by supervisors and how the UIFAND ensures that all DNFBPs are subject to systems for monitoring compliance with AML/CFT requirements.

87. In light of the banking failure, the assessment team had an increased focus on: (i) the extent to which fitness and propriety of board members and senior management is taken into account by supervisors; and (ii) use made of annual AML/CFT audits by external accountants.

88. The assessment also focussed on the capacity of, and resources available to, the supervisory unit of the UIFAND.

(vi) Transparency of legal persons and legal arrangements

89. The assessment considered the effectiveness of measures to identify and verify beneficial ownership of companies, including the role played by notaries, and potential use of nominee shareholdings.

(vii) TF

90. The assessment considered whether the Andorran authorities have assessed the use of the financial sector as a "transit point" for terrorist funds and the threat of tobacco smuggling as a conduit for TF. The latter took account of: (i) a significant level of undetected criminal proceeds related to this crime in Andorra; (ii) the findings of the NRA that refer to several international and national case studies and assessments[6] identifying cigarette smuggling as one of the main sources for TF; and (iii) the fact that it is a cash intensive offence. Given the very recent assessment of risks presented by NPOs, there was also increased focus on the regulation and supervision of this sector.

Materiality

91. Like many European economics, Andorra's economic activity centres on services. Tourism and commerce are the pillars of the economy, with tourism bringing in nearly 8 million visitors each year, mostly Spanish and French. The financial sector is also strategically important, and financial activities, including cross-border business, account for 22% of GDP (EUR 2,525 million). In global terms, the financial sector is relatively small: the country is not ranked in the Global Financial Centres Index; the Tax Justice Network refers to its financial sector as "tiny"; and the number of companies established in Andorra is modest. Nevertheless, Andorra is a regional financial centre which had not fully criminalised tax evasion at the time of the on-site visit and which, historically, has attracted assets from neighbouring countries.

92. Andorra has reformed its fiscal framework and signed a number of double-taxation agreements to promote the export of products and services. Additionally, in 2012 it lifted restrictions on foreign investment and provided additional support for the establishment of new businesses in Andorra. In particular, the Government has set the objective of attracting foreign investment in specific sectors where it has a potential competitive advantage, such as healthcare, education, or sports.

93. Financial services, particularly banking, have been a key example of internationalisation. The number of countries in which Andorran banks operate has increased from six prior to 2008 to 13 in 2015; and, whereas overseas operations had previously focused on neighbouring countries, Andorran banks are now well represented in regions such as Latin America and the US.

94. Banks dominate the financial sector. At 30 June 2016, Andorran banks directly managed EUR 24 470 million of assets and their foreign subsidiaries managed a further EUR 22 322 million of assets (around 60% in subsidiaries in the EU and around 20% in Latin America).

[6] "Global ML & TF Threat Assessment Report" (FATF, July 2010); "Countering illicit trade in tobacco products", Interpol, June 2014; Boxes 9, 12, 15 and 20 of the FATF Report "Illicit tobacco trade" (June 2012); and the national TF Risk Assessment of the US, 2015.

95. Whilst the level of financial inclusion is high, the use of cash is still significant. However, the size of the "shadow" economy is thought to be negligible.

Structural Elements

96. The structural elements needed to ensure an effective AML/CFT system are generally present in Andorra, including: political stability; stable institutions with accountability, integrity and transparency; the rule of law; and a capable, independent and efficient judicial system.

97. The Paris Declaration (2009) set out Andorra's commitment to greater tax transparency. Since then, inter alia, Andorra has ratified the Organisation for Economic Co-operation and Development (OECD) Convention on Mutual Administrative Assistance in Tax Matters and has become a signatory to the OECD Convention concerning the Automatic Exchange of Tax Information[7]. Andorra has recently introduced a business tax, income-tax, and VAT at a rate of 4.5%. The country has also signed several agreements on the exchange of tax information and became a signatory to the OECD Convention concerning the automatic exchange of tax information in 2014.

98. There is a high-level commitment in Andorra to addressing AML/CFT issues, as shown by the comprehensive reform agenda put in place by the Government since 2009. Important reforms, highlighted in the NRA, have been set in train to address weaknesses identified in the system. In particular, Andorra will criminalise tax crimes, which will constitute a predicate offence for ML.

99. In recent years, significant efforts have been made to harmonise financial services legislation with international and European standards.

100. In 2015, Andorra established a framework for the recovery and resolution of banks (Law 8/2015). Law 8/2015 introduces processes for recovery and resolution, and gives administrative authorities powers that are necessary to ensure financial stability. The law has established *Agència Estatal de Resolució d'Entitats Bancàries* (AREB), as the competent authority in matters of resolution. It allows AREB to approve a resolution plan, under which a bank's ''good'' and ''bad'' assets, liabilities, and clients can be separated and transferred to a "bridge" bank, and then the "bridge" bank sold.

Background and other Contextual Factors

AML/CFT strategy

101. The NRA identified that there had been a lack of a clear AML/CFT strategy and sets out high level principles and objectives which policy-makers and the AML/CFT authorities should take into account when determining such a strategy. Principles include: (i) an "absolute commitment" to effectively preventing and fighting ML and TF; (ii) as a priority, neutralising the proceeds of crime through establishing, promoting and adequately resourcing the domestic AML/CFT agencies; (iii) not placing unreasonable or unduly restrictive conditions on international cooperation; and (iv) promoting transparency of beneficial ownership of companies and bank accounts.

102. Such an AML/CFT strategy (distinct from the action plans emanating from the NRA) has not yet been adopted. Instead, the authorities have focussed on implementation of national and sectoral action plans (and more detailed action plans for delivering on key actions at national and sector level). These detailed plans identify: (i) the agency with prime responsibility for taking action; (ii)

[7] On 30 November 2016, the Parliament approved Law 19/2016 of 30 November, on the automatic exchange of information in tax matters. This law came into force on 1 January 2017.

agencies which will have a secondary role in implementation; (iii) the steps to be taken; (iv) the timeframe for implementation; and (v) financial implications.

103. Two policy objectives will affect implementation of the AML/CFT Strategy. In the financial sector, Andorra intends to become an international financial centre of reference and prestige, diversifying into activities that are not core to the sector at the present time. The country is also actively attracting direct foreign investors and supporting national companies throughout their "internationalisation" process.

Legal & institutional framework

104. ML is criminalised under Art. 409 ("laundering of money or valuables") of the CC. The provision covers all relevant elements of Art. 3(1) (b) (c) of the Vienna Convention and Art. 6(1) of the Palermo Convention. At the time of the on-site visit some of the categories of crimes listed in the FATF Glossary were not considered "predicate offences". This includes tax crime and smuggling of goods other than tobacco. Corruption, even though included in the list, does not fully covered bribery in private sector[8]. There is no criminal liability for legal persons in Andorra. TF is criminalised in a manner that is fully consistent with the TF Convention. The CC incriminates the financing of terrorist acts (Article 366 bis (1) of the CC) and then defines the notions of "financing" (Article 366 bis (2) of the CC), "funds" (Article 366 bis (3) of the CC) and "terrorist acts" (Article 362 (1) of the CC), all of them in line with the standards.

105. With regard to confiscation, Article 411(1) of the CC provides for the confiscation of the proceeds of a ML offence and states that, for the effects of the application of the forfeiture and the forfeiture by equivalence (Article 70 of the CC), money, property or valuables which are the object of laundering, committed or attempted, are considered as proceeds from crime. Extended confiscation is also available (Article 70(2)). The law also provides for mandatory confiscation of property belonging to a convicted person on which there exists sufficient evidence that it is a proceed, direct or indirect, from criminal activities while its legal origin cannot be proven; this measure applies to all criminal offences (Article 70 (2) of the CC) and, therefore, ML and terrorism financing are included.

106. Andorra has introduced a comprehensive TFS framework pursuant to the relevant UNSCR. FIs and DNFBPs must implement TFS "immediately, from [their] publication by the Permanent Committee on the UIFAND website" (Article 71(3) of the AML/CFT Act) – which is automatically and immediately updated in case of update by the UN.

107. The institutional framework for the implementation of the AML/CFT regime has been reinforced and is composed of:

[8] For further details – Greco, Council of Europe, Third Round Evaluation Report, 2011 (Theme I), 2013 and 2015 Compliance Reports and the 2017 Addendum. Paragraph 2 of Article 240 of the Andorran CC (Dishonest management of an enterprise) criminalises *passive bribery* in the private sector to a certain extent. Greco considers that Article 240 is designed solely to protect private interests and does not pursue the same aim as Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173), which are intended to protect general interests potentially harmed as a result of bribery within an undertaking, such as fair competition in business and public procurement, quality of the environment, food safety, infrastructure safety, consumer interests, the smooth running of financial and business establishments, etc. and should not be regarded as an alternative to real criminalisation of active and passive bribery in the private sector (First Compliance Report, https://rm.coe.int/16806c2a1e, page 8).

Policy and coordination

108. **PC1** is a technical and advisory body charged with coordinating activities in AML/CFT matters. It is comprised of representatives of the: (i) Ministry of the Presidency; (ii) Ministry of Finance (representing the Customs Department and the Tax Department); (iii) Ministry of Home Affairs and Justice (representing the Police Department); (iv) Ministry of Economy; (v) Ministry of Foreign Affairs; (vi) the UIFAND (which chairs meetings); and (vii) if subjects related to the financial system are involved, the INAF. The General Prosecutor and one investigative judge of the specialised section of the courts also attend meetings.

109. The **PC2** is charged with enabling domestic cooperation and coordination between relevant competent authorities in order to prevent, combat, suppress and disrupt, amongst other things, the proliferation of weapons of mass destruction and its financing. PC2 is composed of representatives of the: (i) Ministry of Finance (representing the Customs Department and the Tax Department); (ii) Ministry of Home Affairs and Justice (representing the Police Department); (iii) Ministry of Foreign Affairs; and (iv) the UIFAND. It is the body that has responsibility for taking action to comply with all TFS.

110. The **Ministry of Home Affairs and Justice** is responsible for criminal law, procedural law, the codification of legislation concerning international cooperation and legal assistance, as well as civil law and judicial enforcement. As the central authority, the ministry is also responsible for receiving foreign MLA requests in criminal matters under the European Convention on Mutual Assistance in Criminal Matters (European Convention on MA) and other Conventions (Palermo Convention, Vienna Convention and Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg Convention). It manages a database with statistics of MLA or other international requests for cooperation made and received. The **Ministry for Foreign Affairs** also receives foreign MLA requests.

Investigation and disruption

111. ***Batllia d'Andorra*** includes the specialised investigative section of the court system. Until March 2015, there were four investigating judges for criminal matters, and all of them had competences to deal with ML cases. Since March 2015, a new specialised investigative section (two specialised judges[9]) deals exclusively with economic crimes, including ML and TF.

112. The ***Fiscalia General d'Andorra*** (Public Prosecutor's Office) represents the State in pursuing indictments before the court. It is comprised of six prosecutors, one of them being appointed as the General Prosecutor.

113. The ***Unitat d'Investigació Criminal Especialitzada 2*** (Police Department) is the specialised unit in the Police Department responsible for investigating ML/TF and associated predicate offences. It is headed by a high-ranking police officer and split into three groups, two of which investigate ML and other economic and financial crimes.

114. The Customs Department enforces the reporting of cross-border movements of currency and bearer negotiable instruments (BNIs) over EUR 10 000 or equivalent.

Judiciary

115. The judicial process comprises: (i) ***Tribunal de Corts*** (first instance court for criminal matters); and (ii) ***Tribunal Superior de la Justicia*** (second instance court for criminal matters). The

[9] The Andorran authorities advised that soon after the on-site visit a third judge was appointed in the specialised investigative section.

first instance court has five magistrates (two of which have received relevant ML/TF training), all having powers to judge ML/TF and predicate offences. It also hears appeals against criminal judgments delivered by *Batllia*. The second instance court has three magistrates all of whom hear appeals in respect of ML/TF and predicate offences.

Supervisory and operational agencies

116. The **UIFAND** is responsible for: (i) receiving, analysing and disseminating financial intelligence; and (ii) supervising compliance by all FIs and DNFBPs with the AML/CFT Act and Regulation made under the AML/CFT Act, as amended (AML/CFT Regulations). It also submits legislative proposals to the Government on AML/CFT matters.

117. The **INAF** is responsible for the authorisation and prudential supervision of all FIs, except for insurance companies and money or value transfer service (MVTS) providers. It also advises the Government on matters relating to economic and financial policies. The **Ministry of Finance** is responsible for the authorisation and prudential supervision of insurance companies. **AREB** is in charge of the resolution of failed banking entities and investment firms.

118. *The* ***Unitat de Prevenció i Lluita contra la Corrupció*** is in charge of the coordination of public and private initiatives in the fight against corruption. Inter alia, it monitors trends and international developments in the fight against corruption and proposes and implements national anti-corruption policies.

Financial sector and DNFBPs

119. Financial activities are a key part of Andorra's economic activity contributing approximately 22% of its GDP (though this percentage has fallen since 2000 – 26%). Banking and asset management are the largest sectors. At 30 June 2016, EUR 10 555 million of deposits and EUR 13 915 million of assets were managed (off-balance sheet) by Andorran banks (EUR 24 470 million of assets under administration). In addition, EUR 905 million of assets were advised on or managed (off-balance sheet) by non-bank FIs and EUR 3 512 million were managed (off-balance sheet) by management companies of undertakings for collective investment (representing 91 collective investment schemes), nearly all by bank-owned companies. Total assets held by active insurance companies at the end of 2015 were EUR 2 200 million and life insurance premia in 2015 were approximately EUR 230 million.

120. The authorities did not provide details for aggregated financial flows into, and out of, Andorra, but this will be measured in billions of euros each year.

121. These figures tell only part of Andorra's story with approximately EUR 22 322 million of assets managed in wholly-owned subsidiaries outside the country as Andorran banks have entered into new foreign markets (mostly in the EU and Latin America) in order to compensate for declining business opportunities domestically. "Internationalisation" of the finance sector is considerable: Andorran banking groups have subsidiaries in six Latin America countries, the Bahamas, Israel, Luxembourg, Monaco, Spain, Switzerland, and the US. In addition, whilst information has not been provided by the authorities, it appears that at least two Andorran DNFBPs (CSPs) also operate through wholly-owned subsidiaries outside Andorra (including in Switzerland). The overseas activities of banking groups reflect the nature of activities carried on in Andorra by those groups, i.e.: (i) banking; (ii) asset management, brokerage, dealing and advice; (iii) collective investment fund management; and (iv) insurance.

Table 1: Composition of the financial market and DNFBPs sectors

Type of FI/DNFBP	Total number
Banks	6 (excluding 1 under resolution)
Advisory/investment institutions	9
Management companies of undertakings for collective investment	7
Providers of life insurance	15
Money services businesses (foreign post offices)	2
Exchange offices (other than banks)	0
Casinos	0
Real estate agents	229[10]
Lawyers (but not law firms)	202[11]
Notaries	4
Accountants, auditors, economists, tax advisors, *gestorias* and CSPs	158[12] (including 3 CSPs)
Dealers in precious metals and stones	17

122. The number of licensed institutions remained largely stable since the 4th round MER.

123. Four of the banks (represented by three banking groups) are domestically-owned (by Andorran families), one is a subsidiary (51%) of a Spanish quoted bank under the supervision of the European Central Bank and the other is owned by an international private equity group. The range of products and services offered, which includes private banking, is not complex and has evolved towards higher value-added services such as asset management (in particular brokerage[13] and discretionary asset management). Approximately 60% of the banking sector's business volume is related to private banking.

124. All of the investment institutions are relatively small (compared to banks), independently owned and focus on discretionary asset management (mostly investment funds, bonds and equities) and the provision of financial advice in Andorra (mostly bonds, investment funds and alternative investments). Most customers are Andorran, Spanish and French.

125. Five of the seven management companies of undertakings for collective investment are bank-owned and account for 95% of market share in the investment sector. These collective investment schemes are exclusively designed for bank customers and not distributed through asset management companies. Schemes invest in equities, bonds, other schemes, structured products (market-linked investments) and the money market.

126. Five of the 15 providers of life assurance are bank-owned and account for around 87% of total premia. The remainder are local companies (11% of premia) or local branches of foreign insurance companies (2% of premia). Approximately 80% of insurance premia derive from investment products, mainly unit-linked insurance products where the benefit payable to the policy-holder on termination is linked to the value of an investment portfolio selected by the policyholder and held by the insurance company). The vast majority of products are distributed through banking networks.

[10] The majority do not buy and sell property: rather they rent or manage property used in the tourist sector.

[11] Not all lawyers are DNFBPs.

[12] Not all are DNFBPs and *gestorias* are not properly identified.

[13] Execution, custody, and settlement of customer orders.

127. Non-residents account for approximately 40% of assets under management in Andorran banks. Most customers of investment institutions are Andorran, Spanish or French. Around 30% of life-savings business relates to non-resident customers, where local non-bank companies have the highest share.

128. One of the two foreign post offices present in Andorra is also a MVTS provider. It also offers international money transfer facilities through a global MVTS provider, though the latter is not registered in Andorra. The other foreign post office provides limited banking services to Andorran residents. Approximately EUR 12 million of funds were transferred by the two post offices in 2015, including EUR 3 million through a global MVTS.

129. Insufficient information is held by the authorities about: (i) the number of Andorran and other companies formed and/or administered by *gestorias* (where there are inadequate market entry controls); and (ii) number of Andorran and other companies administered by lawyers. It is understood that *gestorias* are most involved in the formation of Andorran companies.

130. The NRA notes that: (i) a significant number of lawyers limit their activities to representing clients in civil and criminal judicial proceedings; and (ii) a significant number of economists, accountants and lawyers are not regularly involved in establishing companies – focussing instead on book-keeping, preparation of financial statements, tax management and advice (domestic and foreign). Foreign lawyers cannot practice in Andorra.

131. Notaries are primarily involved in the authentication and certification of signatures and documents, including public deeds that are required under the Law 20/2007 of 18 October on public limited companies and limited liability companies, as amended (Companies Act).

132. Most real estate agents do not buy and sell property; rather they rent or manage property that is used in the tourist sector. The acquisition of real estate by foreigners is regulated by the Foreign Investment Act and must be approved in advance by the Ministry of Trade and Commerce. However, it is not necessary to involve a real estate agent in property transactions and real estate can be purchased through private agreements which are not authorised by a notary or registered (though volumes are very low[14]). Turnover of high value dealers accounts for a very small percentage of GDP (less than half of one per cent) – and is focussed on visitors to the country.

Preventive measures

133. The AML/CFT Act and the AML/CFT Regulations, which refer to "parties under obligation", are equally applicable to DNFBPs and FIs in the majority of cases. Inter alia, an obligation is placed on FIs and DNFBPs to: (i) apply CDD measures; (ii) keep records; and (iii) report suspicion of ML/TF to the UIFAND. These requirements are, to large extent, based on Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

134. AML/CFT Regulations are made under the AML/CFT Act and place more detailed requirements upon FIs and DNFBPs - in line with principles established in the AML/CFT Act. The AML/CFT Act does not expressly provide that sanctions will apply to requirements set out in the AML/CFT Regulations.

135. Technical communiqués (TCs) are used by the UIFAND to convey to FIs and DNFBPs information on their AML/CFT obligations and on supervisory messages. The INAF also uses TCs to set out the supervisor's expectations.

[14] The authorities have explained that it is necessary for a property to be registered before opening a new electricity or water account.

136. The Andorran Bar Association has also prepared a handbook for its members to assist compliance with preventive measures. The handbook, available to members through a restricted website, provides guidance and forms and template documents to be used by members.

137. The Andorran Banking Association (ABA) has published a revised Code of Practice (January 2017). This sets out minimum recommendations for professional conduct and is structured in line with the Andorran legal framework and relevant international standards, including the FATF Recommendations. It includes six principles: (i) acting with honesty, objectivity and integrity; (ii) acting with due diligence in the provision of products and services; (iii) respecting customer confidentiality; (iv) strictly complying with AML/CFT requirements; (v) ensuring the security and protection of assets; and (vi) promoting strong corporate governance. Banks undertaken to comply with the Code, application of which will assist banks to comply with preventive measures.

Legal persons and arrangements

Legal persons

138. The following types of legal person can be established in Andorra under the Companies Act: (i) limited liability company (*societat de responsabilitat limitada*); and (ii) public limited company (also referred to as a joint stock company) (*societat anònima*). A company that has only a single shareholder is considered to be a "sole proprietorship" and must include this expression (or abbreviation thereof) when disclosing its company form. A cooperative form company (*societat cooperativa*) can be formed under Law 5/2015 on Andorran cooperative companies.

139. Foundations and associations may also be established for non-profit purposes under the Law 11/2008 of 12 June on foundations (Law on Foundations) and Law on Associations 29 December 2000 (Law on Associations) respectively.

Table 2: Type and number of registered legal persons (at 28 February 2017)

Legal Persons	Total number of registered legal persons
Limited liability company	9 791
Public limited company	2 165
Cooperative form company	1
Foundations	659
Associations	29

140. Companies are subject to registration requirements with the Companies Registry and obtain legal personality upon registration. The minimum capital for a limited liability company is EUR 3 000 and minimum for a public limited company is EUR 60 000. Andorran companies must have their registered office in Andorra. The general assembly of shareholders is the sovereign body of a company and passes resolutions on the most important matters, e.g. amendments to by-laws and approval of financial statements.

141. The general assembly also decides on the form of the company's governing body for day-to-day management which may be: (i) a sole administrator; (ii) joint administrators (where powers must be exercised jointly); (iii) joint and several administrators (where powers may be exercised separately); or (iv) a board of directors. In the case of a single person company, the powers of the general assembly are exercised by the single member. Members of the governing body may be both individuals and corporations. In the latter case, the legal person must designate an individual to represent it on the governing body.

142. A request must be made to the Ministry of Trade and Commerce to authorise each foreign investment with a stake of 10% or more of the share capital or voting rights in an Andorran company. Companies carrying on a trade or providing an industrial or service activity must also be registered in the Registry of Trade and Industry.

143. There are not yet provisions in the Companies Act for capturing and recording beneficial ownership information about a company. However, information on the identity of foreigners holding shares or exercising voting rights in Andorran companies is already held centrally by the Ministry of Trade and Commerce.

144. No restriction is placed on who may form a company. Lawyers and *gestorias* are generally involved in the formation of companies but it is less common for them to act as officers or provide registered or other addresses after incorporation.

145. Foundations are non-profit entities and may be formed only with the prior authorisation of the Government to benefit generic groups of people, rather than specified natural or legal persons, or classes thereof. They are subject to registration requirements with the Foundations Registry and obtain legal personality upon registration. They may be formed by: (i) Andorran nationals; (ii) foreign nationals legally resident in Andorra; and (iii) legal persons constituted in accordance with Andorran law. The registered office of a foundation must be located in Andorra.

146. A board of trustees – generally unpaid - governs and represents the foundation, comprising of at least three individuals or legal persons. In the latter case, the legal person must designate an individual to represent it on the governing body. Individuals who are trustees, or appointed to represent a legal person which is a trustee, must be: (i) Andorran nationals; or (ii) foreign nationals legally resident in Andorra. Legal persons on the board must be established under Andorran law. The board can appoint general and special attorneys (the general attorney has the status of manager). A statutory protectorate has the task of overseeing the correct application of the Law on Foundations, including checking that they are not established for personal interests.

147. An association is constituted by any volunteer grouping of three or more persons and may not have as a purpose (explicit or implicit) the procurement of financial profits to be distributed among members. They may be constituted by: (i) Andorran nationals; (ii) foreign nationals legally resident in Andorra; and (iii) legal persons constituted in accordance with Andorran law. Non-resident foreign persons may be members of an association but cannot take part in its management. The registered office of an association should be located in Andorra. Associations can be registered in the Register of Associations but it is a declarative status for publicity and qualification to apply for a public subsidy and so not mandatory[15]. They do not have a personality that is separate from their membership. As a minimum, the internal organisation of an association should provide for a: (i) general meeting of members (sovereign body); (ii) board of directors; and (iii) president of the board.

148. Both foundations and associations are required under the AML/CFT Act to keep records of persons who receive funds, but the UIFAND does not supervise compliance with this requirement.

Legal arrangements

149. Andorran legislation does not regulate the establishment or operation of trusts. Andorra is not a Party to the Hague Convention on Laws Applicable to Trusts and their Recognition. Nevertheless, there are no provisions prohibiting: (i) trusts (or similar legal arrangements established under

[15] However, upon registration, members of an association are no longer generally responsible for actions carried out in the name of the association or for obligations undertaken before third parties.

foreign law) conducting their activities through the Andorran financial system; or (ii) Andorran residents or Andorran companies acting as trustee (or equivalent) for foreign trusts (or similar legal arrangements). Indeed, there are suggestions that professional trustees resident in Andorra are administering foreign legal arrangements (though information in this respect is not held by the authorities). Where a trust has professional trustees in Andorra, they are subject to the AML/CFT Act when acting in that capacity.

International context for legal persons and arrangements

150. As stated in the NRA, there has been a significant increase in the number of Andorran companies formed since foreign investment in the country was liberalised in 2012[16]. Out of the 9 044 companies on the register in May 2016, 1 440 were established by foreigners, and 40% of shareholders of Andorran companies are foreign (mainly Spanish and French nationals), though a number will be legally resident in Andorra. Despite the increase in the number of companies formed, the total number registered in Andorra is still rather modest.

151. Historically, there is little evidence to suggest that extensive use is currently made of Andorran companies by non-residents. Whilst there is a reference to Andorra in the FATF MER of Spain (2014) in relation to the use of complex and opaque legal structures, this cites good cooperation with the authorities.

152. There is evidence that South American companies are used by customers of FIs. The cost of establishing companies in these countries is relatively low and they offer greater confidentiality.

Supervisory arrangements

153. The UIFAND is legally responsible for AML/CFT supervision of all FIs and DNFBPs under the AML/CFT Act. It has a broad range of powers to monitor compliance with AML/CFT requirements and can impose administrative sanctions relating to minor offences under the AML/CFT Act. Only the Government can impose sanctions for "serious" and "very serious" infringements of the AML/CFT legislation. In practice, the UIFAND places considerable reliance on information collected, and opinions provided, in AML/CFT audit reports on FIs that are prepared annually by external auditors in line with a programme set by the supervisor.

154. The INAF is responsible for the authorisation and prudential supervision of FIs, except for: (i) the insurance sector; and (ii) financial activities conducted by the two foreign post offices. Since 2013, the INAF has been able to more fully assess the integrity of their shareholders and directors. Article 23 of the AML/CFT Regulations sets out the basis for cooperation between the UIFAND and the INAF, and a memorandum of understanding (MoU) is in place between the two supervisors. Whereas the UIFAND relies upon the INAF's cooperation with foreign regulators in order to exercise consolidated supervision of the significant overseas activities of subsidiaries, it does not seem that there is adequate engagement on AML/CFT matters between the prudential supervisor and its counterparts abroad.

155. In 2013, the INAF joined the International Organisation of Securities Commissions (IOSCO) and signed its multilateral MoU (MMoU), formalising reciprocal cooperation and exchange of information in respect of supervision of securities markets.

156. The Ministry of Finance is currently responsible for the authorisation and prudential supervision of insurance companies under the Law on the Actions of Insurance Companies of 11 May

[16] The Foreign Investment Act and associated Regulation of Foreign Investment Act.

1989, as amended (Insurance Law). Since 2015, the Ministry has been able to assess the integrity of shareholders and directors of insurance companies. Supervisory responsibility will be transferred from the Ministry to the INAF once new insurance legislation – which implements principles established by the International Association of Insurance Supervisors (IAIS) and European regime of Solvency II - is brought into force (on 1 January 2018). The Ministry is not a member of the IAIS; nor is it a signatory to its MMoU. Regulation and supervision of the insurance sector is still rather limited. The INAF indirectly supervises bank-owned insurance companies.

157. The following details were provided by the authorities in relation to the DNFBP sector:

Table 3: Overview of DNFBPs in Andorra

Name of the sector/services	Licensing/Registration	Relevant legislation
Casinos	Licensing	Article 7 of Act 37/2014 of 11 December on the regulation of gambling (Gambling Law)
Real estate agents	Registration (sole traders and companies)	Real Estate Agents Law 2000
Lawyers	Licensing of lawyers (but not law firms)	Law 48/2014
Notaries	Licensing of notaries	Notarial Law 1996
Accountants, auditors, economists, tax advisors, *gestorias* and CSPs	Licensing	Law of 6/2008 on the exercise of liberal professions and collegiate and professional
Dealers in precious metals and stones	No requirement for licensing or registration	N/A

158. Whilst the authorities point to the existence of licencing requirements for lawyers, accountants, auditors, economists, tax advisors, *gestorias*[17] and other CSPs: (i) they are not able to provide exact numbers of those carrying on a business that is covered by the AML/CFT Act; and (ii) such requirements do not include measures to prevent their control or management by criminals or associates of criminals. Nor is a requirement placed on individuals (except lawyers) or legal entities offering these services to be part of a professional association. The extent of services provided by CSPs is thought to focus on company incorporation.

159. As noted above, the following authorities are involved in the creation, registration and supervision of legal persons: (i) Registries for companies, foundations and associations; (ii) Ministry of Trade and Commerce, where companies have foreign shareholders; and (iii) protectorate for foundations.

International Cooperation

160. Andorra provides for a wide range of international assistance among competent authorities in relation to ML/TF, and associated predicate offences. Given its geographical position and since most of the predicate crimes to ML are committed abroad, international cooperation is of particular importance for Andorra. In terms of quantity, the highest level of international cooperation Andorra

[17] *Gestorias* are private agencies which specialise in dealing with legal and administrative work. For a fee they carry out paperwork involved in getting passports, work permits, car documentation etc. and liaise with Government agencies, thereby saving their clients much inconvenience and queuing time. In Andorra, they also assist with the formation of companies and applications by foreigners under the Foreign Investment Act. *Gestorias* are also commonly found in Spain.

has demonstrated with France, Spain, Portugal, and to a lesser extent – Latin America, US, and with countries of Eastern Europe. The major share of the cooperation is carried out through direct communication.

161. Apart from cooperation under various international treaties and MoUs, the authorities are also able to cooperate with foreign counterparts on ad hoc basis, without a treaty or a MoU, based on domestic regulations. Even though Andorra is not part of EUROJUST, the authorities indicated that they have participated in coordination and cooperation meetings a number of times which led to successful international operations against crime. Andorra is also a party of *La Red Iberoamericana de Cooperación Jurídica Internacional* (IberRed). The key authorities (the Public Prosecutor's Office, the UIFAND, the investigative judges and the Police Department) have been very active in the area of informal exchange of information with foreign counterparts. This is the case also for the INAF, though cooperation does not benefit from participation of the supervisory unit of the UIFAND

162. Nevertheless, international cooperation could still suffer from the dual criminality requirement related to the lack of full criminalisation of tax crimes. However, the dual criminality requirement is strictly applied only if no link with other predicate offence(s) foreseen by the Andorran legislation can be identified. The absence of formal prioritisation criteria for MLA cases and case management system for some authorities, as well as the lack of human resources, are the issues that have yet to be addressed by Andorra.

Terrorist Financing and Financing of Proliferation

163. Andorra has never been the subject of a terrorist attack and has never detected any TF activity within the principality. The NRA has rated the TF risk as medium-low. Apart from some unconfirmed suspicion held by Andorra in the form of intelligence information, no evidence has been found suggesting that Andorran residents have travelled to conflict zones abroad to help foreign terrorist groups. The NRA acknowledges, however, that there is a possibility of recruitment, radicalisation and self-radicalisation of individuals.

164. The NRA also acknowledges that Andorra might be used as a transit point for terrorist financing. However, no evidence has been found to confirm that this is actually occurring. The Police Department and judicial authorities have never received formal requests for information or assistance by foreign counterparts in relation to TF or terrorism investigations. Nevertheless, as a regional financial centre Andorra recognises that the TF risk cannot be neglected. The authorities in Andorra appear to have a good understanding of the terrorism and TF threat and work closely on the matter with Spain and France. Andorra has enacted a robust legal framework for criminalising TF, which is largely in line with the international standards. Nevertheless, to date there has been no clear national CFT strategy or policy.

165. Andorra does not have manufacturers of defence materials and its economy is largely based on other sectors like tourism and financial services. Therefore, relating to PF it is mainly at risk of being exploited as a transit country. This risk may be heightened due to Andorra's location between Spain and France, both of which produce a wide range of military and dual-use goods. There have been no export between Andorra and Iran or DPRK since the UIFAND issued a TC in 2015 prohibiting all financial transactions with these countries.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

Andorra adopted its NRA and action plans for addressing the risks in December 2016. It is a candid assessment, and, taking into account that it is its first wholesale exercise to consider the ML and TF risks it faces, it is reasonably comprehensive. Where there are shortcomings, it is in relation to consideration of the risk presented by the activities of foreign subsidiaries.

It is evident that there has been the political commitment to make sweeping changes to Andorran legislation. It was not clear though what political oversight will apply in relation to monitoring implementation of key aspects of the action plans. Despite this, legislation to criminalise tax crimes and revise the AML/CFT Act, all part of action plans, was already well advanced at the time of the on-site visit.

The NRA identifies the lack of a clear AML/CFT strategy and, as a consequence, sets out high level principles and objectives which policy-makers and the AML/CFT authorities should take into account when determining such a strategy. However, in practice, these principles appear to have been adopted in the actions Andorra has so far taken to address ML/TF risks.

The objectives and activities of the UIFAND's operational unit and LEAs appear to be fully consistent with the NRA and action plans, which will not cause the UIFAND or LEAs to act in a way that is at all different from their current operating models. However, strategic co-operation and co-ordination of supervisory activities will need to be improved if action plans are to be effectively implemented.

Two permanent committees have been established to co-ordinate AML/CFT work: PC1 and PC2. In practice, they act as discussion fora and their role is limited to the revision of legislation in line with international standards.

The NRA and action plans demonstrate that there is a good level of co-ordination and commitment.

The assessment team ascertained that the general level of understanding by different interlocutors of the ML/TF risks varies significantly. While the UIFAND, LEAs and FIs demonstrated a strong understanding of relevant threats, lower levels of awareness within the DNFBP sector probably result from the fact that the sectorial NRAs have been available in the English language only.

Recommended Actions

- As identified in the NRA, the authorities should establish an AML/CFT strategy and policy based on the high level objectives set in the NRA reflecting actions already being taken to address the ML/TF risks identified in the NRA. This strategy should be approved by the Government.
- The role and powers of PC1 should be enhanced to enable it to drive the structural changes that the action plans propose. This could include publishing terms of reference to clarify the membership and the role of the committee. The authorities should take action to strengthen co-operation and coordination within PC2.
- The Government should assess the resourcing needs of each agency arising from implementation of the action plans, e.g. staffing and IT, ensure that each is adequately resourced for their role, and hold PC1 accountable for delivery of the various plans.

- A formal mechanism should be established in order to ensure that there is close strategic and operational co-operation amongst LEAs and financial supervisors on relevant cases.
- As identified in the NRA, information on wire transfers and beneficial ownership of bank deposits should be regularly collected and analysed. Information should be collected and analysed on: (i) the overseas activities of FIs and DNFBPs; and (ii) extent of DNFBP activities in the country, in order to build a full understanding of risks inherent in these areas.
- The authorities should continue to promote findings and conclusions from the NRA to the private sector.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/TF risks

166. The NRA was approved by the Council of Ministers, the executive body of Government, on 14 December 2016 and addresses ML and TF risk. It includes a national action plan and a number of sectoral action plans for addressing the risks identified. It used the World Bank model which drew upon qualitative and quantative data from the authorities and private sector. It has clearly aided the understanding and knowledge of the competent authorities in relation to the threats and vulnerabilities Andorra faces. These included: (i) the extensive use of cash and weaknesses in cross-border cash controls; (ii) risks in neighbouring countries; (iii) Andorra's position as a regional finance centre offering private banking services to non-resident customers; and (iv) failure (at the time of the NRA) to criminalise tax offences. Further information on threats and risks identified in the NRA is given in Chapter 1.

167. It is a reasonably comprehensive assessment taking into account that it is its first wholesale exercise to consider risk. The assessment was informed by past Andorran MERs, international typologies, open source information, public reports, SARs, and other quantitative and qualitative information provided by public and private sectors. Additionally, more than 400 cases were analysed in order to identify typologies, methods and instruments used. Where there are shortcomings, or its understanding is impaired, it is in relation to how, and to what extent, Andorra has considered the impact/influence of the "internationalism" of its financial services sector on its assessments of ML/TF threats and vulnerabilities. In particular, the internationalism of its banking sector is significant as banks have pursued: (i) ambitious strategies to develop higher value private banking activities; and (ii) international expansion into Europe and Latin America, and to a lesser extent North America and the Middle East. As a consequence, half of assets under management are held in Andorran banks' foreign subsidiaries.

168. The sectorial NRA on banking emphasises that Andorran banks have had to build robust systems because this internationalism has exposed Andorran banking groups to foreign regulatory standards and to a key dependency on relations with foreign correspondent banks in order to operate. It also considers the activities that are being conducted through these overseas subsidiaries and risks presented domestically by non-resident customers. It assesses the ML threat presented by the banking sector as being high, vulnerability as being medium-high, and, consequentially, risk as "medium-high".

169. The analysis in one area was not fully considered in the NRA: data was not available for the NRA on the geographic origin of customers (and their beneficial owners) of banks (though general information is held on the profile of banks' customer and beneficial ownership bases). Also, an analysis of the origin and destination of wire transfers to some higher risk countries was not

evidenced. These are not considered to be significant deficiencies. There had also been limited consideration of the risks presented to Andorra by the activities of its banks' through their overseas subsidiaries, notwithstanding: (i) the significant size of these foreign operations; and (ii) the different threats and vulnerabilities present that could affect them. Nor did the NRA consider the extent to which Andorran banks operate group-wide programmes against ML/TF. In addition, whilst the authorities made full use of available information, they did not directly seek input from competent authorities in the jurisdictions in which most non-resident customers reside or those in which substantial activities are carried on through subsidiaries. Given the growth and current level of foreign activities, these are considered to be important omissions in the context of Andorra's NRA.

170. There is also an incomplete picture of what is happening in the DNFBP sector as: (i) no market entry criteria apply to some categories of business, such as *gestorias* which facilitate company formation; and (ii) the geographic origin of customers was not considered. As a consequence the authorities do not categorically know the number of DNFBPs offering the service, though activity levels appeared to be low, limited to formation (and not also management, e.g. provision of directors) and focussed on the domestic market.

171. One of the strengths of the NRA is the frank identification and description of the vulnerabilities and gaps in the current legal and institutional framework which concerns the: (i) investigation and prosecution of ML; and (ii) confiscation of the proceeds of crime. Measures and concrete actions to improve these areas largely correspond with the assessment team's findings.

172. The risk of TF – domestically and internationally - has been the subject of close attention and scrutiny by the authorities in the NRA. Andorra has demonstrated that it has generally a good understanding of TF risks, threats and vulnerabilities. The NRA and the interviews held onsite confirmed that LEAs made efforts to identify the sources of funds that can potentially be used for the purpose of TF, such as tobacco smuggling and credit card fraud. Special attention has been paid by the authorities to the activities related to potential recruitment, radicalisation and self-radicalisation of individuals and the possible use of its financial sector as a "transit point" for terrorist funds. The risk of terrorist abuse in the NPO sector and the problem of cash smuggling in the TF context, have also been considered in the NRA in an attempt to properly identify, assess and understand the TF risks.

173. Nevertheless, there is an area that requires further attention. As explained under IO.9, there is a need for regular, or at least periodic, assessment of aggregated wire transfers with countries that present a higher terrorist threat.

National policies to address identified ML/TF risks

174. Andorra is to be commended for producing a very candid risk assessment and setting in place actions that it needs to achieve. The NRA includes a national action plan and sectoral action plans from which the authorities have developed more detailed action plans for delivering on key actions at national and sector level (for FIs and DNFBPs). These detailed plans identify: (i) the agency with prime responsibility for taking action; (ii) agencies which will have a secondary role in implementation; (iii) the steps which should be taken; (iv) the timeframe for implementation; and (v) financial implications. Evaluators consider it important for there to be demonstrable political support for the national, sectoral and detailed action plans in order to ensure that: (i) AML/CFT agencies are held accountable for their delivery; and (ii) additional resources can be made available when needed. Legislation to criminalise tax crimes, revise the AML/CFT Act, and introduce criminal liability for legal persons, all part of the action plans, was already well advanced at the time of the on-site visit.

175. The NRA identifies the lack of a clear AML/CFT strategy and, as a starting point, sets out high level principles and objectives which policy-makers and the AML/CFT authorities should take into account when determining such a strategy. This omission is identified in the national action plan as a priority. These principles include: (i) an "absolute commitment" to effectively preventing and fighting ML/TF; (ii) neutralising the proceeds of crime, as a priority; (iii) establishing, promoting and adequately resourcing domestic AML/CFT agencies; (iv) implementing an accurate risk-based approach; and (v) applying a comprehensive AML/CFT preventive system to FIs and DNFBPs. In practice, these principles have already been adopted through actions taken and proposed in the national action plan and provide evidence that, whilst not formally recorded, national AML/CFT policies are in place.

176. In due course, these principles will form the basis for an AML/CFT strategy that is distinct from the high level and detailed sector plans that have already been adopted and implementation of which has already started. It will be important for this strategy to: (i) address the significant human and technical resourcing issues within the Customs Department, the Police Department and the UIFAND, which, if not addressed, could potentially undermine efforts to strengthen Andorra's AML/CFT framework; and (ii) be endorsed by the Government, which has already made a significant commitment to overhauling and modernising financial services legislation and given a political commitment to the NRA process.

177. The NRA confirms that, as a direct consequence of a banking failure, the number of ML-related investigations, prosecutions and confiscations will increase significantly. There is now a need for a full analysis of the mitigating measures that will be needed to respond to this particular challenge and to prepare a clear strategy on how these cases are to be prioritised.

Exemptions, enhanced and simplified measures

178. Action is in train to strengthen preventive measures in two important areas: (i) cash-related ML; and (ii) tobacco smuggling-related ML. This includes a proposed ban on all cash transactions over EUR 10 000, either in a single or a series of connected transactions, and a proposal that FIs and DNFBPs should pay special attention to those clients and transactions which are potentially linked to tobacco-related businesses and industries.

179. In the case of the later, it is proposed that the UIFAND should: (i) issue a TC on relevant risk indicators regarding tobacco smuggling-related ML, including the use of cash; and (ii) require enhanced CDD measures to be applied to tobacco-related industries and businesses.

180. Given the Andorran context, these proposed measures appear reasonable.

181. More generally, the authorities have not explained how the results of the NRA are to be used to justify exemptions (e.g. those considered under c.1.6) and support the application of any simplified measures for lower risk scenarios. However, as mentioned under IO.4, the current use of exemptions by FIs does not appear to be extensive and application of simplified CDD is not prevalent.

Objectives and activities of competent authorities

182. As explained under IO.3, the UIFAND's supervisory unit has a limited view into the wider governance, business models and operational issues within those FIs and DNFBPs it supervises, including three banks which have relatively substantial foreign operations. Whilst these areas are covered by the main prudential supervisor - the INAF - they overlap with AML/CFT supervision. Whilst there is a MoU in place between the two supervisors, strategic co-operation and co-ordination

of supervisory activities will need to be improved if relevant action plans are to be effectively implemented.

183. Furthermore, as identified in IO.3, risk-based supervision has still to be fully applied to FIs and DNFBPs which may mean that the UIFAND's supervisory activities do not completely address ML and TF risks that have been identified by the country.

184. The objectives and activities of the UIFAND's operational unit and LEAs appear to be fully consistent with the NRA and action plans, which will not cause the UIFAND or LEAs to act in a way that is at all different from their current operating models. It is to be commended that, for some time, the authorities have focused on investigating, prosecuting and confiscating proceeds from foreign predicate offences, which is in line with threats identified. It is noted also that in excess of 30% of investigative judges have been assigned to the specialised section of the courts in order to deal exclusively with financial crime. The majority of mitigating actions foreseen by the NRA concern legislative and institutional reforms and are to be addressed at national level.

185. It appears that combating terrorism and TF have always been a priority for the LEAs. The objectives (although often informal) and activities of the competent authorities seem to be broadly consistent with the TF risk identified.

National coordination and cooperation

186. PC1 was established under Government decree in 2008 to deal with AML/CFT issues. Article 56 ter of the AML/CFT Act determines that it is to be comprised of representatives of: (i) the Ministries of the Presidency, Finance, Home Affairs and Justice, Economy and Foreign Affairs; and the UIFAND, which is the chair. The legislation states that, when matters affect the Andorran financial system, a representative of the INAF shall attend.

187. The purpose of the committee is to co-ordinate the work of the various ministries, the UIFAND and the INAF in the fight against ML/TF. Through its membership, the Committee: (i) studies the ML/TF situation in Andorra; (ii) participates in the assessment of measures and actions undertaken in the field of ML/TF; (iii) offers advice on legislative changes; (iv) attends international meetings; and (v) provides advice on the drafting of reports addressed to international bodies. In practice, it has primarily been concerned with making legislation to implement the FATF Recommendations, EU Directives and recommendations in the 4th round MER.

188. At the date of the on-site visit, Andorra's Government had agreed to merge PC1 with a second committee which deals with the implementation of international sanctions, including TFS (PC2). Evaluators were informed that, going forward, this merged committee will focus on implementation of the action plans in the period up to 2019 - using executive powers held by its members. No changes have been proposed to roles and responsibilities of committee members.

189. The NRA concludes that PC1 has not been sufficiently active in defining AML/CFT policy and strategy. This view is supported by a review of minutes of meetings of the committee held in 2015 and 2016 which do not convey that representatives are driving change, moving matters forward, or co-ordinating their activities. For example there is no evidence that the committee has discussed AML/CFT matters or integrity issues arising from major ML cases (including bribery in private sector at operational level), and IO.6 refers to failure to discuss police information on organised crime group activities with regard to tobacco smuggling. It is noted that: (i) the INAF is not a standing member of the committee (though it has attended many of the meetings held); (ii) representatives from key agencies have been absent in some committee meetings (because of other engagements); (iii) there is limited attendance by the Police Department and Customs Department; and (iv) not all members actively participate in deliberations on the development of key proposals.

Instead, minutes convey an impression that PC1 is more of a discussion forum and limited to the revision of legislation in line with international standards. PC1 does not appear to take decisions, there is no follow up of actions arising from previous meetings, and there is no consideration of the activities of each agency between meetings. There are similar concerns about the effectiveness of the work of PC2.

190. Despite this, work undertaken in a short period of time by the domestic authorities on the NRA and action plans, led by the UIFAND, and action taken to resolve the banking failure (see box 13) demonstrate that there is meaningful coordination and cooperation at policy level

191. In addition, Article 53 of the AML/CFT Act requires the UIFAND to promote and co-ordinate measures to prevent ML/TF. This complements its two core roles of: (i) AML/CFT supervisor; and (ii) financial intelligence unit (FIU), and there is a clear benefit to one agency undertaking both. For example, when the UIFAND's operational area detects deficiencies in the application of CDD or reporting measures, this information can be shared seamlessly with the UIFAND's supervisory area in order to inform its supervisory efforts. The benefit from this internal relationship can be seen in the sanctions cases detailed in IO.3, the most significant of which have emanated from investigations by the operational area.

192. Domestic operational cooperation (especially informal) between the relevant AML/CFT authorities is also well-established in Andorra. However, as noted above, there has been limited interaction between the supervisory arm of the UIFAND and the INAF to co-ordinate supervisory activities. Evaluators also understand that information on judicial investigations is not made available to, or used by, supervisors, which could assist identification of emerging risks and trends in ML/TF.

193. There is little evidence of any co-ordination or cooperation in relation to PF matters. Accordingly, it remains unclear whether the level of co-ordination and cooperation and sharing of information and intelligence across all relevant competent authorities is adequate to effectively combat PF.

Private sector's awareness of risks

194. Andorra has produced a sector level NRA and associated action plans to reduce ML/TF risk in each sector. The NRA includes qualitative and quantitative information provided by the supervisor, private sector and professional associations. The main findings have subsequently been shared through workshops.

195. However, awareness of the output from the NRA appears mixed: the banking sector is best informed and some sectors of the DNFBP sector such as gestories least aware. The NRA was adopted in the English language, and, at the time of the on-site visit, was being translated into Catalan.

196. The UIFAND met with the banking sector on many occasions in 2016 and 2017 to consider the output from the NRA, and it was evident from the evaluators' meetings with banks that they had been engaged in the process and broadly concurred with its conclusions. Within Andorra's small non-bank FI sector, awareness of the NRA was also high as their principals were drawn in either through their business' participation or through their position within an association. Like the banks, they broadly agreed with the findings.

197. Conversely, knowledge about the NRA appeared poorest amongst the larger DNFBP community (except notaries). The evaluation team met a lawyer that had not participated in the NRA process, and had not seen its output, and a CSP which had participated in three NRA meetings but

had not yet seen the results from the assessment. However measures are foreseen to communicate more widely the output from the NRA.

Overall Conclusions on Immediate Outcome 1

198. Andorra has put significant effort into undertaking its NRA. As a consequence, for a first time wholesale exercise to understand ML/TF risk, it is a very detailed and frank assessment of the ML/TF risks it faces, upon which subsequent assessments can build. Whilst not approved until December 2016, it was encouraging to observe at the time of the on-site visit that Andorra had already begun addressing the recommendations drawn up in the action plans.

199. **Andorra has achieved a substantial level of effectiveness for IO.1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

The authorities systematically use financial intelligence and other information provided by the UIFAND in developing investigations of ML cases. The good ratio of SARs submitted against the number of investigations initiated based on them supports LEAs consideration that the UIFAND analyses/disclosures are of a high quality.

The number of SARs submitted by the reporting entities appears to be modest. Before submitting SARs, reporting entities often visit the UIFAND and discuss the case informally. The authorities deem that, thanks to such practice, most of the SARs received by the UIFAND lead to disclosures to judicial authorities and subsequent investigations. So far, two SARs concerning TF have been submitted.

The insertion of tobacco smuggling crime into the list of ML predicate offences has increased the number of SARs. Subsequent analyses of these SARs led, in most of cases, to judicial investigations and seizure of assets. The UIFAND, based on analyses it has carried out, is currently drafting guidelines and indicators on this specific typology.

The number of controls performed by the Customs Department is not in line with the threats identified by the NRA.

Cooperation and communication between the UIFAND and LEAs seem to be intensive and fruitful. It, inter alia, includes face-to-face meetings which enable the interlocutors to discuss all aspects of the case(s) and to preserve the confidentiality of information.

Human resources are an issue of concern given the heavy workload the UIFAND is exposed to – e.g. the role of the UIFAND to check and approve each foreign application to invest in Andorra seriously impacts the operational unit's workload. Nonetheless, the operational analyses carried out upon receipt of the STRs are always prioritised against the checks of the foreign applications to invest in Andorra.

Immediate Outcome 7

Andorra has a small law enforcement and magistrates community, which has facilitated good cooperation and co-ordination, effective investigation and prosecution of complex ML cases. These cases have generated uniform ML case law and reflect high professional standards.

The criminal justice system investigates and prosecutes a wide range of cases which are consistent with the country's ML threats and risk profile. This includes stand-alone ML with a foreign predicate offence, third-party and self-laundering. Nevertheless, the ratio between investigation/prosecution and subsequent convictions appears to be modest.

The ML offence combined approach (having a specific list of predicate offences in conjunction with the threshold of a minimum of 6 months of imprisonment as a sanction) and non-criminalisation of tax crime trigger supplementary requirements in establishing the foreign predicate offence, which is

challenging for the judiciary in stand-alone ML.

The ML threats that the country faces, the current workload, complexity of cases[18], lack of human resources, certain shortcoming with regard to legal framework and the court proceedings that appear to be exceptionally long, call for further strengthening of the institutional and legal framework.

The imprisonment sanctions imposed by the courts on natural persons are proportionate and dissuasive and are cumulated with fines which can amount up to 3 times the value of the laundered funds. Andorra does not have criminal liability for legal persons and to date the existing alternative measures provided by the law have only been applied once.

Immediate Outcome 8

The Andorran authorities consider depriving criminals of their assets to be one of the priorities in overall criminal justice policy. The legislative and institutional reforms carried out in recent years have had a positive impact on the effectiveness of the confiscation regime, while further measures to improve the system have been provided in the National Level Strategy and Action Plan of the NRA.

Confiscations mostly involve assets resulting from ML which include the property laundered and instrumentalities used. Other than that, a conviction for a predicate crime in foreign jurisdiction usually triggers direct confiscation.

Authorities seem to apply a reasonably proactive approach in pursuing the confiscation of assets. This means that assets obtained or laundered are pursued even in cases when the dual criminality principle could prevent that.

Searching for criminally obtained property is quite a complex process - although parallel financial investigations are systematically carried out, lack of human and technical resources and restrictive access to databases by some of the LEAs casts doubt on the effectiveness in identifying proceeds.

Cash smuggling has been identified as vulnerability in the NRA. Nonetheless, the activities undertaken by the authorities to uncover ML through transportation of cash do not reflect the risks identified.

Andorra does not have the comprehensive asset sharing mechanisms with other countries, apart from the US. Given the country's risk profile this might negatively influence co-operation from other jurisdictions in seizing and confiscating the proceeds from crime.

Recommended Actions

Immediate Outcome 6

- Human and IT resources of the operational unit of the UIFAND should be reviewed taking into account the amount of work it is currently assigned. Access to the cadastral and tax databases should be granted to the UIFAND.
- The UIFAND should consider why the number of SARs made in recent years is modest given the country's risk context, and take appropriate action based on its findings.
- The UIFAND should strengthen its case study analysis on the basis of a summary of cases

[18] The need for such reinforcement is emphasised by the significant number of SARs expected in respect of ML cases related to the banking failure.

prepared for the NRA purposes. Typologies of the most common ML trends, including potential vulnerabilities, should be discussed by PC1 and with the private sector.

- The UIFAND should continue on-going efforts to produce and approve the manual to be used by staff to mitigate the risk of loss of institutional memory in case of staff departures.
- The capacities of the Customs Department should be strengthened in order to enhance border controls of transportation of cash into and out of Andorra.

Immediate Outcome 7

- Andorra should significantly reinforce human and technical resources (IT tools) of relevant authorities involved in ML investigations, especially the Police and specialised investigative judges (*Batllia*), in order to effectively combat complex stand-alone ML schemes.
- Andorra should criminalise: (i) tax evasion in a manner that covers all the elements related to direct and indirect tax crimes; (ii) bribery in private sector; (iii) smuggling of goods other than tobacco, and make them a predicate offences for ML; and consider adopting an all-crime approach regarding ML predicate offences.
- Andorran authorities should consider, in line with ECHR obligations, what further measures should be taken to simplify the appellate procedure or to otherwise significantly expedite the timely conclusion of criminal proceedings.
- Given the risks of using legal persons as vehicles for ML, as identified in the NRA, Andorra should consider introducing criminal liability of legal persons in legislation.
- The authorities should make legislative steps to increase of the secrecy measure beyond 6 months period and thus minimise the threats originating from the current, overly broad, regulations to notify the suspect(s) of the proceedings against them and provide them access to the criminal files. This point is also relevant to IO.2, IO.8 (due to risk of asset dissipation) and IO.9.
- The authorities should systematically collect statistics regarding ML investigations, prosecutions and convictions in line with FATF guidance, including: (i) aggregation of active and concluded ML investigations; (ii) number of persons investigated broken down by predicate offence and type of ML; and (iii) prosecutions and defendants sent to trial (including the predicate offence and the assets seized).
- The legal framework should place a requirement on FIs and DNFBPs to provide information requested for judicial investigations on a timely basis and within exact deadlines. This point is also relevant to IO.2 and IO.8.

Immediate Outcome 8

- The authorities should develop a case management system which would enable them to keep comprehensive statistics, which would include: (i) data on the amount of property seized and confiscated; (ii) type of confiscation; and (iii) breakdown of figures by predicate offence. Such database shall also assist authorities in assessing the risks and determining the effectiveness of the confiscation system in place.
- As identified in the NRA, the authorities should strengthen the mechanism for cross-border control of cash and adequately apply measures provided in the National Level Strategy and

Action Plan of the NRA.

- Andorra should introduce asset-sharing mechanisms with relevant foreign jurisdictions.
- Permanent training programme and guidelines on financial investigations and asset tracing shall be introduced to ARO.

Immediate Outcome 6 (Financial intelligence ML/TF)

Use of financial intelligence and other information

(a) Access to information

200. The UIFAND is the authority responsible for receiving, analysing and disseminating SARs submitted by the obliged entities. The UIFAND can also initiate investigations following its own findings, foreign FIUs requests, or upon information received by a third party.

201. The UIFAND has direct system access to a wide range of information and databases. Direct access to the Police Department database has been granted on the basis of the MoU signed between the UIFAND and the Police Department in 2015.

Table 4: Databases to which the UIFAND has direct access

Database Holder	Available information
The UIFAND	SARs
The UIFAND	International requests
The UIFAND	National cooperation information/requests
The UIFAND	Cash smuggling infringements from Customs Department
Customs Department	Cross-border transportation of cash controls
Companies register	Companies information
Police Department	Vehicle licensing
Police Department	Employment registry
Police Department	Andorran citizens
Police Department	Immigration register
Police Department	Interpol database
Police Department	Criminal records
Police Department	Investigations (only yes/no)

202. Access is also possible to the following databases and information (also not requiring prior judicial order), where it is requested in writing by the Head of the UIFAND: (i) tax department databases; (ii) information on real estate ownership[19]; and (iii) information from any other

[19] Information on property ownership is not centralised and is held at local administration level and by notaries.

administration, e.g. Customs Department and the Ministry of Finance. The authorities refer to this as "indirect access". The UIFAND may also request and obtain copies of criminal records from the judicial authorities. Given the risk profile of the country, direct access to tax and real estate ownership data would be beneficial, in particular for the operational unit of the UIFAND.

203. The UIFAND has the power to request financial information without prior judicial order (unlike Police Department and prosecutors) as well as additional information from the obliged entities, regardless if a SAR has already been submitted.

204. Andorran authorities have not kept detailed statistics with regard to requests the UIFAND made to the reporting entities following the submission of a SAR. This can partially be explained by the manner in which communication between the UIFAND and reporting entities is carried out. Each time an obliged entity considers whether to send a SAR, the UIFAND is consulted in advance and usually a meeting is scheduled to discuss the matter. During the meeting the obliged entity exposes the case to the UIFAND which then provides feedback/requests additional information, thus reducing the need for subsequent formal communication. Such communication is effective given the small size of the jurisdiction and the low number of the reporting entities which generate modest number of SARs.

205. In most of cases, the UIFAND seeks additional information once the SAR is analysed. More precisely, the UIFAND usually requires additional information from the entire banking system whenever they receive a SAR. However, outside of an isolated study[20], authorities were unable to provide accurate statistics of such requests.

(b) Use of intelligence

206. From 2001 to 2015, financial intelligence was disseminated by the UIFAND to the Public Prosecutor. This practice has proved to be cumbersome given that, for any further action to be undertaken, the public prosecutor needed the approval of the investigative judge. Since 2015, and subsequent to the legislative amendments, the UIFAND reports have been disseminated directly to the investigative judge, who decides on the further actions in gathering evidence and opening the investigation.

207. The statistics presented by the authorities show that most of the ML/TF cases investigated come from the reports disseminated by the UIFAND.

Table 5: Ratio of ML/TF judicial investigations based on UIFAND disclosures to other sources

	Judicial investigations based on UIFAND disclosure	**Judicial investigations based on other sources**	**ML/TF investigations**	**ML/TF investigations based on UIFAND disclosure**
2010	14	3	17	82 %
2011	11	3	14	79 %
2012	4	6	10	40 %
2013	6	2	8	75 %
2014	10	4	14	71 %

[20] The UIFAND conducted a study on requests sent to banks in 2015 which includes some statistics for this sector; it is further elaborated under core issue 6.4.

2015	16	8	24	67 %
TOTAL	**61**	**26**	**87**	**69 %**

208. Also, due to the SAR refinement process previously described (see above 6.1.a) the ratio between the number of reports disseminated by the UIFAND and subsequent ML/TF investigations indicates that financial intelligence is widely used by LEAs in pursuing ML cases.

Table 6: ML-related judicial proceedings following the reports filed by the UIFAND

Year	Cases opened by UIFAND	Reports disseminated by UIFAND	Judiciary investigations following UIFAND's disclosure	Prosecutions	Convictions
2010	60	14	14	2	-
2011	82	19	11	1	-
2012	70	14	4	2	-
2013	75	16	6	2	-
2014	76	25	10	2	2
2015	111	21	16	1	-
2016 **(until 20.06)**	31	11	14	2	1

209. An example of a case triggered by the UIFAND report is provided below. It demonstrates a proper use of powers by the UIFAND to seek information, as well as the use of financial intelligence by LEAs.

Box 1: Example of a case triggered by the UIFAND

Origin: SAR
Alleged crime: ML
Destination of analysis: Specialised investigative judge

On 2nd February of 2016, the UIFAND opened a case and started a financial analysis following the transactions made by one of the clients of a financial entity which were not in line with their professional and financial background.

After consulting the commercial and companies' registers and other databases to which the UIFAND has direct access to, the following information was gathered: the client was one of the owners of a legal person with commercial activities established in 2013. Analysis showed that his monthly income couldn't be more than 1 500 EUR, which was not in line with the amounts of the afore-mentioned transactions.

Further checks confirmed that the client had previously been under investigation in Andorra for the crime against the intellectual property (sale of satellite channel fake cards). The same person had a criminal file in a neighbouring country for an alleged crime of tobacco smuggling.

The UIFAND requested additional information regarding the financial movements in other banking entities in the country. Once the information was received and analysed, the UIFAND concluded that

the client had other bank accounts, which were closed, linked to the commercial activities until 2013.

In addition, during 2015 there have been 22 cash receipts in amount of around EUR 60.000. This was explained as a regular revenue.

CONCLUSION OF THE ANALYSIS
The cash incomes in the bank account were not justified. These could come from a presumed illicit activity. The Police Department and judiciary information reinforced this conclusion. The amounts deposited in cash, could correspond to the payments received or from benefits obtained from operations of tobacco smuggling. In any case, they would correspond to a percentage of a total amount of tobacco that could have been exported illicitly.

LAW ENFORCEMENT INVESTIGATION AND PROSECUTION
The case was sent to the *Batllia* (Investigative Court). Investigation was opened and three persons were arrested.

When the arrest took place (July 2016), around EUR 19.000 in cash were found inside the engine of the one of the suspect's car. This was detected by the officers from the Customs Department and Foreign Unit.

On 5th July, 2016, the main suspect was charged for crime of ML in line with Article 409 of the CC. LEAs which carried out the investigation, identified and seized/frozen EUR 30.155 in cash, 4.500 cartons of cigarettes, and three luxury vehicles.

210. The UIFAND advised that their reports - once they are sent to the investigative judge - are also made available to police officers who then use them for investigative purposes. As a matter of systematic practice, the findings are discussed in face to face meetings, which include the UIFAND, the Police Department, prosecutor and investigative judge. These meetings enable the exchange of all relevant data/information and coordination among the UIFAND and LEAs on how to proceed further. All interlocutors met on-site consider such practice as a way to properly coordinate investigatory activities and preserve the confidentiality of information. To them, it also confirms that LEAs routinely use financial information not only for ML but also for investigating predicate offences. However, the NRA notes that in some, rather exceptional cases, the UIFAND reports were not sent to the Police Department. As a consequence, the Police Department had to carry out their own analyses thus overlapping with the UIFAND's work.

211. With regard to TF, apart from the cases that were reported under IO.9, analysis of financial intelligence did not confirm any attempt of TF offence so far.

SARs received and requested by competent authorities

212. The SARs are received in paper form with the supporting documents attached. In complex cases and in any case when the UIFAND requests so, SARs are also submitted in a digital form (on a CD/DVD) to foster the information processing. The table below summarises the number of SARs disseminated:

Table 7: SARs received and disseminated by activity

	2012		2013		2014		2015		2016[21]	
	Rcvd.	**Diss.**	**Rcvd.**	**Diss.**	**Rcvd.**	**Diss.**	**Rcvd.**	**Diss.**	**Rcvd.**	Diss.
Banks	20	9	28	12	32	13	52	19	48	17
Non-banking FI									1	
Notaries	1				1	1	1	1		
Lawyers	3	1	2	2	1	0	1			
Accountants	0						1			
Economists							1	1	2	
Insurance Companies							1			
Real Estate Agencies	0				2	2	1		1	
Money Orders	1		1	0			2		1	
Total	25	10	31	14	36	16	60	21	53	17

213. As indicated in the table, banks are the main source of the SARs, while DNFBPs have submitted very few of them. The number of SARs is in general considered as modest for the reasons further elaborated under IO.4. Despite the low numbers of SARs sent by DNFBPs, a good proportion of the SARs sent by this sector led to dissemination by the UIFAND.

Box 2: Example of a case triggered by a SAR made by a DNFBP

Origin: SAR
Reporting entity: DNFBP
Alleged crime: ML
Destination of analysis: Specialized judge

A reporting entity submitted an SAR involving person (A), his partner (A'), his mother in law (A'') and his father in law (C'). Person A is the owner of an Andorran legal person (B), and persons A' and A'' have powers of attorney of company B. All involved persons are citizens and residents of a European country (Y).

While performing CDD, negative information was found regarding person C.

The consultation in the commercial and companies data bases provided the following information:

In 2013, person A was the only shareholder of company B. The declared purpose of the company was "investment and energy investigation projects".

On the 10/2013, person A created in Andorra the legal entity B.

[21] Statistics between 28/09/2016 and 31/12/2016 were given after the onsite visit.

On the 07/2014, person A, acting in name and representation of company B, appears in front of the same notary, to grant powers of attorney of the company to person A' and person A''.

The UIFAND obtained the following information in open sources of information:

In 2004 a company from country Y bought an Italian company that produces and distributes gas. Later, the Italian justice confiscated the heritage of the original owners of the Italian company (the head of the company was person C), because of possible links with the organised crime. The company was a part of a scheme which lauders funds of a criminal group. In 2013 the Italian justice, seized about 48 millions of Euros from person C (died in 2000).

Property of persons A', A'' and C have also been confiscated by the Italian justice.

The UIFAND requested and obtained relevant information (via Egmont) from the countries concerned:

- Person A is a holder of four individual bank accounts, in four entities in Andorra. All the accounts were opened in 2013 and before.
- The bank accounts analysed have the same kind of movements.
- The transactions that took place in the three accounts in 2013 consisted in the deposit of 39 transfers (13 in each entity) ordered by person A, from his bank accounts in three entities in country Y. This lead to the following conclusions:

Person A in July 2013, and before the confiscation process started, initiated a transfer of his property outside country Y, in a fractionate manner for both - the accounts and the amount.

The documents made available to the UIFAND indicated that the beneficial owners of the Andorran company were probably persons A' and A''. This company could have been used to hide property that belonged to person C.

The accounts presented a total balance close to EUR 1.500.000.

LAW ENFORCEMENT and MLA COOPERATION

The case was disseminated to the Specialized Section of the *Batllia* (investigative Court) and an investigation was launched.

The Police Department conducted the investigative activities together with the Italian investigatory authorities. The Anti-Mafia prosecutor of Palermo travelled to Andorra, in order to participate in the investigation. The investigation is still underway.

214. The tables of SARs received and disseminated by professions (6.2), the ML-related judicial proceedings following the reports filed by the UIFAND (6.1(b)); and the ratio between the number of SARs received and disclosed to the investigative judges by the UIFAND tend to support the appreciation that the general quality of the SARs is high, especially from banks. Both the reporting entities and the UIFAND consider their active cooperation in the production of SARs (as described under 6.1) to be a key reason for the good quality reporting.

215. The private sector, including DNFBPs, is undergoing the AML/CFT trainings organised by the UIFAND since 2013. These trainings covered not only general AML/CFT concepts but also concrete indicators and typologies. However, as elaborated under IO.3, this training has been focused on non-banking FIs and DNFBPs. Also, professionals met on-site indicated that more training on trends and typologies from the UIFAND would be appreciated. Such training would probably help to enhance the number of good quality reports by DNFBPs.

216. The National level NRA identified that some reporting entities involved third parties in their SARs decision-making process. This practice has been confirmed by private sector met on-site. Indeed one of the Andorran banks has externalised its legal department – entrusted it to a law firm. A representative of this law firm is also the member of the bank's AML/CFT committee, which decides whether or not a SAR should be submitted. Although, in this concrete case, the situation did not seem particularly problematic, the fact that this kind of practice occurs may create a risk of tipping off.

217. The National level NRA recognises that the introduction of the tobacco smuggling in the list of predicate offences for ML had a positive impact on the number of SARs. At the time of the onsite visit, twelve (12) SARs have been filed with the UIFAND. In those cases, the UIFAND analysed the reported reasonable grounds that ML, including self-laundering, took place. Investigations were subsequently open, several persons were arrested, and money, real estate and vehicles were seized.

Box 3: Example of a case involving tobacco smuggling as a predicate offence

SAR submitted by a banking entity; Source: UIFAND annual report

An obliged entity submitted a suspicious transactions report to the UIFAND in relation to cash movements generated by a duly authorised shop in Andorra which sales tobacco.
The analysis of banking transactions carried out by the Unit's operational area showed a substantial volume of annual revenues which was distributed in an unusual manner.
The study determined that, in the last two years, 95% of the revenues were obtained in cash, while credit card income entailed only 5% of the total.

With respect to the distribution in time of the cash revenues, the study concluded that there was no logical pattern and that there was an acyclic correlation with the dates and periods of greatest tourist influx. The shop shows coherent commercial margins while almost all payments to suppliers concern tobacco. The annual turnover is approximately three million euros.

Consequently, there was reasonable indicative evidence to believe that part of the tobacco was sold for illegal export.

Risk indicators that lead to such conclusion:
- the type of commercial premises and their location make it hard to justify the volume of revenues,
- the handling of large amounts of cash for the declared business activity in relation to collections made by credit card,
- the pattern of the distribution over the course of time of the shop's revenue is not logical.

The investigation is still underway.

218. The manner the analysis described above was carried out has also been applied to all other cases involving tobacco smuggling as a predicate offence. This typology has also been shared with the reporting entities through the UIFAND annual report. Tobacco smuggling SARs have been submitted in a digital form, thus enabling large amount of information to be at the UIFAND's disposal without delay.

219. With regard to cash couriers and as already elaborated under 6.1.a, the UIFAND has a direct access to the joint Customs Department database, which they consult for every SAR received. This database is populated by the Customs Department upon their controls. However, the number of

controls and sanctions appears to be rather low[22] in comparison to the risk regarding both - cash couriers and tobacco smuggling[23]. Hereafter is a table of the controls performed by the Customs Department, while details on sanctions applied are provided under the IO.8.

Table 8: Number of vehicles controlled at Customs Department from 06.08.2015 till 20.04.2016

	2015 **From 06.08.2015 till 31.12.2015**	2016 **From 01.01.2016 till 20.04.2016**
Andorra to France	229	10
France to Andorra	627	304
Andorra to Spain	38	164
Spain to Andorra	295	94

220. Authorities recognised that not enough staff has been allocated to the border controls. Since the cash declaration regulation has been recently introduced, the Customs Department still lacks expertise to detect such infractions. From the meetings held on-site, it appears that the focus of officers is on smuggling of goods rather than on cash. Currently staff undergoes training organised by Spanish *Agencia Tributaria*.

221. TC 02/2015 sets out obligations applicable to entries and withdrawals of cash for an amount of EUR 10 000 EUR. It notably requires that Andorran banks: (i) request their customers to present a duly completed declaration form for the Customs Department for each deposit of EUR 10 000 or more (or equivalent); and (ii) inform customers of the requirement to disclose cross border cash movement in the case of a withdrawal of EUR 10 000 or more (or equivalent). This measure is intended to ensure that information on such withdrawals or deposits will be included in the Customs Department's database which is accessible to the UIFAND. Yet the understanding of the assessment team is that a client who fails to fill in this special form would not face any consequences. Failure to submit the form would not trigger the same responsibility as it would be in the case of false declaration of cross border movements of currency.

Operational needs supported by FIU analysis and dissemination

(a) Operational analysis & dissemination

222. Unlike the number of judicial investigations triggered by the UIFAND disseminations, the number of ML prosecutions and convictions is modest. The interlocutors met on-site confirmed that this was not due to the low quality or any other issue related to the UIFAND reports, or to

[22] Approximately eight (8) controls/day in 2015 and even less in 2016 based on the data provided

[23] NRA states that open sources information indicates that a significant number of cases of smuggling of tobacco from Andorra to Spain are detected at the Spanish border. From the Andorran side, the number of controls appears to be low.

cooperation between them and LEAs, but to other issues that involve complex judicial proceedings, which, in general, are lengthy. This is further elaborated under the IO.7.

223. The UIFAND's power to postpone transactions is only used when there are enough grounds/evidence that a freezing order would be issued by the investigative judge. In general, the postponement mechanism is rarely used because of its inherent problems (e.g. risk of jeopardising the investigations, etc…). The postponement order may last up to five days. However, once the postponement measures are lifted, if no judicial order to freeze the funds has been issued, the risk of further transfers, and inability to trace them, is rather high.

224. Although the use of resources currently available for operational analysis seems to be appropriate, the heavy workload raises concerns as to whether the UIFAND is sufficiently staffed. At the time of the on-site visit, three (3) persons were in charge for the UIFAND operational activities[24]: two of them had previous work experience with the police, and one is a financial analyst. The officers with police background have vast experience on AML/CFT matters, while the financial analysis has joined the UIFAND since November 2013.

225. The UIFAND advised that they were in the process of hiring new staff members; however, at the time of the onsite visit, the evaluation team learned that one staff member had just left the institution. Staff departures are an issue of concern, especially in the context of a small FIU. With the idea to remedy the possible consequences of frequent staff departures, the UIFAND drafted a manual aiming to gather the existing analytical methodologies and good practice developed so far. The assessment team welcomes the UIFAND's efforts in this direction. The manual, as a matter of priority, should include: (i) guidelines and available methodologies for the analytical process that the UIFAND staff apply; and (ii) guidelines and key principles of cooperation with the LEAs.

226. Regarding the IT resources, the UIFAND uses a custom-made Lotus database to manage its cases. For the analytical process, access to Microsoft Office software and IBM I2 is available. However, the software has not been largely used for analytical purposes - I2 is used only in specific cases to make them more understandable by judicial authorities. Complex SARs and smuggling related SARs are filed in digital format on a CD/DVD while, sometimes, the excel spreadsheets are filled in manually by the analysts since most of the communications related to SARs is paper-based. The UIFAND database is also filled manually. This might cause a problem given the issues related to the UIFAND staffing.

227. The use of human resources by the UIFAND is also affected by the role of the institution under the Foreign Investment Act. The UIFAND has an obligation to check and approve each new foreign investment that is covered by that law. The operational staff of the UIFAND therefore analyses all foreign investment applications. In practical terms, an operational officer performs checks on each legal and physical person behind these investments, assessing the level of potential ML/TF risks. In 2014 and 2015, respectively 1022 and 1141 foreign investment applications had undergone these checks. Nonetheless, the priority is always given to the STRs analysis. The criminalisation of the tax crime and its inclusion in the list of ML predicate offences will significantly increase the workload of the operational department. The time allocated to foreign investment checks, in the context of the afore-mentioned legislative changes, might need to be further considered by the UIFAND and adequate response to this challenge should be sought.

(b) Strategic analysis

228. The Strategic analysis is performed by the UIFAND's operational and supervisory units. When the operational officers notice a certain rehearsal of cases submitted to the UIFAND, they may decide

[24] Authorities indicated that a third additional police officer has joined the UIFAND shortly after the onsite visit.

to conduct a parallel analysis on these cases. This analysis may result in preparation of a TC, which is then disseminated to the reporting entities. According to the AML/CFT Act, TCs presents an obligatory instruction which the reporting entities have to follow. This type of information on indicators and trends is also disseminated within the "typologies" part of the UIFAND annual reports which can be found on the public part of the UIFAND's website[25].

229. Both the TCs and typologies identified some important patterns and trends, including: (i) ML risks associated with Panamanian companies; and (ii) practice of parallel cash withdrawals through the same office and deposits as a mean to hide and disable the tracing of money.

230. Some of these TCs are published on the public part of the UIFAND website while others are on its restricted part. For example, in 2011 the UIFAND decided to disseminate indicators on TF through a TC on the public section of the website. If posted on the public part, the document has to remain general and cannot contain detailed indicators. On the other hand, if circulated through the restricted access part of the website, the TC can be more detailed but subject to less dissemination. TCs should be as detailed as possible and their publication on either restricted or public webpages of the UIFAND appears to be carefully examined in advance.

Table 9: List of TCs issued by the UIFAND arranged by availability[26]

Number	Content	Availability
TC-02/2014	Enhanced CDD regarding Bosnia and Herzegovina	Public
TC-04/2014	CDD regarding Panamanian entities	Restricted
TC-05/2014	Prohibiting "cash transaction" seeking to disguise internal transfers	Restricted
TC-02/2015	Obligations on cash deposits/withdrawals of EUR 10 000 or more and on operations of large amounts of cash (EUR 100 000 or EUR 250 000 of cumulative annual amount)	Restricted
TC-02/2016	Prohibitions against Syria (following FATF listing)	Public
TC-10/2016	High risk operations related to the AEOI for tax purposes	Public
TC-01/2017	Associations, foundations and other NPOs: main methods used to abuse NPOs, risk indicators and measures to be applied by NPOs	Public

231. TCs are, in general, a very valuable and flexible feature of the Andorran AML/CFT system. The UIFAND can use this power given by the law to respond to emerging needs mostly related to the prevention of ML/TF in the country. Meetings with FIs and DNFBPs confirmed that they were duly taken into account and swiftly translated into policies and procedures. However the assessment team considers that more TCs (or typologies in annual reports), based on cases and trends that have taken place in Andorra, should be issued.

[25] http://www.uifand.ad/publicacions

[26] List excludes CTs related to: (i) updates of lists of countries classified high risk by the FATF; and (ii) instructions concerning audits of obliged entities.

Cooperation and exchange of information/financial intelligence

232. As already mentioned, UIFAND operational officers have direct access to numerous databases, including Customs Department and Police Department databases. In practice, each operational officer has 2 computers: (i) a computer only connected to the UIFAND database, without internet connection; (ii) a computer with internet connection in order to access the register of companies, Customs Department database, and other private databases (such as World check) or open Internet.

233. The Customs Department's database contains all the controls performed by that department (including the records of the control). For every failure to declare, or in case of false declaration, the UIFAND would create an entry in their own database, including the profile of the person.

234. To access the Police Department database, a separate computer with a secured network is used. Only two UIFAND analysts can access this database which contains criminal records and indicates if a person is being investigated (details can then be asked directly) or is a matter of interest by Interpol. This database also contains the registries of cars, employment, immigration, etc.

235. The manner the information is provided to the UIFAND by FIs and DNFBPs has already been elaborated. This process is intensive and mostly takes part in the 'face to face' meetings between the representatives of these institutions. In that regard, the confidentiality of information seems to be well preserved.

236. There is evidence that, within the UIFAND, the operational unit has fruitful cooperation with the supervision unit. For example, in 2015, the UIFAND conducted a study regarding the number of information requests issued by the operational unit to Andorran banks on subjects of SARs or UIFAND requests leading to a positive result (while the concerned bank did not send any SAR). Each bank exceeding a certain percentage of positive result has been reported to the supervision department for possible vulnerabilities or threats within their system. Evidence has also been presented of cooperation between the INAF and the operational unit of the UIFAND in order to assist the former with licensing decisions and approval of changes to shareholders and senior management.

237. The UIFAND can also receive information from LEAs. A typical case of such practice involves Police Department pre-investigative actions against one or more persons, in which they have insufficient information to request a judicial order to access financial information. LEAs would then send a request for information to the UIFAND, which treats such requests like a SAR. Usual checks and analysis are then performed and, in case there are suspicions, the UIFAND would send the report/disclosure to the investigative judge.

238. The UIFAND chairs the PC1 and PC2 meetings. Authorities indicated that both PC1 and PC2 would soon be merged into a single PC. However, to date, the role of these PC seems too passive: it is limited to the revision of legislation advised by the relevant international standards (see also IO.1). These platforms are not used for exchange of information of strategic importance – as an example, police information on organised crime groups' activities with regard to tobacco smuggling is not shared with other interlocutors.

Overall Conclusions on Immediate Outcome 6

239. The UIFAND gathers a wide variety of information and has access to relevant databases. It provides good quality analyses which are afterwards largely used by LEAs to investigate ML. The UIFAND has set good cooperation with the reporting entities and with LEAs. Altogether, these elements lead to a good ratio between the number of reports generated by the UIFAND and the

number of investigations subsequently opened. Yet, the number of SARs received by the UIFAND remains modest.

240. Successful cases provided to the assessment team confirm the appropriate use of financial intelligence by the competent authorities.

241. The members of the operational unit of the UIFAND are well experienced and are able to produce high quality intelligence. However, human resources are a matter of concern bearing in mind the UIFAND's current and expected workload.

242. TCs – being a specific means of the UIFAND's communication with the reporting entities – are perceived as strength of the AML/CFT system, primarily in the area of prevention.

243. **Andorra has achieved a substantial level of effectiveness for Immediate Outcome 6.**

Immediate Outcome 7 (ML investigation and prosecution)

244. Andorra has a small LEAs community in charge of investigating ML: the specialised unit of the Police Department (UICE2), the investigative judges within the specialised investigative section of the Court of First Instance and Preliminary Investigations *(Batllia)* and the Public Prosecutor's Office.

245. In the last 3 years, the judiciary has faced significant legislative and institutional reforms – in 2015 the ML offence was amended (self-laundering was fully incriminated and tobacco smuggling was introduced as a predicate offence) and specialised investigative judges were appointed to deal exclusively with serious economic crimes, including ML.

ML identification and investigation

246. The judicial authorities and LEAs enjoy a solid degree of independence, they are skilled and motivated to effectively combat ML and have the ability to investigate and prosecute a wide range of ML offences, including complex cases involving large scale third party ML schemes. Stand-alone ML with an underlying foreign predicate offence is the most common type of ML offence in Andorra. The effectiveness of the criminal process is therefore essentially influenced by the quality and timely inputs provided by other countries through international judicial cooperation. Andorran LEAs systematically conduct financial investigations in all ML cases and seek appropriate assistance from their foreign counterparts. Due to the size of the country, cooperation and co-ordination between different LEAs and between LEAs and judiciary are rather intensive and informal, based on permanent communication (mostly in the form of face-to-face meetings). Such practice has led to uniform case-law and investigative practice.

247. In essence, the limited number of financial investigators and the difficulties encountered in international judicial cooperation with some countries have had certain negative effects. The NRA highlighted the need for a significant effort to resolve the lack of human resources, given that Andorra is a regional financial centre with substantial ML threats.

248. Although formally three different LEAs (Police Department, Prosecutor and *Batllia*/ investigative judge) can initiate preliminary investigations, in practice the investigative judge is a *dominus litis* of the investigative procedure. Only the judge can authorise the collection of evidence, including financial information. Prosecutors need judicial approval to access such information, and although they are informed of the investigatory actions, their involvement is proactive once the investigatory phase is finished. They may ask for additional evidence to be gathered, however, such proposals are subject to the approval of investigative judge. The Police Department are pro-active in

gathering evidence but they act mostly upon the investigative judge's instructions given their limited access to information. External forensic accounting expertise may be ordered in the course of the investigation, but in practice such analyses are performed by the Police Department.

249. The officers of the Economic Crime police (UICE 2) undergo trainings in Spain, France and Italy. Investigative judges have been trained in the ML field in the *École Nationale de la Magistrature* (France) and in the *Consejo General del Poder Judicial* (Spain). The Andorran Superior Council of Justice has established a compulsory training plan for all prosecutors and judges. In addition, the Public Prosecutor's Office has taken measures to strengthen the institutional capacities by concluding different agreements for training and exchange of best-practices mainly with Spain, France and Italy.

250. There are 2 investigative judges[27] supported by 2 assistants and 5 administrative staff in the specialised economic crime section of the court (*Batllia*). No detailed statistics on the cases that are yet under the investigative judges' review were available but judges advised that, at the time of the on-site visit, there were approximately 150 on-going ML investigations. The workload is considerable, given the specificity and complexity of the files (usually stand-alone ML with foreign predicate offence).

251. The number of prosecutors (6 in total including the General Prosecutor) also appears to be modest, taking into consideration that they are in charge to prosecute all crimes in the country and are also involved in different civil procedures.

252. The lack of human resources presents a risk. The system could suffer from this shortcoming even more in the near future taking into account the expected increase of the number of ML cases after incrimination of tax offences and the numerous SARs linked to ML cases arising from a banking failure. *Eight police officers* within the specialised police unit are in charge not only of investigating ML and other economic crimes but also of executing MLA requests, performing the duties of ARO and of other administrative tasks. They advised that they needed specific IT tools to improve the financial analysis. It appears that the capacities of the institutions allow only several complex cases to be investigated per year.

253. Mainly, ML investigations in Andorra are triggered by the UIFAND reports (app. 73%). Other than that, ML cases are opened by the Police Department on their own initiative, usually based on information provided by foreign counterparts (mostly Spanish and French Police), or through MLA.

254. A weak proactive approach in *initiating* ML investigations was identified in the 4th MER. While there are improvements in this regard, LEAs have not yet developed specific guidelines establishing the circumstances in which ML cases should be initiated, in order to strategically target areas of risk with regard to ML, nor does it appear that the NRA findings are used/taken into account for this purpose.

255. Nevertheless, the ML prosecution rate for cases initiated by LEAs *ex officio* (30,43%)[28] is higher than the prosecution rate in cases initiated by the UIFAND (16,39%)[29]. The authorities advised that this was due to the fact that in cases initiated by LEAs the predicate offence has already

[27] Please see footnote 8 which refers to post on-site appointment of a third investigative judge.

[28] Between 2010 and 2016, LEAs have initiated 23 ML investigations on their own initiative (without UIFAND report) involving 182 persons. As a result of these investigations, 7 indictments were issued against 20 persons (no indictment in 2013-2014) which culminated in 7 convictions, 6 of which being final.

[29] Out of the 106 UIFAND reports disseminated to LEAs in 2010-2016, in 61 cases investigations were opened (57,54 %), 10 of these cases went to trial (16,39% out of these investigations) and 3 final convictions, against 4 persons, have been pronounced.

been identified and investigated (usually in a foreign jurisdiction), which significantly facilitates the follow up ML investigation. On the other hand, cases initiated by the UIFAND usually concerns ML where the predicate offence is unknown.

256. During the period 2010 – 2016, 84 ML investigations were opened, 17 indictments were issued and 9 final convictions were handed down[30]. There were 5 pending ML cases before the first instance court at the time of the on-site visit[31]. The total number of ML prosecutions can be considered as *modest* compared to the ML risks the country faces. Even though this is, *inter alia*, caused by some objective circumstances (summarised below), immediate actions are needed to increase the level of cases with judicial finality.

257. As regards qualitative indicators, according to the information received during the on-site, the conviction rate in ML cases is 82% (9 convictions and 2 acquittals), which is higher than the average conviction rate in Andorra (70-80%) thus indicating the positive effects of the strategic approach that the judiciary has recently adopted in combating ML[32].

258. From the interviews held on-site, it could be concluded that the following reasons are the key impediments to successful prosecution of ML offences: (i) the lack of proof for the predicate offence, since evidence related to the origin of assets are required in courts; (ii) the impossibility to localise the accused (almost all ML perpetrators are foreigners), given that it is mandatory to inform him/her of the accusations – e.g. prosecutors and judges from Andorra used to travel abroad in order to render such information or send MLAs in this regard ; and iii) the limitations posed by the criminal legislation with regard to non-criminalization of some offences. With regard to point ii) it needs to be noted that the domicile of subject of investigation may affect the process only if the domicile is situated in a non-cooperative jurisdiction. In such case, no mechanism is available to inform him/her about the initiation of a criminal proceeding.

259. There are no statistics available about the number of financial investigations. However, the practitioners advised that financial investigations are conducted alongside all ML cases. Banking secrecy cannot be invoked as grounds for refusal but there are no procedural deadlines for failing to submit the response in a reasonable time, which might affect the financial investigation (information is normally submitted within one month). For asset identification, the restrictive access to databases limits Police Department capabilities in this endeavor thus, similarly to ML cases, transferring further actions to the investigative judge.

260. Special investigative techniques are available for the investigation of ML offences but the exact statistics on their use in practice was not available. The most frequent techniques are wiretapping, controlled delivery and monitoring of the accounts. The "*Unlucky case*"[33] is a good example of successful evidence gathering through the application of SIMs.

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[31] One of the these cases resulted in a conviction shortly after the onsite: on 26 April 2017, a person was convicted for ML to 3 years of imprisonment, fine of EUR 1 million and the confiscation of several funds, including bank accounts and a vehicle of a third party (http://www.justicia.ad/ca/jurisprudencia/9956.html?view=sentencia&format=pdf).

[32] These mostly concern: i) the appointment of specialised investigative judges; ii) the appointment of permanent judges - in the past judges used to came from Spain and France and take only urgent cases; and iii) the unified jurisprudence that the High Court of Justice has developed with regard to the standard of proof for the predicate offence.

[33] Unlucky *case*"- following the analysis of the UIFAND and a preliminary investigation of the Public Prosecutor's Office, in cooperation with the Border Unit of the Police Department and officers of the Courts,

261. ***Undue delays*** in criminal procedures are mainly caused by lack of information and evidence from some countries in which the predicate offences have been committed. Cooperation with foreign authorities is efficient in some cases (e.g., Spain, France, Italy, Mexico, Brazil, Panama) and very difficult or non-existent with some higher risk countries.

262. ***Excessive involvement of courts*** and even the Constitutional Court in ML investigations also affects the reasonable length of investigations*.* From the information received on-site, it appears that every investigative judge's order and resolution (including domestic request for financial information or orders for submitting the rogatory letters) may be appealed before the higher court instance. The following possibilities to appeal may be used simultaneously:

Regular appeal (Article 194 of the CPC - "*recurs d'apel·lació*") against the decisions of the investigative judge before the Corts Court [*Tribunal de Corts*], which is only available in a *numerus clausus* cases.

Urgent and preferential procedure - Article 41(1) of the Constitution - this is an appeal against any alleged violation on fundamental right(s) recognised by the Constitution. This appeal is treated as a priority case and is dealt by the *judge on duty*. The decision of the *judge on duty* can, then, be subject of appeal before the High Court of Justice. The decision of this Court can then be appealed before the Constitutional Court.

Appeal of annulment or *incident de nul·litat* (Article 18bis of the *Llei transitòria de procediments judicials*) is a legal remedy that can be filed before the judge who has taken the decision/resolution and its scope is limited to alleged violations of the right to a fair trial. The decision of the judge concerning the *incident de nul·litat* can then be appealed before the Constitutional Court. The Constitutional Court examines the proportionality of the measure(s) in the light of the Constitution and the doctrine of the European Court of Human Rights (*Tribunal Constitucional-Causa 2016-31 i 27-2-RE, Recursos d'empara Sentència del 16 de gener del 2017-04*).

263. In the interpretation of the High Court of Justice the right to privacy includes the right not to have the property/assets disclosed (Judgment 24-2015, CA 41.1 0000212/2015 High Court Jurisprudence regarding an appeal against rogatory letters sent to Venezuela and Spain). Consequently, the court could verify if there are solid grounds to submit rogatory letters and if the investigative judge acted in good faith, consistently and not arbitrarily. Any resolution that may involve human rights considerations can then be challenged before the Constitutional Court. The jurisprudence of the Constitutional Court (Resolution, of 13 March 2017 - Cause 2017-4-RE) confirmed, however, that the right to privacy does not include secrecy of assets.

264. This recent interpretation of the Constitutional Court's competence is seen as controversial among the justices of other courts. To them, the Constitutional Court acts as a "third instance" and verifies the reasoning of the judge's decisions.

265. The complex judicial proceedings and most notably their frequent interruptions caused by the possibilities to appeal/challenge almost each and every judge's decision before different courts (as elaborated in the previous paragraphs) result in lengthy trials (average 5-6 years per case). The assessment team considers this fact as one of the key concerns that impedes the effectiveness to adjudicate ML cases. It is undoubtedly one of the key reasons for a modest ratio between investigations/prosecutions on one and convictions on other side. The magistrates pointed out that

3 persons were indicted in 2016 for a smuggling-related ML case and some goods have been seized. The investigation revealed a cash intensive profile of some business in high amounts of money which did not fit with their declared lawful activity. Illegitimate co-mingled with legal business activity and licit funds with illicit funds.

the situation with regard to the length of trials had already improved following the creation of the specialised court section and further to appointing of permanent judges. Although these reinforcements cannot affect the cumbersome appealing procedures, the judges met on-site were of the opinion that the criminal proceedings would now last much less and be finalised in 2-3 years' time. The statute of limitations (10 years following the commission of a ML offence) has so far not posed any obstacle for the completion of the proceedings.

266. *Access to the criminal file by the defendant at* any stage of the procedure is also considered to be a potential vulnerability which could jeopardise ML investigations[34]. Every person who is being investigated can, upon request, access all the evidence gathered, except when there is a secrecy resolution. However, the secrecy can last up to 6 months. This can be particularly problematic in the context of MLA, when special investigative techniques are in place in the requesting state (e.g. if in France someone is under surveillance for 1 year and measures need to be applied in Andorra - then after 6 months the person must be informed by the Andorran judge if he/she inquired about the investigation). Considerations about this measure are also discussed under IO.8.

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

267. LEAs do not have guidance on ML investigations, while the absence of AML strategy has already been discussed under IO.1. The National Action plan proposed within the NRA framework should further elaborate the objectives and make them more specific and target oriented with the aim to increase LEAs proactivity in combating ML.

268. Andorra is a regional financial centre with a well-developed financial infrastructure[35], which has attracted proceeds from foreign tax crimes[36], corruption, fraud, drug trafficking and organised crime. Domestic threats are more limited and posed by smuggling of tobacco and, to some extent *qualified fraud*[37]. According to the NRA, the following are exposed to the highest risks: the banking sector, involved in more than 80% of the ML cases; shell companies pool (e.g. foreign Panamanian companies and Andorran companies incorporated in the framework of the foreign investment process); and the use of illicit cash.

269. The fact that tax crime does not constitute an offence in Andorra is a significant technical deficiency which influences the effectiveness of the AML process. Nevertheless, the jurisprudence, which in such cases decides not to be bound by the *numen jure* of the offence (this approach has also been approved by the Constitutional Court), is partially remedying this deficiency (elaborated also under the IO.8).

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[34] According to Article 46 (2) of the CPC[34], during the investigation of a case for major crimes (which includes ML), the Judge of the First Instance may, *ex parte*, at the proposal of the Public Prosecutor's Office or at that of any the parties to the case, by means of a reasoned order, **decree the secrecy of all or part of the actions for a maximum unextendable time of six months,** with the obligation to lift the secret of the investigation proceedings at least one month before the conclusion of the investigation phase.

[35] Andorran banking groups have subsidiaries in 6 Latin America countries, the Bahamas, Israel, Luxembourg, Monaco, Spain, Switzerland, and the US, therefore the effectiveness of international cooperation provided is a key factor for effective ML investigations in Andorra.

[36] The extent of the ML threat posed by foreign tax evasion cannot be estimated, given the lack of data regarding to SARs and investigations related to tax crime.

[37] 'Qualified fraud' is criminalised by Article 209 of the CC.

270. The interlocutors met on-site have demonstrated adequate awareness of ML threats, risk profile and typologies. The statistics regarding final convictions confirm the findings in the NRA. Overall, the predicate offences underlying the ML final convictions pronounced in 2010-2016 are drug trafficking (7 cases), fraud (3 cases), corruption, illicit financial activity and misappropriation of funds (1 case)[38].

271. No statistics concerning details on on-going ML investigations - domestic and foreign criminality, persons investigated broken down by predicate offences, were made available to the assessment team, therefore examples of cases and information from the practitioners have been used as a relevant source. As already noted, there are 150 ML investigations at the moment. They include *i) cases with predicates already dealt by foreign jurisdictions*, usually related to foreign drug trafficking; and ii) *cases that indicate potential ML in Andorra in respect of which some investigative activities have just started.* The latter includes foreign and domestic corruption and fraud; and cases linked to the failure of a bank.

272. There have been significant changes in ML methods detected since the 4th MER. A banking failure has uncovered the involvement of bank professionals in laundering proceeds of corruption and fraud committed by organised criminal groups. The case below is an important precedent as it is the first case in Andorra in which the CEO and staff of a large FI have been investigated and prosecuted for ML committed in an organised manner.

Box 4: Major ML cases committed through professional scheme at failed bank

In March 2015, FinCEN released a Notice of Finding that identified a domestic bank with a significant subsidiary in Spain as a foreign FI of primary money laundering concern, concluding that several officials of high level management had *"facilitated financial transaction on behalf of Third-Party Money Launderers ("TPMLs") providing services for individuals and organisations involved in organized crime, corruption, smuggling and fraud* [...]. *TPMLs* were *able to establish close relationships with complicit bank personnel who facilitated illicit transactions*".

The notice made reference to 4 cases, three of them being already under investigation by Andorran LEAs at the moment of publications of FinCEN's Notice of Finding, hindered by the lack of cooperation with Venezuela.

On 13 March 2015, LEAs arrested the bank's chief executive officer on suspicion of ML. In the framework of the case, which comprises 4 different complex ML schemes and large amount of money, MLA requests were sent to China, Russian Federation, the US and Mexico and Spain. The investigative judge ordered the seizure of the CEO's assets amounting to EUR 15 million (real estate, money in bank accounts, vehicles, paintings, and a wine collection) and sent freezing requests to Switzerland and some other countries.

After the intervention of the Andorran authorities (see box 13), in February 2016, FinCEN withdrew its finding against the bank. FinCEN's decision took into account that the bank would no longer operate as a banking institution and that the bank, under the control of the Andorran authorities, no longer operated in a manner that poses a threat to the US financial system.

At the time of the on-site visit, the most advanced part of the investigation, which involved Chinese suspects, had already been sent to court for prosecution. 26 persons are currently on trial, accused of aggravated ML (committed through an organised criminal group and by a perpetrator acting on behalf of a banking entity).

Whilst the FinCEN notice highlighted only a limited number of ML cases, it appears that CDD

[38] In total, there were 9 convictions but one of them concerned proceeds from three different predicate offences (drug trafficking, fraud and illicit financial activity).

measures had not been properly applied by the bank since there were deficiencies in many customer files and documents. At the time of the on-site visit, CDD had still to be remediated for many customers – based on a review of the bank's customer database by an international consulting firm. These customers had exhibited indicators of high risk activity, and 10 SARs had been sent to the UIFAND at the time of the on-site visit. There is still doubt about the origin of funds for other customers which it is expected will form the basis for a large number of SARs.

273. Apart from this case, the authorities provided examples of important on-going ML cases associated with corruption committed in LATAM or Spain where money and financial products have been seized. Except Venezuela, direct channels of communications with authorities from LATAM are usually used. Cooperation with Spain is also smooth and effective.

274. *Case Sunbird*[39]*,* successfully investigated under the coordination of EUROJUST by LEAs in the Netherlands, Andorra and Spain in 2013, revealed a relevant ML method in this area - ML operations were conducted through a company established in Andorra that invested in large-scale construction projects; 16 million EUR was deposited in bank accounts in Andorra, most of it from a Dutch drug trafficker.

275. As regards foreign third party money launderers using bank accounts in Andorra held by companies affiliated to complex corporate structures, the authorities presented an example of a successful case initiated by the UIFAND, where 2 Panamanian nationals were convicted, *in absentia*, to 5 years imprisonment (3 years in detention and 2 years of suspended sentence), a fine of 600,000.00 EUR each and the confiscation of the proceeds, for having committed aggravated ML crime through an organised group. Details follow.

Box 5: "*Chong*" Case – ML through complex legal structure

The defendants were associated to an organised criminal group acting for the purpose of committing large fraud (pyramid schemes), corruption and drug trafficking in Panama and Colombia. The coordinator of the group assigned one of the defendants as financial and administrative consultant of the corporate structure GRUPO DMG, a financial vehicle corporation used to launder proceeds amounting to several million US dollars. The defendant created over 200 enterprises in Panama without any operating permit or accounting system. The fictitious transfers of funds between their bank accounts were intended to comply with an apparent corporate purpose and to establish a tie between the enterprises forming GRUPO DMG, giving a legitimate appearance of the illicit income. In order to channel the proceeds in the legal financial system, the defendants opened 2 bank accounts in a bank in Andorra in the name and on behalf of 2 Panamanian companies, one of them non-existent, and, as attorneys-in-fact of the aforementioned bank accounts, transferred money from Belize and Panama without justification. These amounts were seized by the Andorran authorities in 2009. Some members of the group were convicted in Colombia and US for the predicate offences (Chong Case, Judgement of 2 April 2014 of the *Tribunal de Corts*, 009-4/11).

276. Cash has been identified as an important method used by criminals to launder mostly the proceeds of domestic crime in Andorra (e.g. smuggling of tobacco). The use of cash appears to be intensive in Andorra and some of the ML methods identified in the NRA refer to the use of cash of illicit origin to acquire high-value goods (such as gold ingots and cut diamonds) or real estate. This is

[39] The summary of the case is provided under the IO.2.

due to the fact that there is: i) no threshold on cash payments in Andorra; and ii) a low effectiveness of cross-border transportation of cash controls.

277. Nevertheless, the use of cash within the framework of FIs has sometimes been observed in ML cases and measures have been taken to mitigate it:

Box 6: Use of cash and the banking sector to disguise the origin of the funds

In the framework of the investigations conducted by the UIFAND, some bank clients had withdrawn cash from their bank accounts at the banking offices and had concurrently deposited the cash in other bank accounts of the same bank at the same office (held by the same or another person).

In just one investigation, there were multiple transactions of cash-withdrawn followed by an immediate cash-deposit to avoid any link between the transactions and the bank accounts involved. This fact hindered the traceability of the operations and the funds.

In this context, the supervisory and the operational units of the UIFAND conducted a joint comprehensive analysis of all transactions to trace the origin of the funds in order to contribute to ongoing investigations.

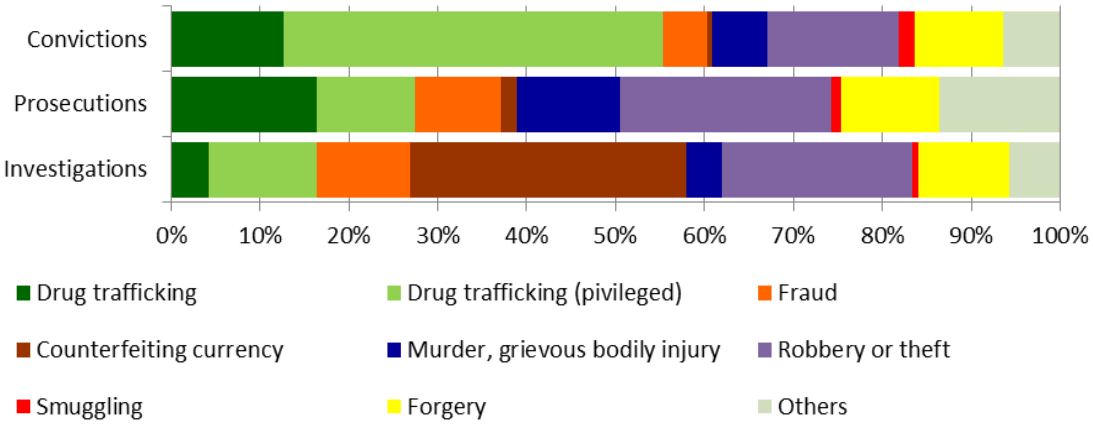
Furthermore, transactions like the above-mentioned were prohibited through a binding TC.

278. Recently, the Andorran authorities have targeted ML related to crimes against intellectual property. Although there was only one investigation in relation to this predicate offence, it revealed potential gaps that should be addressed by the legislator – primarily the need to introduce another SIM, namely the technique to monitor IT activities.

279. There have been no investigations related to ML through virtual currencies or Hawala transfers.

280. Domestic criminality broken down by predicate offence is presented in the chart below:

Table 10: Percentage of investigations opened and persons prosecuted and convicted - domestic criminality- broken down by predicate offence (2010-2015, excluding ML)[40]



Source: Justice Administration; "*counterfeiting currency*" includes credit and debit card duplications.

[40] This figure refers to the percentage of total number of investigations opened and prosecuted and convicted persons broken down by predicate offence (not to the total absolute number)

281. The authorities assessed potential areas of ML risks posed by domestic crimes (counterfeiting currency, drug trafficking, arms trafficking and, to a lesser extent, corruption) bearing in mind i) quantitative statistical indicators related to the crimes reported in Andorra; and ii) the lack of qualitative indicators for typologies uncovered in these cases. Between 2012 and the first half of 2016[41], there have been a significant number of drug trafficking reported crimes (558) and 216 convicted persons. LEAs met on-site advised that those were apparently cases of drug abuse[42] (self-consumption) which did not generate proceeds.

282. LEAs advised that, due to specific circumstances, crimes such as arms trafficking and counterfeiting of currency did not generate assets in Andorra since they were simplified forms of abuse - arm trafficking apparently included illicit use of hunting guns, while counterfeiting was mostly related to cloning of the credit/debit cards abroad and involved low amounts.

283. There have been 25 reported offences *against public functions* (3 of those were related to abuse of public funds) and one conviction for unlawful use of public funds. LEAs and judges have shown zero tolerance to potential corruption in Andorra while shortcomings in criminalisation of bribery in private sector appear not to have significant effect on their efforts to properly address this phenomenon and prosecute accordingly. Important integrity issues in one FI in Andorra have already been highlighted.

284. Even though the case studies presented are an argument that Andorra's LEAs are targeting ML consistently with the risks identified, Andorra has yet to allocate sufficient investigative and prosecution resources to effectively mitigate all the risks. The modest ML investigations/prosecutions ratio is an issue that deserves attentions and needs to be taken into account given the overall ML threat faced by the country.

Types of ML cases pursued

285. Andorra's judicial authorities have demonstrated that they have the ability to pursue all kinds of ML offences and in particular complex cases with sophisticated legal structures involving numerous countries and transactions. LEAs usually prosecute ML as an independent crime, without necessarily prosecuting the predicate offence (which have or have not been prosecuted in the foreign jurisdiction where it has been committed).

286. In fact, all the 9 final convictions pronounced in the period under review are related *to third party stand-alone ML with a foreign predicate offence*, since self-laundering was criminalised only recently (in 2015).

Table 11: ML convictions (2010-2016)

Year	Trigger for investigation	Type	Predicate Offence(s)		Natural persons	Confiscation
			Category	Committed		
2010	SAR	Stand-alone	Drug trafficking	Abroad	1	EUR 241,66 USD 1 447,03
	Police Department	Stand-alone	Drug trafficking	Abroad	2	EUR 57,24 31,75% of a Real Estate

[41] Mutual evaluation questionnaire (MEQ) p 187

[42] The CC Chapter 2 concerns the crimes 'related to the illegal trafficking of toxic drugs'. Self-consumption is a part of this chapter and that is why the NRA refers to 'drug trafficking' and not 'self-consumption'.

2012	Police and Customs Department	Stand-alone	Drug trafficking	Abroad	1	EUR 60 560
2013	Police Department	Stand-alone	Drug trafficking	Abroad	3	EUR 2 385 800,91 4 Real Estate
2014	SAR to UIFAND	Stand-alone	- Drug trafficking - Fraud - Corruption - Illicit financial activity	Abroad	2	EUR 389 750,40
	SAR to UIFAND	Stand-alone	Drug trafficking	Abroad	1	EUR 31 848,83
2015	Justice Administration	Stand-alone	Drug trafficking	Abroad	3	EUR 3 601 237,60 USD 838 965,22 CHF 122 339,95 JPY 4 143 807 GBP 30,75
2016	SAR to UIFAND	Stand-alone	- Fraud - Misappropriation of funds	Abroad	1	EUR 66 870
	Police Department	Stand-alone (attempt)	Fraud	Abroad	1	-

287. The number of prosecutions and convictions appears to be modest (*reference to core issue 7.1*.). The ML offence combined approach (having a specific list of predicate offences in conjunction with the threshold of a minimum of 6 months of imprisonment as a sanction) triggers supplementary requirements in establishing the foreign predicate offence. This presents a problem for LEAs in cases where there is no investigation of predicate offence taking place abroad or when cooperation by the foreign jurisdiction is lacking. Given that the usual arguments of the defence in ML cases are that the proceeds derive from foreign tax crime, there is an additional burden on prosecutors to prove that the predicate offence concerns other facts, incriminated in Andorra and included in the list. Nevertheless, there is a solid and uniform High Court of Justice jurisprudence (sentence of the Criminal Division of the High Court of Justice of 29/11/2010, Roll no. 12/10, mentioned in Sentence of 7 May 2014 of the *Tribunal de Corts* - 009/4/12) stating that the intent and knowledge required to prove the ML offence can be inferred from objective factual circumstances. It appears that this jurisprudence is applied by all courts. It also provides guidance to LEAs. The initial elements of the origin of money, details about the predicate offence and connection with ML need to be established while different indicators can be considered such as: the use of shell companies, false documents and false business relationships as a justification for transactions, involvement of politically exposed person (PEP), etc. Although the legislation does not foresee the possibility for reversal of the burden of proof, in practice it could be applied if sufficient circumstantial evidence is available. Overall, the fact is that neither the interpretation of the law nor the required level of proof are the problem but the law itself and non-incrimination of certain predicate offences as indicated above.

288. In order to challenge the use of *self-laundering* related arguments (non-criminalised before 2015, *mitior lex* for offences committed under the former law), the courts stated that it is possible to claim that the defendant has committed self-laundering only if he/she can prove that the proceeds laundered in Andorra are exactly those deriving from the predicate offence for which the defendant

was convicted abroad. If this is not the case, the case is considered as stand-alone ML and triggers the conviction[43].

289. However, self-laundering is now an important type of ML offence, and, in the context of Andorra, its importance increased with the criminalisation of tobacco smuggling. This has been confirmed by several ML investigations/prosecutions with tobacco smuggling as a predicate offence.

290. Andorran nationals participating in the laundering process as intermediaries who facilitate the integration process of illicit money in exchange for a commission, without knowing the exact nature of the predicate offence, is another ML typology relevant for the country. An example of a successful prosecution is presented in the box below:

Box 7: AA Case - attempted stand-alone ML, third party, fraud, intermediaries

AA was a manager of a reporting entity in Andorra (real estate agent) and acquired a Spanish company, whose object was the management of commodities and international commerce.

AA contacted a foreign lawyer. The lawyer, according to the information AA had, was an intermediary in the business of buying/selling commodities. He also had a lot of contacts with individuals interested in the investment in commodities.

AA provided the data of her bank account in order to funnel the revenues that would be sent to her account, acting as an intermediary, and interested in receiving the high commissions (5%). The verdict literally states that AA did so "without any concern at all on obtaining the information related to the origin of the funds or the identity of the owner/s". Finally, it was proved that AA intended to facilitate the transfer of funds coming from the fraud committed in the United Kingdom. The transaction was not completed due to external circumstances.

The Court considered that AA was in a position of wilful blindness about the origin of the funds and their clients (she was not interested at all in knowing the content of the documents about the origin of the funds and other CDD measures). Additionally, The Court states that AA was a reporting entity according to the AML/CFT Act and, therefore, was "in a position of special importance regarding the application of the AML/CFT legal framework".

AA was convicted, on 25 May 2016, for (attempted) ML in the framework of a stand-alone ML case, to 1 year and 6 months imprisonment (conditionally suspended) and a fine of 1 million EUR.

(Judgement of 25 May 2016, Criminal Court, final by decision of 21 November 2016 of the High Court of Justice)

Effectiveness, proportionality and dissuasiveness of sanctions

291. Criminal penalties for ML offences appear to be proportionate and dissuasive, in line with other offences for serious crimes provided by the CC. The penalty for the simple form of the offence is imprisonment from 1 to 5 years, cumulated with a fine up to 3 times the value of the laundered funds, along with confiscation. Gross negligent conducts are punished with an imprisonment term of up to 1 year.

292. The CC provides imprisonment from 3 to 8 years and professional disqualification in case of ML under aggravating circumstances, respectively: a) when ML is committed through an organised criminal group; b) when the perpetrator acts on a regular basis; c) when the perpetrator acts in the

[43] Judgement of 25 January 2012, of the Court of Corts.

framework of a banking or financial entity, a real estate agency, or an insurance company. Given the fact that these circumstances correspond to the major ML threats in Andorra, it is reasonable to presume that, in complex ML schemes, the judiciary would establish the aggravated form of the offence thus assuring the dissuasiveness of sanctions.

293. According to the statistics, the average penalty imposed by the courts in the period under review is 3 years imprisonment cumulated with a fine of approximately 750 000 EUR. From the jurisprudence reviewed it can be concluded that judges usually apply the maximum penalty in case of ML associated to drug trafficking committed through an organised group. The fines are substantial and have a clear deterrent effect, together with the confiscation of the proceeds. There are no information about the actual execution of the penalties (imprisonment and fines) in cases where the foreigners are judged *in absentia*, which raises some concerns about how effective is the sanctioning regime, given that the absence of the defendant triggers undue delays in pronouncing the final decision.

Table 12: Sanctions for ML crimes

Years	Cases	Persons	Penalty
2012	1	1	2 years and 6 months of imprisonment Fine EUR 90 000; Expulsion from Andorra for 20 years
2013	1	3	Each person was convicted to 5 years of imprisonment Fine EUR 300 000; Expulsion from Andorra for 10 years
2014	2	2	2 persons were convicted to 5 years of imprisonment Fine EUR 600 000; Expulsion from Andorra for 20 years
		1	Person 3 was convicted to 2 years of imprisonment Fine EUR 250 000; Expulsion from Andorra for 20 years
2015	1	3	Person 1: 4 years of imprisonment; Fine EUR 3 000 000 Persons 2 and 3: 2 years of imprisonment; Fine EUR 1 000 000
2016[44]	2	2	Person 1: 3 years of imprisonment Expulsion from the country for 20 years
			Person 2: 1 and a half year of imprisonment; Fine EUR 1 000 000 Expulsion from the country for 20 years

294. The CC does not provide for criminal liability for legal persons and it seems that this is not due to fundamental principles of domestic law. In case of conviction against a natural person, some additional measures (not penalties) may be imposed to legal persons (Article 71[45] and 411[46] of the

[44] 2016: from 01.01.2016 till 30.05.2016

[45] Such measures include: the dissolution of a legal entity; its temporary or permanent closure; suspension of its activities; judicial administration over the legal entity; a ban on the company's right to sign contracts with any public authority; and pecuniary sanction of up to EUR 300 000 or up to 4 times the benefit obtained, or sought to be obtain, through the commission of the crime).

[46] Dissolution of the legal person or final closure of its premises or establishments open to the public; suspension of the activities of the legal person, or closure of its premises or establishments open to the public for a period of not more than five years; prohibition to carry out the activities, mercantile

CC). This measure has only been applied once in a tobacco smuggling case where a business was convicted to the payment of a fine.

295. Some of the interlocutors met on-site have expressed their doubt about the effectiveness of introducing criminal liability of legal persons in the legislation, stating that Andorran companies had not been involved in ML and that the execution of sanctions on foreign companies would be difficult. The evaluation team, however, does not agree with this given the risks of using legal persons as vehicles for ML (as identified in the NRA[47]) and the significance of the major ML cases linked to the banking failure.

Alternative criminal measures

296. All the interlocutors met on-site advised that confiscation is a priority in Andorra (elaborated under IO.8.)

297. Confiscation is considered a deterrent tool for legal persons, usually used by natural persons to keep their assets, even in the absence of their criminal responsibility. Statistics about shell companies investigated are being kept by the Public Prosecutor's Office, in order to assess the confiscation process (there are 43 legal persons involved in the investigation of ML cases during 2011 – 2016).

298. The liability for personal enrichment, provided by Article 99 of the CPC is another alternative criminal measure. Here, the person not criminally responsible for an offence or civilly liable for its consequences is obliged to pay compensation up to the amount of the profit gained – if he/she profited lucratively from the offence.

Overall Conclusions on Immediate Outcome 7

299. Andorran judicial authorities have demonstrated the ability to pursue all kinds of ML offences and in particular complex cases with sophisticated legal structures involving numerous countries and transactions. Recent complex ML prosecution targeting a FI in Andorra, introduction of a self-laundering offence, strengthening of the specialised/investigatory section of the court (*Batllia*) and the overall determination to combat ML represent positive developments since the last evaluation. Nonetheless, and as acknowledged in the NRA, further improvements are needed given the particular ML risks identified in the country. Significant technical deficiencies, including the lack of criminalisation of tax crimes thus their exclusion from the list of predicate crimes to ML, as well as the lack of human resources have affected to a large extent LEAs ability to produce the expected results.

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transactions or business through the exercise of which the crime was facilitated or covered up, for a maximum of five years; and a fine under the terms provided in Article 71.

[47] The need for introducing criminal liability for legal persons is specifically expressed in the NRA, motivated by the fact that *"for a variety of reasons, it may be impossible to proceed against the natural persons responsible for offences. In increasingly large and complex structures, operations and decision-making are diffuse. For this reason, corporate entities are frequently used as vehicles for the payment of a bribe or ML…. The lack of criminal liability of legal persons hinders the international cooperation of Andorran judicial authorities with jurisdictions where the criminal liability of legal persons is formally established."*

300. The modest ratio of convictions/finalised proceedings versus the number of ML investigations and prosecution is another issue that raises concerns. The judiciary is confronted with obstacles during both the investigatory and main hearings phases which require to be addressed at the general policy level and to be resolved through legislative and institutional reforms.

301. The sanctions imposed by the courts to natural persons appear to be effective, proportionate and dissuasive.

Andorra has achieved a moderate level of effectiveness for IO.7.

Immediate Outcome 8 (Confiscation)

302. The Andorran authorities prioritise tracing and confiscating the proceeds of crime and consider these measures to be an important part of the overall criminal justice policy.

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

303. Confiscation of the proceeds of crime, instrumentalities used and property of equivalent value has been one of the key policy objectives of all LEAs in Andorra. The political commitment across the different institutions has been confirmed by all interlocutors met on-site. Parallel to this, a number of concrete reforms have taken place. This includes amendments to different pieces of legislation and setting of the specialised units for asset tracing and their management.

304. The legislative and institutional reforms carried out in recent years have had a positive impact on the effectiveness of the confiscation regime. The system in place provides for mandatory confiscation in the criminal proceedings. It allows extended confiscation and the confiscation of assets of a corresponding value where the direct proceeds of offences are no longer available. Some forms of non-conviction based confiscation (NCBC) are also provided by the law.

305. In 2014, the country introduced the "extended confiscation" – as of December 2016 it applies to all criminal offences thus abandoning the previous approach when it was enforceable only for specific crimes as regulated by the CC[48]. These changes resulted from the analysis of risks and obstacles to effective confiscation. Taking into account the country's risk profile and the fact that most of the crime is committed abroad, the introduction of the extended confiscation and specific forms of the NCBC were steps forward in strengthening the effectiveness of the overall confiscation regime.

306. Andorra applies NCBC since 2005. The system was upgraded in 2015, extending the scope of NCBC through the amendments to the CC. In short, in case of final or provisional dismissal (as per CPC), as long as it has been proven that the crime was committed, the proceeds obtained, instruments used and the profit which derived from them are subjects to confiscation.

307. The reforms that institutional framework has undergone recently resulted in the establishment of the ARO – the unit of the Police Department assigned to facilitate the tracing and identification of the proceeds of crime which may become the objects of freezing, seizure and confiscation. Furthermore, a specialised investigative section of the court and the Judicial Asset Management Bureau (JAMB) have also been set. While the former focuses on the cases of financial

[48] This change was approved by Qualified Law 17/2016 implementing the Directive 2014/42/EU, which entered into force on 23rd December 2016.

crimes with special attention to the confiscation of their proceeds, the latter is primarily occupied with the management and preservation of the value of assets seized.

308. The NRA and the Action Plan, in their parts which analyse the confiscation regime and the challenges it is exposed to, foresee number of important steps to be implemented in the future. As elaborated under IO.1, the country is to be commended for producing a very candid list of actions that aim at strengthening the current system and for initiating concrete steps to implement them.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

309. As already noted, the legal framework enables numerous possibilities for confiscating the proceeds of crime - confiscation following the conviction in the criminal proceedings, including the extended confiscation, NCBC, economic penalty (fines), and claims for restitution/compensation to victims. Assets of an equivalent value could also be recuperated when the direct proceeds of an offence are no longer available. Authorities observed that the parallel financial investigations are *usually* applied to all proceeds generating crimes. Authorities also presented a case of confiscation from a third party to support their statement that this type of confiscation is pursued in practice[49].

310. In the majority of cases Andorra is used by criminals as a destination in which they try to hide or disguise the proceeds of crimes committed in other jurisdictions. On the other hand, there have been no cases referring to the opposite situation, i.e. confiscation of proceeds which have been moved to other countries following the crime committed in Andorra.

311. Authorities seem to apply a reasonably proactive approach in pursuing the confiscation of assets. One has to bear in mind that tax crime is not an offence in Andorra and, therefore, not a predicate offence for ML. This is considered to be a risk not only for ML and associated predicates but also for executing confiscation orders received from other jurisdictions. Since the seizure and confiscation requests need to be made based on crimes other than tax crime, additional impediments are put to foreign requests. Nonetheless, the practice and the case law presented to the assessment team confirm that LEAs often re-qualify the predicate crimes committed abroad in line with the CC. In most of cases Andorran judicial and law enforcement agencies investigate such cases through introduction of the ML component thus avoiding the violation of a dual criminality principle. Such practice enables LEAs to pursue the case in line with the domestic legislation and also enables subsequent seizure(s) and confiscation(s) to be executed. The authorities advised that their generally adopted approach is to always try to qualify the crime with a view to further pursue the case and not to simply drop it due to potential dual criminality shortcomings. The appropriateness of such approach has been confirmed by the Constitutional Court. Moreover, frozen and seized asset data and the figures provided by the authorities (see tables 13 below) support the argument that the UIFAND, the Police Department and judicial authorities proactively search and trace criminal assets.

312. The role of the UIFAND in analysing financial information is very important in detecting and tracing proceeds and instrumentalities of crime. Once the UIFAND receives an SAR or other information, a case is open in order to analyse all available financial and other information, including Tax Department information. The practice and the case law confirm that the UIFAND makes full use

[49] The case concerns the confiscation of assets/funds found on the account of a person who was a part of drug trafficking criminal group. While he was claimed innocent by the court, his father was convicted for drug trafficking and the confiscation was ordered against both of them. Sentence of the First instance Criminal Court, confirmed by the Superior Court of Justice, considered that "*the acquittal of the appellant cannot imply that the confiscation cannot be recognised in relation to the amounts held at the Principality of Andorra under his formal titularity, knowing that the real owner of the funds is his father, who was convicted […]*".

of all available information. More than 90% of the value of seized property concerns the cases triggered by the UIFAND.

Seizure and confiscation

313. The authorities were able to show some figures concerning the property seized and confiscated following the ML prosecutions/convictions. The highest confiscation order was made in 2010 and amounted to EUR 16 million. The average confiscation order in other cases amounted approximately to 1 million EUR. It must, however, be noted that the courts also apply the confiscation orders in cases which included a significantly lower amounts. The confiscation orders are in most of the cases generated following the ML convictions or MLA requests. The statistics show that out of 20 confiscations concerning ML as a predicate crime, 4 cases of confiscation were applied based on the NCBC mechanism.

Table 13: ML related seizing/freezing and confiscations 2010-2016 (until 30 June 2016)

Years	Number of cases	Property seized / frozen (EUR)[50]	Number and types of confiscations[51]		Value of confiscated property (EUR)[52]
2010	11	EUR 17 million; 1 real estate ; 3 vehicles	5	2 Convictions 3 MLA	EUR 16.3 million; 3 real estate properties + 31.75% of a real estate ; 1 safe deposit box ; 1 parking place
2011	4	EUR 2 million; 23 vehicles	2	1 MLA 1 NCBC	EUR 4 million
2012	6	EUR 197.5 million	4	1 Conviction 3 NCBC	EUR 3 million
2013	1	EUR 263.500	3	1 Conviction 2 MLA	EUR 3.5 million; 4 real estate properties
2014	13	EUR 11 million; 1 real estate ; 1 parking place ; 2 vehicles	3	2 Convictions 1 MLA	EUR 4 million
2015	16	EUR 71 million	1	1 Conviction	EUR 4.5 million
2016	N/A	N/A	2	1 Conviction 1 MLA	EUR 400 000
Total	51	EUR 299 million; 2 real estates ; 1 parking place ; 28 vehicles	20	8 MLA 8 Convictions 4 NCBC	EUR 36 million; 7 real estate properties + 31.75% of a real estate ; 1 safe deposit box ; 1 parking place

314. Authorities reported that the MLA requests for seizures and confiscations were also given priority and that they were usually executed in 24h. However, the evaluation team was not provided with detailed statistics on freezing/seizure requests coming from abroad including their execution rate.

[50] Approximated values after conversion in euros and aggregation on the basis of cases provided

[51] MLA; NCBC

[52] Approximated values after conversion in euros and aggregation on the basis of cases provided

315. Provisional measures to prevent the dealing, transfer or disposal of property, once the investigation for a predicate crime is open, are foreseen by the CPC. Nonetheless some features of the CPC might raise concerns as to what extent these measures secure that all the assets are seized/frozen by the end of the criminal proceedings. This primarily concerns the issue of obligatory notification to a suspect by an investigative judge - upon his/her request – that an investigation has been initiated against him/her. Indeed, once a judicial investigation is open, judges are obliged, upon request by a suspect, to notify him/her about the on-going criminal investigation, and grant him/her an access to all case files. The information and the access to files must be given in a month time following the submission of the request unless the judicial secrecy measure is applied (as per the decision of investigative judge - Article 46a of the CC, also discussed under the IO.7). This presents a risk and may facilitate the dissipation of assets especially of those that might have been a subject of extended or a third party confiscation.

316. As already noted, the majority of seizure requests granted by the investigative judge concerns the cases triggered by the UIFAND. This is mainly explained by the ML risk profile of Andorra, where most of proceeds originate from the predicate offences committed abroad. Nevertheless, the seizure and the confiscation regime may also be impaired, to some extent, by difficulties faced by the Police Department (including ARO) when searching and identifying the criminally obtained property. This concerns databases available to them – apart from the companies[53], cars, boats, planes and immigration registries, police need judicial approval to access other relevant information. Therefore the fact that most of the seizure measures originate from the UIFAND analyses - which has an access to financial information/bank accounts and various databases (see under IO.6) - does not come as a surprise.

317. Despite the evident achievements attained through the legislative and institutional reforms, certain features are still missing – this primarily concerns the capacities of ARO. Namely, interviews held on-site confirmed that, although a new structure within the Police Department, ARO staff has not been systematically trained on financial investigations and asset tracing. Furthermore, no specific guidelines in this matter were provided to them. International cooperation, being of key importance in the context of Andorra, might also be negatively influenced by the facts that ARO i) has no access to the Secure Information Exchange Network Application /European Police Office software system for information exchange; ii) is not involved in EU ARO platform; and iii) is not a member of the Camden Asset Recovery Interagency Network (CARIN).

318. The UIFAND's power to postpone the transaction is used in cases when there is enough grounds/evidence that a freezing order will be issued by the investigative judge. The statistics show that this tool does not play a significant role in securing the assets. This issue has also been discussed under IO.6.

[53] As noted under other IOs companies register do not have information on beneficial ownership.

Table 14: Postponement orders followed by a seizing order

Year	Number of postponement orders issued by UIFAND to suspend transactions	Number of cases where UIFAND order was followed by a preliminary investigation and a seizure/freezing order was issued	Number of cases where a prosecution /indictment was initiated	Convictions and confiscation	
				Cases	Amount (EUR)
2010	4	3 seizure/freezing orders (1 dismissal)	1 prosecution (2 on-going investigations 1 dismissal)	(0 conviction 3 pending cases)	-
2011	2	1 seizure/freezing order (1 dismissal)	(1 on-going investigation 1 dismissal)	(0 conviction 1 pending case)	-
2012	-	-	-	-	-
2013	3	2 seizure/freezing orders (1 preliminary investigation without seizure/freezing)	(3 on-going investigations)	(3 pending cases)	-
2014	4	3 seizure/freezing orders (1 dismissal)	1 prosecution (2 on-going investigations 1 dismissal)	(3 pending cases)	-
2015	-	-	-	-	-
2016	-	-	-	-	-

319. The overall value of property seized by the LEAs appears to be high, which suggests that LEAs and the UIFAND efficiently identify, trace assets and take measures to secure them in the course of an investigation.

320. Although, the evaluation team was not provided with comprehensive statistical data, comparison of the figures available indicate that since 2011 the amounts of assets that have been actually recovered following ML convictions is high, thus demonstrating a fair level of effectiveness in executing the confiscation orders. However, it appears that in recent years the gap between seized and confiscated assets has widened. The authorities advised that various factors influenced this – on one hand strengthening the authorities' ability to trace assets has raised the amount of proceeds seized; large scale cases recently launched and yet not finalised, while some long lasting cases has not yet resulted in final verdicts/confiscation orders (see under IO.7).

321. The JAMB is responsible for managing the proceeds of crime. Meetings held on-site confirmed that the authorities made good use of resources available. For the purpose of preservation of the value of different assets, their management can be entrusted to various agencies. The JAMB decides, in consultation with the agency(ies) concerned to whom they should entrust the management of specific assets. This is done on a case by case basis. The authorities also provided the assessment team with several examples where the existing legal provisions (see also R.38) were properly applied in practice. These examples concerned some businesses seized (hotels) where administrators were appointed by the JAMB, and in which the businesses have been properly managed while the seizure order was still in place. This practice has proven to be successful since

the assets continued to generate profit. This might be of a particular importance in the cases of acquittals which would then not trigger additional burden to the state to pay the compensation request to the defendant. In case of conviction such management would equally be of benefit for the state budget.

322. Depending on the type of property frozen/seized, the competent authorities can adopt different measures for their management: i) cash can be transferred to the INAF; ii) financial assets (other than cash) can be converted into cash with the approval of the owner and then deposited to the INAF; iii) JAMB can assign the financial entity to manage the funds; and iv) for the real estate - as per the decision of the JAMB - a professional can be appointed to manage them.

Claims for restitution

323. Since the ML risk profile of Andorra mainly concerns the autonomous ML offences related to the funds unlawfully obtained in foreign countries, identification of victims appears to be a difficult endeavor. Nevertheless, the judicial authorities advised that they always made efforts to identify the victims' whereabouts, including through the rogatory letters. In cases where a victim is identified, judicial authorities give priority to the compensation of a victim, in accordance with the Article 176 of the CPC. Assets can be immediately returned to victims, even in the absence of a treaty or MoU (Art 22 of Judicial Cooperation Law).

Box 8: Compensation to victims case

Case where the victim was a foreign FI

In the framework of a ML case investigated in Andorra, the Andorran Courts were informed that the accused JFP had been already convicted in the US (in 2009) because of a fraud against a FI.

In 2008 the Andorran Courts seized the amounts of money that were the proceeds of the referred fraud (approx. EUR 4.000.000, 00) and this amount of money was transferred in 2014 to the victim of the fraud (Financial entity from the US).

324. However, Andorra does not have comprehensive asset sharing mechanisms with other countries, with the exception of the agreement the country has signed with the US. So far, asset sharing has been applied on a case by case basis. As a matter of fact, the legislation, as it currently stands, provides for asset sharing possibilities in case a bilateral/multilateral agreement has been signed. Given the importance of international cooperation for Andorra, this might negatively influence co-operation from other jurisdictions in seizure and confiscation of the proceeds from crime.

Economic penalties (fines)

325. There is no criminal liability for legal persons and the fundamental principles of domestic law do not seem to preclude that. However, as an alternative to the confiscation and restitution claims, Andorra indicated that prosecutors seek to apply fines as a way to recover assets from the legal entities (Articles 71 and 366 ter of the CC). This is enforceable when a conviction against a natural person is secured. These fines seem to be proportionate and dissuasive and they do not prejudice the criminal liability of natural persons. The amounts of fines are calculated based on several criteria indicated by the CC - Article 44 provides the *numerus apertus* list, which includes: the seriousness of the infringement; the economic situation/wealth of the person (i.e. incomes, revenues, familiar

charges, etc.), the amount of money laundered; general environment/scope of the predicate crime; possible involvement of PEPs; involvement of lawyers in concealing of assets, etc.

Box 9: F.A.O.G case

During more than 5 years, ERG, FAOG and JAMQ were opening the accounts in their names at three Andorran banking entities, for the purpose of introducing into the legal circuits the money they obtained from the illegal trafficking of narcotic drugs.

In this case, the Court considered that the circumstantial evidence is of capital importance: the disposal of large amounts of money in cash; the non-existence of legal businesses or of a professional activity which would justify the origin of money; and the connection with the illegal trafficking of drugs.

The investigation conducted by LEAs applied the "follow the money" strategy and realised that the use of different currencies was also a relevant evidence of the origin of the money.

ERG, FAOG and JAMQ were not able to prove any legal economic activity which would justify these extraordinary deposits and the financial activity which were reflected in their accounts at the aforementioned banking entities of Andorra in the period between 1994 and 2013. They did not provide any evidence of any sales which, according to their statements, were made in the name of the companies of M. G. L. Neither they provided any evidence of the international transport activity (to prove their economic activity as drivers), with frequent trips to Europe.

The accused were convicted of ML, punished with a fine of EUR 3 000 000 and more than EUR 4 000 000 were confiscated.

326. The economic penalties, which can amount up to three times the value of laundered funds, have been applied in almost all ML convictions and they appear to be dissuasive. This is consistent with the country's policy and the proclaimed principle that the targeting of the profit of the crime, with the emphasis on organised crime, is a priority.

Table 15: Economic penalties (until 30 May 2016)

Years	Case	Number of persons	Amount of economic penalty (EUR)
2010	2	3	- 300 000 - 40 000 - 120 000
2011	-	-	-
2012	1	1	- 90 000
2013	1	3	- 300 000 (x3)
2014	2	3	- 600 000 (x2) - 250 000
2015	1	3	- 3 000 000 - 1 000 000 (x2)
2016	2	2	- 1 000 000
Total	9	15	EUR 8.9 million

Statistics Limitations

327. The figures provided under this immediate outcome still present an incomplete picture of Andorra's confiscation measures applied so far. Although both judicial and law enforcement authorities keep statistics in this matter, the lack of comprehensive aggregated statistics on provisional and confiscation measures with regard to: (i) proceeds and instrumentalities; (ii) conviction (including the confiscation from a third party) and NCBC; (iii) direct confiscation or property of an equivalent value; and (iv) type of predicate offence, hampers the authorities' ability to get a comprehensive and detailed picture of the total amount of proceeds that criminals in Andorra are deprived of. It also creates difficulties to assess the degree to which the objectives of the confiscation policy are achieved. Although the available data do suggest that seizure of assets is pursued to an increasing degree[54] and that high penalties are imposed, comprehensive aggregated statistics would enable further strategic analysis determining which exact reforms might be needed.

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

328. Movements of currency across the border have been identified as a high risk for ML. In addition, the NRA states that Andorran cross border transportation of cash system could have a *medium-high* impact on TF vulnerability. However, the cross-border identification and seizure of cash seems not to be prioritised by the Customs Department. The NRA also takes into account the findings of the *FATF MER of Spain (2014)* which stated that *the majority of the cash smuggling to/from Andorra is related to tax offences committed abroad.*

329. Andorra has implemented a declaration system for incoming and outgoing cross-border transportation of cash. These dispositions were implemented in the AML/CFT Act by the Law 20/2013. Any natural person entering or leaving the country carrying EUR 10,000 or more in cash (or its equivalent in foreign currency) has to declare that sum to the Customs Department.

330. Non-compliance with the obligation to declare, due to a false declaration or a failure to declare, constitutes an infringement punished with a fine ranging from EUR 600 to maximum 25% of the amount of cash which exceeds EUR 10,000 if carried across the border (see R.32). These sanctions appear to be low and not sufficiently dissuasive. Customs are not empowered to retain cash for a reasonable period of time during which the investigative actions could be initiated and evidences gathered on potential links with ML/TF. Andorran authorities advised that this power is granted to police and can be executed at the cross border points. In 2013[55] a recommendation was made by the UIFAND, the Public Prosecutor's Office and the Police Department to the Andorran Government to establish a total retention by the Customs of undeclared/falsely disclosed cash transported in order to allow effective investigations of ML/TF.

Table 16: Cash Declarations received by Customs Department

	Inbound (EUR)	Outbound (EUR)
2014	431 236, 18	327 319, 06
2015	1 150 375	484 866, 55
TOTAL	1 581 611, 18	812 185, 61

Source: Customs Department

[54] The fact that the number of cases has increased in 2014 and 2015 may indicate that the money is being followed in more and more cases.

[55] Report regarding the transposition or Regulation 2005/1889/CE and the possibility to retain not declared cash in the border

331. The UIFAND and the Police Department are the recipients of the information related to all cash transaction reporting made to the Customs Department for cross-border transportation of cash. The Police Department carries out weekly checks on who declared cash at the border (based on its own and data provided by the Customs Department) and assess the risk in this area. Customs Department officers may also inform the Police Department officers at the border about suspicion of ML/TF in order to provisionally retain the cash. Up to now, any retention of cash has been made by the Police Department in application of the general CPC provisions and no notifications on suspicious ML have been submitted by the Customs Department. Some specific preventive measures imposed by the UIFAND on banks under TC-02/2015 are elaborated under IO.6.

332. Up until the end of 2015, no checks of vehicles for cash detection purposes were carried out. Since then, the Customs Department has performed several controls on cash flows, however they have not produced concrete results in identifying ML/TF activities (see table below). These figures may be considerably below the estimated amount of undeclared/falsely disclosed cash transported. For example, Spain[56] reported the detection of 263 travellers between Spain and Andorra carrying more than EUR 7.2 million of undeclared or falsely declared cash.

Table 17: Number of sanctions for non or false declaration

	Cases	Undeclared cash	Sanctions
2015	1	11 525 EUR	600 EUR
2016 (until 20.10.2016)	6	29 900 EUR	995 EUR
		10 065 EUR	600 EUR
		12 605 EUR	600 EUR
		10 015 EUR	600 EUR
		14 800 EUR	840 EUR
		10 000 EUR	600 EUR
TOTAL	**7**	**99 000 EUR**	**4 835 EUR**

Source: Customs Department

333. Despite limited results achieved so far, the authorities presented a case of a cross-border control operation between French, Spanish and Andorran customs. It concerns the case where this cooperation has proven successful in combating tobacco smuggling and confiscation of goods and assets obtained thereof.

Box 10: ARAMIS case

The French, Spanish and Andorran customs administrations organised a large-scale coordinated operation from 21 May to 4 June 2012 to combat tobacco trafficking from Andorra.

This operation, called ARAMIS, was attended by officials from the Regional Customs and Tax Offices of Perpignan and Toulouse from France, Spain and Andorran customs.

[56] Data taken from the FATF MER on Spain (December 2014)

Initially, this operation consisted of an exchange of information on criminal organisations specialised in tobacco and cigarette trafficking, and subsequently, in a second phase, in implementation of the specific controls and joint patrols between the participating national services. At the same time, controls were intensified at the border crossings of Andorra with France and Spain.

This operation demonstrated the mobilization and reactive capacities of the three participating customs administrations, with the aim of establishing joint control mechanisms and coordinated operational actions to combat large-scale illicit trafficking by organised groups.

During this operation, 3.280,580 cigarettes and 400 cigars were seized in customs and other controls in different countries.

Specifically in Andorra, 54 boxes of tobacco (27.333 packages) were confiscated and a total amount of EUR 150.253 were imposed as a penalty for the infringement of Article 9 1 a) of the Law of sensitive goods.

Consistency of confiscation results with ML/TF risks and national AML/CTF policies and priorities.

334. Since the NRA was issued in December 2016 and given the lack of aggregated statistics, it is rather difficult for the evaluation team to determine whether the confiscation results reflect the assessment of ML/TF risks and priorities set out in the NRA. The authorities presented figures for 2016 which indicate that the most significant seizures and confiscations concern tobacco smuggling and, to a lesser extent, qualified fraud, drug crimes and illicit association. Although the available data suggests that assets which may become the object of seizure and confiscation are pursued to an increasing degree, it seems that the authorities still face some challenges during the investigation procedure (resources available, access to databases by LEAs, judicial secrecy limits, etc.). Nevertheless, the effective implementation of measures in the action plan of the NRA, which aim to rectify these deficiencies, has to be ensured in order to continue to improve the system which is currently in place.

335. The NRA Action Plan states that '*NCBC does not apply when the person accused is acquitted because of merely formal defects during the trial, therefore a specific "in rem" civil procedure should be established.*' The assessment team supports such statement, and given the country's risk profile where most of crimes are committed abroad, introduction of the civil confiscation regime would be a significant step forward in ensuring the effective confiscation of the proceeds of crime.

336. Some of the risks concerning the cross border movement of cash did not yet result in concrete actions and measures. For example, some persons were identified acting as 'mules' - transporting someone else's cash over the border. The current system does not provide mechanisms to prove if the transported cash belongs to the holder or not. No measures have been taken in relation to this issue. Authorities reported that this trend would decrease due to the introduction of the tax crimes in the legislation and AEOI for tax purposes which will no longer make Andorra an attractive place to evade payment of tax.

337. The same can be said for other risks identified, such as cases where several persons linked by a common interest jointly transport more than 10 000 EUR but less than this amount individually, and the absence of obligation to declare precious metals and other high-value commodities at the border.

338. For these reasons, the assessment team is of the opinion that the efforts to uncover ML through transportation of cash do not reflect the risks identified. Combating cash smuggling appears not to be a priority objective for the authorities.

Overall Conclusions on Immediate Outcome 8

339. Andorra has recently taken measures to strengthen its legal and institutional framework for confiscation, based on a genuine commitment to pursue the recovery of proceeds. The overall system of provisional measures and confiscation demonstrates some characteristics of an effective system and the sanction regime seem to be dissuasive (with exception of fines for non or false declaration of cross border transportation of cash).

340. Although the amounts confiscated so far appear to be significant, there is still a considerable gap between the amounts of funds frozen and those confiscated – this being a result of various factors underlined in the previous chapters of the report.

341. Certain legal and institutional obstacles continue to limit the effectiveness of LEAs in pursuing the confiscation of proceeds from crime. Insufficient human resources, restrictive access to databases by some of the LEAs and problems identified with regard to cross-border identification and seizure of cash are the most relevant issues of concern in the current system.

342. **Andorra has achieved a moderate level of effectiveness for IO.8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key findings

Immediate Outcome 9

Andorra has enacted a robust legal framework for criminalising TF, which is largely in line with the international standards, and has conducted a comprehensive national TF risk assessment. Nevertheless, to date it is not clear what political oversight will apply to monitoring implementation of the national CFT policy and Action Plan.

Being geographically located between France and Spain, Andorra naturally relies on close cooperation with these countries for combatting terrorism and TF. Excellent relations and information exchange exist with the relevant counterparts in Spain, France and Italy.

There is no evidence indicating that Andorra's financial system might be used as a transit point for terrorist financing. Concerning foreign TF risk, the LEAs in Andorra appear to have a good understanding of the threat of recruitment, radicalisation and self-radicalisation of individuals. No evidence has been found suggesting that Andorran residents have travelled to conflict zones abroad to help foreign terrorist groups. Andorra has never been formally requested by foreign counterparts to provide information or assistance in relation to a TF or terrorism investigation conducted abroad.

The authorities have not prosecuted any type of TF activity and no convictions for the offence of TF have been secured in the period under review. Therefore, they have had no opportunity to apply in practice tools and mechanisms available to combat TF and thus test their effective implementation in practice. The two investigations carried out so far by the authorities demonstrated that they took seriously any indications or links to possible terrorist and TF activities. The absence of prosecutions and convictions for TF appears to be broadly in line with the risk-profile of the country.

Although Andorra has never directly dealt with any case of terrorism or TF, the authorities have demonstrated their understanding that this does not exclude *per se* an underlying threat of TF in the country. The NRA and the interviews held onsite confirmed that LEAs made efforts (especially at the intelligence level) to identify the sources of funds that can potentially be used for the purpose of TF.

It appears that Andorra would benefit from having a more flexible legal framework (an intelligence law) to prevent terrorism and TF in light of the evolving TF risks (such as recruitment, radicalisation or auto-radicalisation through the Internet).

The evaluation team remains concerned with the issue of judicial secrecy and its potential impact on TF investigations.

The authorities have conducted a detailed analysis of wire transfers with other jurisdictions, including high-risk countries, within the framework of the NRA. However, the possibility to monitor wire transfers data to and from high-risk jurisdictions from the TF perspective has not been fully explored by the UIFAND prior to the NRA.

Immediate Outcome 10

The TFS framework under UNSCRs 1267/1989 and 1988, and pursuant to UNSCR 1373 seems complete, and capable of applying sanctions promptly. Listing in Andorra is automatic following the UN designation and without delay. However, the assessment team could not assess the effectiveness in designating foreign or domestic terrorists since no formal request for designation pursuant to

UNSCR 1373 has ever been submitted to/by the competent authorities.

The evaluation team believes that Andorra could be more proactive in recognising terrorists and terrorist organisations designated by the EU and neighbouring countries, given the close relationship that Andorra has with those jurisdictions and risk of terrorism and TF that is found there. In practical terms, this would mean that any EU, Spanish or French designations (once in force in those jurisdictions) could have direct effect in Andorra.

The overall general level of awareness of TFS seems to be satisfactory, though some sectors (mostly DNFBPs) need additional guidance and training.

FIs, especially the larger ones, have in place robust systems to detect funds or other assets owned by designated persons or entities. However, smaller FIs and especially some DNFBPs seem to have focused less attention and resources for this purpose. The off-site supervision of FIs through the external audits on AML/CFT compliance does not include a requirement for the auditor to test the effectiveness of a FI's screening arrangements.

A limited regulatory regime for registration and supervision of NPOs does not fully target and seem not to be proportionate to the risk of abuse of NPOs for TF purposes. No formal review of the risks posed by the NPO sector had been undertaken prior to the NRA. Besides some financial accounting requirements, NPOs are not supervised or monitored by the authorities in any other manner. The NPOs met onsite had never received training by the authorities on possible misuse of the NPO sector for TF purposes, and, as a result, there was a shortage of awareness on TF risks even by NPOs operating close to the conflict areas. Still the NPOs met onsite prefer to remain a reporting entity under the AML/CFT Act, as they perceive this as an additional measure to prevent their possible misuse for TF purposes.

No positive matches have been identified with persons designated under the relevant UNSCRs, thus, no freezing of assets and instrumentalities of terrorists, terrorist organisations or terrorist financers has been applied. Nevertheless, Andorra has mechanisms and disposition to act in compliance with the core issue 10.3.

Immediate Outcome 11

The mechanism implementing PF sanctions is similar to that for TF sanctions. Andorra has a complete TFS framework pursuant to UNSCRs 1718, 1737 and their successor resolutions. No PF-related assets or funds have been frozen so far.

There is less understanding among certain DNFBPs about the obligations regarding TFS related to PF as opposed to the banking sector. Not all reporting entities were aware of the guidance on PF sanctions issued by the authorities.

Not enough evidence has been presented by the authorities to demonstrate that Andorra has robust export control of proliferation-sensitive goods and technologies. It remains unclear to the assessment team if the competent authorities have adequate understanding of proliferation risks.

The PC2 has been set up to coordinate activities and provide a platform for cooperation among the relevant authorities on, inter alia, PF issues. However, insufficient evidence has been provided by the authorities to demonstrate the satisfactory level of co-ordination and cooperation (including on information/intelligence sharing) across all relevant authorities in relation to PF matters.

Recommended actions

Immediate Outcome 9

- As suggested in the NRA, Andorra should further develop a clear national CFT strategy built on the existing Action Plan, whilst PC1 should be used to strengthen inter-agency co-operation on

TF issues, especially at the policy level.

- Regular or at least periodic assessments of aggregated wire transfers with countries having a high-risk of terrorist activities to detect any potential TF suspicion should be continued by the UIFAND.
- As proposed in the NRA Action Plan, Andorra should consider introducing legislation on operational intelligence services to provide the authorities with a more comprehensive legal framework in the context of TF and terrorism prevention.

Immediate Outcome 10

- Andorra should conduct proper and comprehensive periodical monitoring of all NPOs operating in the jurisdiction to: (i) form an objective analysis of risks posed by the sector; (ii) identify those NPOs at risk from terrorist abuse; and (iii) conduct outreach and exercise oversight of those identified as presenting a risk.
- Training on possible misuse of the NPO sector for TF purposes should be provided to the entire NPO sector as a matter of priority.
- In light of the close economic and political ties with neighbouring jurisdictions, the authorities should consider recognising lists of terrorists and terrorist organisations designated in particular by the EU, France and Spain.
- The work of the PC2 should be enhanced through more active participation of the Police Department and ensuring that the agenda of the Committee routinely covers TFS issues, including how sanctions may be evaded.
- The authorities should include a requirement for the auditor to test the effectiveness of a FI's TFS screening arrangements during AML/CFT audits. They should also consider the adequacy of supervision of DNFBP compliance with TFS sanctions given the limited number of supervisory on-site visits conducted to date.
- Regular training on the proper implementation of TFS should be provided to reporting entities and specifically to gestorias and other DNFBPs.

Immediate Outcome 11

- The authorities with CPF competences should be trained on the risks of PF (including on typologies and indicators of proliferation-related sanctions evasion activity, risks of abuse of proliferation-sensitive goods and technologies, and the FATF typologies and best practices paper) in order to develop capacity in this area.
- The authorities should ensure that the agenda of PC2 regularly covers PF issues, including how PF sanctions may be evaded. The Police Department should regularly take part in the meetings of the Committee.
- Further training and awareness-raising activities, including on the ways in which PF sanctions could be evaded, should be provided to the reporting entities by the UIFAND and specifically to gestorias and other DNFBPs.

Immediate Outcome 9 (TF investigation and prosecution)

Prosecution/conviction of types of TF activity consistent with the country's risk-profile

343. In the period under review the authorities have not prosecuted any type of TF activity and no convictions for the TF offence have been secured. As noted in Chapter 1, Andorra has conducted a detailed national TF risk assessment in 2016, which concluded that the overall TF risk for the country is medium-low.

344. The methodology applied to assess TF risk in Andorra examines both domestic and foreign TF risk. The authorities have analysed different factors related to the sources of funds lawfully and unlawfully generated within Andorra that may potentially be used for the purpose of TF. So far, there have been no cases of domestic TF detected.

345. With regard to foreign TF risk, the NRA acknowledges that there is a possibility of recruitment, radicalisation and self-radicalisation of individuals. The LEAs in Andorra appear to have a good understanding of this relatively new threat and work closely on the matter with Spain and France. Apart from some unconfirmed suspicion held by Andorra in the form of intelligence information, no evidence has been found suggesting that Andorran residents have travelled to conflict zones abroad to help foreign terrorist groups. The NRA also acknowledges that Andorra might be used as a transit point for terrorist financing. However, there is no evidence that this is actually occurring.

346. At the time of the onsite, the UIFAND, the Police Department and judicial authorities have never been formally requested by foreign counterparts to provide information or assistance in relation to a TF or terrorism investigation conducted abroad. This supports the finding of the NRA that, so far, no links have been found between Andorran residents and terrorists/terrorist organisations. There are also no indications that terrorist networks operate in Andorra.

347. In principle, the assessors deem that the conclusions of the NRA in relation to IO.9 are reasonable. The absence of prosecutions and convictions for TF, therefore, appears to be broadly in line with the risk-profile of the country.

TF identification and investigation

348. Potential TF is identified through intelligence collected by the Police Department, SARs submitted and through international cooperation. The main source of information used to identify potential TF cases has been the intelligence information generated by the specialised groups of the Police Department.

349. The Police Department is the law enforcement agency authorised to investigate any suspicion of terrorism or TF. There are two dedicated anti-terrorism teams established within the Police Department to proactively investigate, gather operational intelligence and exchange it with the equivalent foreign counterparts.

350. If the different Police groups in charge of the terrorism-related cases were to suspect terrorist activity, the suspicion would be communicated to the divisions of the Police Department in charge of financial investigations in order to conduct a parallel financial investigation. Moreover, there are specialised investigative sections of the Courts (investigative judges) competent to deal with potential TF investigations. Therefore, it appears that Andorra has the necessary mechanisms and resources in place to proactively work to detect terrorism and TF cases and is able to deal with them if detected.

351. Between 2011 and 2016, three SARs which had been reported to the UIFAND contained some suspicion of TF. However, two of the cases did not confirm the suspicion. The first case turned out to be a Nigerian scam involving a person from West Africa. The description of the second case is provided in the case study box below. The third case is under investigation (see Box 12 below).

Box 11: Case of TF suspicion analysed by the authorities

In July 2013, a SAR was submitted to the UIFAND by one of the banks in relation to an unusual transaction conducted by a client of the entity. Although the SAR was originally presented as a ML-related SAR, a small component of TF suspicion was identified by the UIFAND.

The bank detected that one Andorran legal entity had received wire transfers from Germany, and subsequently, part of these funds had been withdrawn in cash in Paris. One of the persons related to this company was an Andorran resident with Moroccan nationality. The UIFAND initiated a joint preliminary investigation with the Police Department to determine if this could be a TF or terrorism related case. Finally, after having checked all the details of the case with the law enforcement counterparts, no indications that could point to TF or terrorism were found.

352. The evaluation team believes that the UIFAND should be proactive in analysing data on wire transfers with high-risk jurisdictions/clients at least on a periodic basis. This may help the authorities to reassure that any potential indication of terrorism or TF activity is detected. The assessment team also considers that the low number of TF-related SARs from reporting entities can be explained, in part, by insufficient awareness among reporting entities on TF threat.

353. During the period under review, the authorities conducted one investigation indirectly related to terrorism and there is one investigation of potential TF which is ongoing. The first investigation was opened further to the discovery of a symbol potentially linked to ISIL by the Police Department during a search conducted in the context of the investigation of another crime. The investigation focused on this particular issue and, after investigating for a year, it found that no links with terrorism or TF existed. Since no further evidence or suspicion was found, this case was closed. Nevertheless, the authorities confirmed that the former suspect of that investigation remains under close surveillance by the Police Department. The second investigation is still ongoing, and therefore, a very brief description of it is given in the Box below.

Box 12: Case of TF suspicion *(still under investigation)*

Based on a SAR submitted to the UIFAND, an analysis pointed out that some suspicious financial transactions with a credit card were being conducted in relation to a high-risk area and the usual routes to it.

This information is being used by the GPO and the units of the Police Department in charge of terrorism and TF. Close cooperation is set with the foreign counterparts to join efforts in investigating the potential TF. Andorran authorities assured the assessment team of their pro-activity, with regard both to national and international aspects of the case.

354. Additionally, the evaluation team was informed that LEAs possess some intelligence regarding isolated and not confirmed cases of potential radicalisation or auto-radicalisation (mainly through the Internet) and some not confirmed information on foreign fighters in relation to ISIL and its affiliated organisations.

355. Although, fortunately, the authorities have not had yet the opportunity to apply in practice the tools and mechanisms available to combat TF (and thus test their effective implementation in practice), in the two investigations mentioned above, the Police Department, UIFAND and the GPO took seriously into account the indications or links to possible terrorist activities.

356. So far, to conduct operational intelligence services, the Police Department has applied the general legal framework (applicable to all criminal acts) which it considers to be not fully apt for terrorism and TF investigations in some circumstances. As was identified in the NRA and then confirmed during the interviews, the Police Department deems that a more flexible legal framework to prevent terrorism and TF is needed. The needed intelligence law, in their view, should enhance Police Department powers and equip it with flexible tools to face the new challenges and trends related to terrorist international operations (such as recruitment, radicalisation or auto-radicalisation through the Internet). Notably, this refers to a more flexible application of special investigative techniques encompassing intervention in communications, banning of webpages promoting terrorism or radicalisation, etc.. In fact, the need for a formal discussion at a high political level to consider the introduction of a new law has been suggested in the NRA Action Plan.

357. Informal domestic cooperation between the relevant competent authorities involved in the prevention and detection of ML and TF is well-established in Andorra. Within 24 hours after the detection of a TF suspicion, a joint meeting of competent authorities (UIFAND, Police and the General Prosecutor Office) has to be held in order to coordinate further actions. Besides, regular and similar meetings take place to update all relevant authorities of the advancement of the case.

358. The evaluation team is concerned about judicial secrecy in Andorra and its potential impact on TF investigations. Judicial secrecy can only be maintained for up to 6 months (elaborated under IOs 7 and 8). After that period, a judge, upon request from a person under investigation, is obliged to disclose to that person the information about the on-going proceedings which concerns him/her. This may jeopardise very sensitive TF investigations should they be opened in the future. This can also impair potential MLA assistance as it could compromise investigations under secrecy which are being conducted.

359. Despite the fact that Andorra has never directly dealt with any case of terrorism or TF, the authorities have demonstrated their understanding that this does not exclude *per se* an underlying threat of TF in the country. The NRA and the interviews held onsite confirmed that LEAs made efforts (especially at the intelligence level) to identify the sources of funds that can potentially be used for the purpose of TF. Special attention has been paid to the crimes considered in the framework of the NRA as a possible source of TF.

360. Tobacco smuggling has been recognised by the international community as a relatively common instrument worldwide to finance terrorism. LEAs have demonstrated that investigations of domestic tobacco smuggling are considered as high priority. They have conducted a number of parallel financial investigations in these cases. Up to now, these parallel financial investigations have always led to ML investigations and not to TF cases.

361. Notwithstanding the fact that cross-border transportation of cash has never been detected or suspected to be used for terrorist purposes, the assessors are concerned about the substantial level of cash smuggling through Andorra (especially in the light of Spanish data regarding the number and amount of detected cash smuggling cases in the Spanish side of the border with Andorra, however these flows were not related to TF but to tax crimes)[57]. For example, in 2015, according to

[57] The FATF report of Spain: http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Spain-2014.pdf

information provided by Spain in the international cooperation feedback, the Spanish authorities intercepted more than EUR 1.5 million of cash coming from Andorra.

362. Cash smuggling creates a certain vulnerability that could be exploited for TF purposes in Andorra as well as in neighbouring countries. The existing controls in place are weak and some major technical deficiencies remain in the Andorran legal framework which requires improvement. On the other hand, it should be emphasised that the authorities fully understand the existing deficiencies of the cash control regime and concrete steps to improve the system have already been taken. The mitigating measures include the strengthening of cash border controls from both the legislative and operational perspective: relevant legislative reform has been initiated and at the time of the on-site visit a draft law on cross-border transportation of cash had been prepared.

363. When asked about whether there were any signs of the use of "Hawala" or similar informal money transfer services detected in Andorra, the authorities interviewed onsite confirmed that no indications that such activities are taking place in the country have been found. The authorities also indicated that the use of on-line payment systems and e-wallets is not common in Andorra.

364. There are also some concerns about the absence of the criminalisation of smuggling of goods (apart from tobacco) that limits the ability of the authorities to detect and combat antiquities smuggling, the proceeds from which could be used by the Islamic State. Although no such cases have been identified to date, this technical deficiency could adversely impact on the effectiveness of the CFT system once tested in practice. Andorran authorities advised that such goods would be detected through the use of Interpol databases or WCO platforms and assured that the provisions on illicit trafficking of stolen goods would apply.

365. The issue of adequacy of human resources for CFT has also been raised during the onsite. Although, the human resources issue is not a matter of urgent concern, the evaluation team agrees with the conclusion of the NRA that the number of available law enforcement staff, specifically in the investigative section of the Courts, should be increased. Notwithstanding the fact that the lack of human resources appears to be a general deficiency of the Andorran AML/CFT system, the authorities confirmed that absolute priority would be given to any potential TF case.

366. Some CFT training and capacity building activities have been provided to the competent authorities outside of Andorra, in France, Spain and Italy. However, this happens occasionally. The lack of regular training is partially compensated by close cooperation with the Spanish competent authorities, who have been sharing their experiences and techniques in the CFT field. In this regard, the authorities referred to regular trainings and workshops provided to the Police Department by the Centre on Deactivation of Explosives of the Spanish police.

367. Given the near absence of TF cases in Andorra, international cooperation on terrorism and TF is mostly conducted on an informal rather than a formal basis. In the period under review, the competent authorities have never been formally requested by foreign counterparts to provide information on or assistance in relation to a TF or terrorism investigation conducted abroad.

368. The authorities have demonstrated that they have very good information/intelligence sharing with the equivalent foreign bodies (especially with France and Spain). The Public Prosecutor's Office plays a pivotal role in the international cooperation process and is very pro-active in seeking and providing different forms of international cooperation and assistance, including on an informal basis. Cooperation and information exchange with Spain and France at the operational level is conducted on a daily basis through direct contact persons in both countries. In this regard, the authorities confirmed that they pay special attention to any suspicion of TF they detect or are informed of.

369. In September 2015, Andorra and Spain signed a convention on combating crime and on safety, where both states among other things undertook to work together against terrorism, and its financing. Andorra has also signed a MoU with Italy, including on combating TF. The work on another two MoUs, one with France and one with Belgium, is under way. The TF risks of misuse of credit cards in conflict zones have recently been discussed in Madrid with the competent authorities of Spain and other countries.

TF investigation integrated with -and supportive of- national counter-terrorism strategies

370. To date, Andorra has had no overarching national strategy to combat terrorism and TF. After the completion of the NRA, the authorities have developed a detailed Action Plan that includes a list of measures to mitigate the TF risks. The next step envisaged by the Action Plan is to formally establish a clear national policy and strategy to prevent and fight TF.

371. Andorra has two permanent committees responsible for preventing and combating TF, however certain deficiencies regarding their effectiveness have been highlighted in the NRA and during the onsite visit. Although interagency co-operation on TF issues is well established and features a proactive approach at the operational level, the policy level still appears to have some shortcomings. For example, the implementation of the FATF and MONEYVAL recommendations are the main fields of intervention by PC1 in practice. Moreover, some relevant competent authorities such as the Police Department, Tax and Customs Department have not participated in the meetings of the groups on a regular basis. There are also shortcomings in the coordination and interaction between the PC1 and PC2, which are expected to be resolved soon further to the authorities' decision to merge the two committees into one.

Effectiveness, proportionality and dissuasiveness of sanctions

372. In the period under review, there have been no TF prosecutions and convictions, therefore, the evaluators were unable to assess whether sanctions or measures applied against natural persons convicted of TF offences are effective, proportionate and dissuasive. Nevertheless, it has to be noted that in 2014 Andorra increased penalties for TF (the basic sanction for TF offence went from 2 to 5 years of imprisonment to 2 to 8 years; the sanction for aggravated TF offence went from 3 to 8 years of imprisonment to 3 to 10 years).

Alternative measures used where TF conviction is not possible (e.g. disruption)

373. So far, no specific measures have been adopted by Andorra to disrupt TF activities as there has been no evidence of TF in Andorra. The authorities stated that if propaganda of terrorism or radicalism through the Internet is found, they would be able shut down such websites.

Overall Conclusions on Immediate Outcome 9

374. Even though there have been no prosecutions for TF, the proactive approach taken by LEAs in cases of potential suspicion of TF demonstrates that the authorities have not been inactive in the field of CFT. The Public Prosecutor's Office, the judicial authorities and the Police Department are well aware that the small size of the country does not exempt them from addressing this problem, particularly in view of Andorra's geographical proximity to regional terrorist activities and the opportunities it provides as a financial centre. The evaluation team concludes that Andorra has sufficient/appropriate mechanisms and practices in place to investigate the financial aspect of terrorist activities when necessary.

375. **Andorra has achieved a substantial level of effectiveness for IO.9.**

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

376. As noted in more details in the Technical Annex (cf. R.6), Andorra has adopted legislative amendments in 2014 in order to implement TFS without delay, in compliance with UNSCR 1267, its successor resolutions and UNSCR 1373.

377. According to Article 68 of the AML/CFT Act[58], the PC2 prepares and publishes on the UIFAND's website a "*list of names and circumstances of persons and entities deemed to have links with terrorist activities, the financing of terrorism, or financing of the proliferation of weapons of mass destruction*". The persons included on the list shall be the following: (i) Persons or entities listed by the corresponding UN committee; (ii) Persons or entities designated by the Andorran state; (iii) Persons or entities based on a request submitted by a foreign state.

378. The persons or entities listed by the UN Sanctions Committee (i) are automatically included by law. The consolidated list drawn by the UN Sanctions Committee is therefore directly applicable in Andorra and is available on the website of the UIFAND through a link on the UIFAND's webpage. Therefore, TFS under UNSCRs 1267/1988 and 1989 and subsequent resolutions are implemented without delay. For domestic designations (ii), the inclusion of persons or entities on the list has to be issued and published by the PC2. Therefore, the mechanism for designation exists, but has never been used by Andorra so far.

379. Finally, implementation of requests by foreign states (iii) goes through PC2 which has to consider and, if appropriate, give effect to requests sent by other countries to include a person on the list. The PC2 has discretion in this respect to assess whether there are reasonable grounds to justify the inclusion of persons and entities in the lists. Should it conclude that there are reasonable grounds for such inclusion, it issues a specific resolution in this matter. However, to date, no requests have been made to Andorra by foreign jurisdictions and, therefore, there are no persons or entities included on the Andorran list on the basis of a foreign request.

380. Regarding the mechanism for informing the private sector, reporting entities are obliged to consult the UIFAND's webpage (updates of the UN consolidated sanction list are automatically published). Additionally, e-mails are sent to obliged entities identified by the authorities as presenting a higher TF risk and professional bodies to inform them about any update of the lists. Nevertheless, not all DNFBPs are covered by these emails. It appears that for a certain number of reporting entities, specifically DNFBPs, the only way to know about changes in the lists is to consult the UIFAND's webpage. This might cause delays in the implementation of TFS. In fact, some associations of professionals indicated that they consult the UIFAND's website on a weekly basis.

381. The UIFAND has recently transmitted comprehensive guidance on the implementation of TFS to the private sector, which among others describes how to implement TFS, freeze assets, make a SAR, etc.[59] However, the evaluation team could not assess the extent of implementation of the guidance and its impact on reporting entities given that it was transmitted shortly before the on-site

[58] As amended by Law 4/2014

[59] http://www.uifand.ad/images/stories/Docs/Guies/Guia_Aplicac_Recom_6_7.pdf

visit. The UIFAND has also issued guidance on TF risk on NPOs, based on a FATF document issued in June 2014; it was disseminated by Andorra only in March 2017.

382. Banks and their investment and insurance subsidiaries have developed their own automated screening systems to check clients and beneficial owners of customers against sanctions lists whereas non-bank FIs and DNFBPs tend to use commercial databases (mostly World-check). Some less resourced DNFBP's, such as lawyers, have access to those commercial databases through their professional associations.

383. The UIFAND confirmed that the testing of the sanctions screening systems took place during its inspections. The inspection programme, however, was significantly cutback in 2015 and 2016 as a result of: i) a banking failure which required significant resources from the UIFAND; and ii) the NRA findings. In view of this, fewer tests have been carried out. Although FIs are subject to off-site supervision through the external audits on AML/CFT compliance, this does not include a requirement for the auditor to test the effectiveness of a FI's screening arrangements. The evaluators also found out that the MTVS provider in the country only updates its list on a monthly basis. This MVTS provider has not been inspected by the UIFAND. In addition, not all FIs record data on their customers in electronic form, especially when it concerns numbered accounts. Some CDD information is kept physically and some electronically therefore checking lists to seek potential matches may prove difficult and matches may be missed.

384. The evaluation team also noted that some DNFBPs (e.g. accountants and real estate agencies) were not equipped with commercial databases and, although trainings were provided since 2013 by the UIFAND, were not sufficiently aware of the UN sanctions lists, the controls to apply and the measures to take in case of a positive hit. These professionals seemed to rely on the Andorran Foreign Investment procedures' checks performed by the Government as well as by Andorran banks. Both DNFBPs and also some small FIs indicated that there was lack of information and training provided by the UIFAND in this respect. Banks demonstrated a satisfactory level of understanding of TFS.

385. Chapter 7 explains the measures that are in place to prevent the misuse of Andorran companies. These checks include: (i) controls exercised over foreign investment by the Ministry of Tourism and Commerce; and (ii) use of notaries, both of which also take account of TFS. Similar controls are applied to the acquisition of real estate.

Targeted approach, outreach and oversight of at-risk non-profit organisations

386. Despite the small size of the country, Andorra has a large number of NPOs. According to the NRA, there are 659 registered NPOs. NPOs in Andorra can take two legal forms: foundations (28) and associations (631).

387. The Constitution of Andorra provides that the right to form an association is a fundamental right and that the registration of associations cannot be mandatory. The assessment team was assured onsite that in practice there are no non-registered associations, as carrying out financial and any other activities would require registration in Andorra.

388. Nevertheless, the evaluators consider that since no proper analysis of the sector is periodically carried out, the possibility of the existence of non-registered associations and their potential misuse for TF purposes cannot be completely eliminated; the authorities should thus consider registering all associations to ensure improved monitoring.

389. The NPO sector is regulated mainly by the Law on Associations, the Regulation on the Associations Register, Law on foundations and the Regulation of the Foundations Registry and Protectorate of 1 April 2009 (Foundations Regulations). NPOs in Andorra are reporting entities

under the AML/CFT Act. In addition, the AML/CFT Act also provides that NPOs shall be required to retain for five years the identification data concerning persons to whom funds are paid and the documents mentioned in Article 28 of the Law on Associations (register of members, book of minutes, inventory of assets and accounting registers relating to the association's activities).

390. Even though the regulations on associations and foundations include some elements to promote transparency and integrity of the registration and management of NPOs, it is the evaluators' view that at this stage they do not target the risk of abuse of NPOs for TF purposes.

391. Nevertheless, no formal review of the risks posed by the NPO sector had been undertaken before the NRA. The NRA analysis of the NPO sector in Andorra was carried out based on the findings of the FATF 2014 typology report on NPOs[60], distinguished between NPOs carrying out 'service'[61] and 'expressive'[62] activities. 87% of the NPOs in Andorra carry out expressive activities, while 11% is involved in service activities, and 2% carries out both service and expressive activities. Following the findings of the FATF Report[63], the authorities have identified 28 NPOs acting as "*service NPOs*" in the international context, including 7 NPOs operating in places relatively close to conflictive areas (e.g. Burkina Faso, Uganda or others), and considered them as the riskiest ones.

392. While these figures do not seem to be too alarming, nevertheless, a proper and comprehensive monitoring and supervision of all the NPOs operating in Andorra is necessary to prevent the misuse of NPOs for TF purposes.

393. The NPOs regulations provide for a number of conditions for registration, as well as requirements to maintain updated information. However there is a complete lack of supervisory, monitoring or sanctioning mechanisms. Although the registering authorities are mandated to carry out verification of NPOs while registering, no proper mechanisms for verification of the registering NPOs are in place and no corresponding measures are being performed by the authorities. The registrars do not have access to, or any connection with the databases of other state authorities, such as the UIFAND or the Police Department, thus, only basic formal requirements are observed by the registering authorities. If during the registration process, there is the suspicion of criminal activity in the light of the presented documentation the registrar must notify the Minister of the Interior, who may refer the matter to the prosecution. Nevertheless, the authorities met onsite could not recall a similar experience.

394. Domestic legislation merely requires NPOs to keep a register of members, minutes, an inventory of assets and accounting registers relating to their activities. Foundations are also subject to accounting obligations (article 22 of the Law on Foundations). According to the authorities, when NPOs receive public funds, they are subject to enhanced control, which means that income and the payments carried out by the NPO and the accounting records are verified by the Andorran authorities.

395. Other than these forms of financial accounting, NPOs are not supervised or monitored by the State authorities in any other manner. The NPOs met onsite, including an NPO which received around 40% of its funding from the Government, indicated that they had never been under any type

[60] The FATF report (June 2014) – "Risk of terrorist abuse in non-profit organisations".

[61] Service activities – housing, social services, education, health care.

[62] Expressive activities – sports and recreation, arts and culture, interest representation, advocacy.

[63] The FATF Report states that "*service NPOs principally engaged in the provision of humanitarian services present the most desirable targets for terrorist entities*".

of supervision or monitoring by the authorities, besides annually reporting basic financial information to the authorities. No audits had ever been carried out in the NPOs met onsite. Domestic legislation envisages no sanctioning regime for NPOs, other than criminal sanctions, which have never been applied in practice, and sanctions with regard to breaches in tax activities. The authorities met onsite did not have information, and by law are not required to possess any information on the foreign states which NPOs cooperate with. Prior to the NRA, no analysis had been conducted by domestic authorities in relation to associations operating close to conflict areas. Furthermore, there was no proper assessment of the TF risks posed by the misuse of NPOs, and no designated authority that can conduct such an analysis.

396. The NPOs met onsite had never received training by the authorities on the possible misuse of the NPO sector for TF purposes, and, as a result, they were insufficiently aware of the risk, including those operating close to conflict areas. The NPOs met onsite, had never seen the necessity to undertake a risk analysis before working in a new environment or with new partners. This, however, seemed to be due to a lack of awareness, rather than a careful scrutiny.

397. According to the authorities, the majority of NPOs are funded from sources in Andorra, either by the Government, or public funding and fundraising activities. The NPOs met onsite demonstrated a sufficient level of caution with regard to accepting funding from unknown sources, indicating that due to the size of the country, they always know personally the individuals who make the donations, and the purpose of such donations. Nevertheless, it was also observed that they had encountered cases of anonymous monetary transfers which they had accepted. Even though the NPOs did not *per se* assess the context and terrorism and TF risks and vulnerabilities in the geographical areas in which they planned to operate, their profile and operations appear not to bear specific risk of being abused for the criminal activities purposes. Despite the fact that NPOs are currently reporting entities under the AML/CFT Act, no NPOs have ever submitted an SAR to the UIFAND.

398. Moreover, the NPOs met onsite were not properly informed and did not have any understanding about their functions and obligations as a reporting entity. Considering that the FATF standards do not require NPOs to be reporting entities, the NRA suggests that NPOs should be removed and not appear as reporting entities. According to the NRA, a general framework regulating the activities of the NPOs and proper rules of financial transparency would ensure the prevention of TF more effectively than the applications of all the obligations established under the AML/CFT Act. Despite this reasoning, the registrars of NPOs consider that the removal would not be desirable, as being a reporting entity has never been a cause for concern for NPOs, and it can serve as an additional guarantee for combating the possible misuse of NPOs for TF purposes.

Deprivation of TF assets and instrumentalities

399. No confirmed positive matches have been identified with persons designated under the relevant UNSCRs, thus, no freezing of assets and instrumentalities of terrorists, terrorist organisations or terrorist financers has been applied. Nevertheless, Andorra has the mechanisms and the disposition to act in compliance with the core issue 10.3.

Consistency of measures with overall TF risk profile

400. Despite the fact that Andorra has never detected any terrorist or TF activity within its jurisdiction, the two countries neighbouring Andorra, namely France and Spain, have a significant level of exposure to terrorism and TF risks. Many other European countries have also suffered from recent terrorist attacks. Moreover, Andorra has very close economic and political ties with neighbouring jurisdictions.

401. Therefore, the evaluation team believes that Andorra could consider recognising terrorists and terrorist organisations designated by the EU and neighbouring countries, given the close relationship that Andorra has with those jurisdictions and the risk of terrorism and TF that is found there. In practical terms, this would mean that the EU, Spanish or French designations could also have a direct effect in Andorra. This could strengthen the TFS framework of Andorra and further ensure that its financial system cannot be exploited by terrorists and terrorist financiers from neighbouring countries and the EU.

Overall Conclusions on Immediate Outcome 10

402. Andorra appears to have a complete and appropriate TFS framework. Nonetheless, the communication between supervisors and FIs on changes in the lists is not done promptly. In addition, the supervision over DNFBPs needs further improvement. A targeted approach, outreach and oversight in dealing with NPOs at risk have not been implemented and conducted. The possibility to recognise the EU and neighbouring countries TFS lists to prevent the risks of its financial system being exploited by designated terrorists/terrorist organisations has never been considered by Andorra despite close political, economic and social ties with neighbouring jurisdictions.

403. **Andorra has achieved a moderate level of effectiveness for IO.10.**

Immediate Outcome 11 (PF financial sanctions)

Implementation of targeted financial sanctions related to proliferation financing without delay

404. The mechanism implementing PF sanctions is similar to that for TF sanctions. It appears that Andorra has a comprehensive TFS framework pursuant to UNSCRs 1718, 1737 and their successor resolutions, which is properly implemented. Listing in Andorra is automatic after UN designation and without delay. To date, no funds, assets or economic resources have been frozen under PF-related UNSCRs.

Identification of assets and funds held by designated persons/entities and prohibitions

405. FIs, especially the larger ones, have in place robust systems to detect funds or other assets owned by designated persons or entities. The majority of private sector participants rely on commercial databases (predominantly World-Check) to screen customers. Nevertheless, some DNFBPs seem to have focused less attention and resources for this purpose.

406. The PC2 has been set up to coordinate activities and provide a platform for cooperation between the domestic authorities, including on PF issues. The assessors had a chance to look through the minutes of the PC2 meetings which revealed that PF issues had rarely been discussed in practice. Neither the minutes of the PC2 meetings nor the interviews conducted onsite provided sufficient evidence to demonstrate that the risk of proliferation-related sanctions evasion has been considered by the Committee. Besides that, as has already been mentioned under IO.9, there are some underlying concerns about the effectiveness of the work of the PC2. The participation of the Police Department in PC2 has been limited, which apparently negatively influenced the activities of the Committee.

407. It appears that the possible sanctions evasion activity and the level of the country's exposure to this risk, for example, through the use of shell companies, have never been discussed between the

competent authorities, at least at the intelligence level. There is little evidence of any co-ordination and cooperation activities being conducted between domestic competent authorities in relation to PF matters.

408. Moreover, the evaluation team was not provided by the authorities with enough evidence to demonstrate that Andorra has a robust export control regime for proliferation-sensitive goods and technologies in order to identify situations where there may be connections with designated persons. The authorities indicated that Andorra does not have manufacturers of defence materials and, therefore, does not produce controlled military or dual-use goods. Nevertheless, this does not exempt Andorra from the risk of being exploited as a transit country for the PF activities. Nor does it appear that the risks inherent in operating as a regional financial centre or activities of Andorran companies abroad are taken into account. The evaluation team has also considered the risk and the context of the country, in particular the fact that Andorra is located between Spain and France, both of which produce a wide range of controlled military and dual-use goods. In case of Spain, the last FATF mutual evaluation of the country conducted in 2014 identified that Spain has a significant exposure to the risk of proliferation-related sanctions evasion, mainly in relation to Iran.

409. There are no export licensing or similar requirements in Andorra, except for arms. Although Andorra is not a member of the EU, the Principality is treated as an EU member when it comes to trade in manufactured goods (no customs duties). To date, there have been several exports of goods to Iran which have the characteristics of dual-use goods. Andorra was acting as a transit country in those export transactions. Though a documentary control was made by the Customs Department, it seems that no physical inspection of the goods exported to Iran was conducted.

410. There have also been several exports of goods to North Korea. However, the amount of total exports to DPRK is negligible.

411. Nevertheless, it seems that the information on companies involved in the export operations either with Iran or DPRK has never been shared by the Customs Department with the UIFAND. Therefore, this information had not been studied by the UIFAND and no checks had been conducted on the parties (legal persons or entities) of the export contracts in order to detect any potential attempts to evade sanctions through the use of legal structures.

412. It should be noted that in 2015, Andorra, through a TC issued by the UIFAND, prohibited all commercial transactions with Iran and DPRK. Since then, there have been no exports from Andorra to Iran or DPRK.

FIs and DNFPBs' understanding of and compliance with obligations

413. Reporting entities[64], other than large FIs (including insurance and asset management companies owned by banks) have much less awareness of UN sanctions regime related to the PF. It should also be noted that some smaller FIs do not even see a need to consult the lists on the basis of their client base, given that their clients are typically Andorran or Spanish nationals whom they know well.

414. The authorities issued a comprehensive guidance[65] on TFS in February 2017, shortly before the on-site visit. With the exception of reporting entities affiliated to professional associations that disseminated the UIFAND's guidance to their members, the evaluation team has no assurance that all reporting entities were properly informed about the requirements to prevent PF and it was not

[64] Specifically: dealers in precious stones and metals, jewellers, real estate agencies, accountants, company service providers.

[65] Guidance on the application of restrictive measures: FATF Recommendations 6 and 7.

possible to assess the effectiveness of the guidance due to its recent publication. Nevertheless, those reporting entities met onsite were aware of the guidance.

415. The evaluation team remained concerned about the level of understanding of and compliance with the TFS obligations among *gestorias*. Given the lack of supervision over this sector and a general little knowledge of the PF-related sanctions, it is unlikely that *gestorias* consider PF risk when forming companies.

Competent authorities ensuring and monitoring compliance

416. The UIFAND is responsible for monitoring and ensuring compliance by FIs and DNFBPs with their obligations regarding proliferation related TFS. The supervisor does test screening systems in place (TF and PF) as part of its on-site supervisory work and to date has found no exceptions.

417. With regard to communicating changes to the PF and TF lists – a two-fold approach is followed by Andorra: (i) changes to the lists are automatically published in the UIFAND's webpage and (ii) additionally, for those sectors with a higher risk, e-mails are sent to inform them about any update of the lists. Nevertheless, as mentioned above under IO.10, updated information on the lists is not systematically communicated to all reporting entities. As a result, there may be situations where some FIs or DNFBPs which are expected to look at the UIFAND website may not be aware of new designations or de-listings for some time.

418. The external audits of FIs on AML/CFT compliance conducted as part of the UIFAND's off-site supervision do not include a requirement for the auditor to test the effectiveness of a FI's screening arrangements for PF. Also, not all FIs record data on their customers in electronic form, especially when it concerns numbered accounts. In practical terms, this means that, in cases where CDD information related to customers is mainly recorded physically and only some information electronically, checking the lists in order to seek potential matches can become difficult and matches may be missed.

Overall Conclusions on Immediate Outcome 11

419. It is clear that there is a system in place to freeze property of persons identified under UNSCR PF lists. However, the assessors consider that Andorra is not taking sufficient steps to address all the issues surrounding proliferation. There is a lack of awareness of TF-related UN sanctions regime with certain reporting entities. The competent authorities involved at the governmental level in export control of proliferation sensitive materials do not seem to be well aware about the PF risks. The work of the PC2 is not entirely effective and there is little evidence on interagency co-ordination and cooperation in PF matters.

420. **Andorra has achieved a moderate level of effectiveness for IO.11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

FIs and DNFPBs have explained that they have a low risk tolerance, in part as a result of action taken by the authorities following a banking failure. Notwithstanding this, the use of cash continues to be quite extensive and action against tax evasion (though not a criminal offence at the time of the on-site visit) has been taken quite recently.

Large FIs assess and broadly understand their ML /TF risks, both domestic and cross-border, but it seems that they may be down-played to some extent. Smaller FIs and DNFBPs appeared less clear about risks, but operate straightforward business models for a limited number of customers. Notwithstanding this, it seems that insufficient attention is given by them to factors other than customer risk.

Most FIs and DNFBPs classify their clients into risk categories in order to apply appropriate CDD measures. However, some of the methodologies followed for classifying risk are not yet fully adapted to the specificities of their customers or their activities. There is quite a large variation amongst banks in the percentage of customers considered to present a higher risk.

FIs and DNFBPs generally demonstrated a strong commitment to applying AML/CFT obligations, though the UIFAND has uncovered cases where CDD has not been properly applied. A number of factors, including action taken by the authorities, have encouraged most to strengthen their AML/CFT policies and procedures, although screening procedures to ensure high standards when hiring employees appear light. Not all parts of the DNFBP sector appear aware of their AML/CFT responsibilities.

This commitment to applying AML/CFT obligations was not evident at the failed bank. There is still doubt about the origin of funds for a large number of customers which will form the basis for a substantial number of SARs.

The application of simplified CDD measures is quite limited and risks appear to be managed. Very little reliance is placed on CDD undertaken by third parties. Preparation for the AEOI for tax purposes and criminalisation of tax evasion has reinforced the need to consider the provenance of funds.

FIs and most DNFBPs comply with obligations to keep documents (some indefinitely) and monitor business relationships. Practices for ensuring that information held is kept up to date and relevant are not sufficient for some accounts where there is no transactional activity, and there is a gap in in on-going CDD requirements.

The extent to which CDD held for existing customers in the banking and other sectors has been remediated is variable. Nevertheless, FIs and DNFBPs had measures in place to "regularise" their client base ahead of the criminalisation of tax evasion and to accommodate new tax reporting requirements. One bank reported losing a significant proportion of its client base as a result of tax regularisation.

The use of numbered accounts is still widespread. Details of customers are held in separate databases or manually, increasing the risk that persons may not be picked up when screening

against databases, including for TFS. For smaller FIs and DNFBPs, screening against TF lists is less common.

Given the country's context, the number of SARs is modest and there is some evidence of under-reporting. In cases where accounts were terminated under tax regularisation programmes, it appears that few SARs were submitted. The NRA notes that some reporting entities have involved third parties in analysing and deciding whether SARs should be submitted.

Banks have expanded into foreign markets. They appeared to understand the risks inherent in such "internationalisation" and have developed quite comprehensive group-wide programmes against ML/TF risk. It is not clear that CSPs with overseas operations have similarly managed risk.

Recommended Actions

- FIs and DNFBPs should be required to: (i) identify, assess and document ML/TF risks inherent in their own activities through a periodic and formal business risk assessment; and (ii) to share that assessment with the UIFAND from time to time - in order to inform its supervisory approach.
- The UIFAND should issue high level guidance on: (i) the types of criteria to be taken into account by FIs, CSPs and other DNFBPs when determining customer risk profiles, in order to encourage more bespoke and tailored assessments of risk; and (ii) risk classification groupings, in order to encourage a more graduated application of CDD measures.
- FIs and DNFBPs should be required to complete the application of CDD measures to existing customers within an appropriate period of time to be set by the UIFAND, in order to ensure that information, including tax status, and documentation held for long-standing relationships is in line with current requirements.
- The screening by banks of numbered accounts against TF sanctions lists should be automated. Other FIs and DNFBPs should screen customers on a timely basis using up-to-date TF sanctions lists.
- As recognised in the NRA, third parties should be excluded from taking part in deciding whether a FI or DNFBP should submit a SAR to the UIFAND.
- The UIFAND should: (i) enforce the requirement for FIs and DNFBPs to have independent audit functions to test the system; and (ii) issue guidance on the screening measures to be applied when hiring employees.

Immediate Outcome 4 (Preventive Measures)

Understanding of ML/TF risks and AML/CTF obligations

421. Andorra has made significant efforts to understand its ML/TF risks, especially by conducting a formal NRA process. However, the NRA has yet to be translated into Catalan and shared with stakeholders.

422. The majority of FIs met by evaluators explained that they have a "conservative" risk appetite. Whilst it is right to say that the types of products and services offered in Andorra are not complex, it is noted that the use of cash by customers is still quite extensive and action against tax evasion

(though not a criminal offence at the time of the on-site visit) has been taken quite recently. Indeed, the avoidance of payment of tax is the subject of a very recent TC (10/2016) issued by the UIFAND.

423. Following recommendations made by the UIFAND during the NRA process, each of the banking groups has now agreed to formally self-assess ML/TF risk at business level using a template developed by the ABA. This is a positive development. Each of the banks had already developed methodologies for assessing business risk – some of which also consider trends in risk. Because of this, they were able to articulate their understanding of ML/TF risk. Evaluators are not aware of similar self-assessments being conducted in other sectors, at least formally.

424. These self-assessments appear to understate risk. Whereas the NRA suggests that banking risk is medium/high, self-assessments point to a moderate ML/TF risk, notwithstanding the prevalence in the sector of private banking and wealth management and growing number of non-resident customers (e.g. in South America). The use of cash was also highlighted consistently at meetings as presenting a higher risk. Accordingly, whilst risks are understood, it seems that there may be a tendency to down-play them to some extent.

425. It is not clear that all of the banks have all of the aggregated information that they need to assess and understand ML/TF risk to hand – in particular data on financial flows to, and from, other countries, and on the beneficial ownership of accounts. In particular, the absence of this information may prevent banks identifying and understanding the TF threats that they face where customers are from areas of conflict, or countries that are adjacent to such areas.

426. In order to compensate for increasingly limited domestic business opportunities (particularly following the "regularisation" of customers' tax affairs), banks have expanded into overseas markets in Europe, the US and Latin America. Banks appeared to understand the risks inherent in such "internationalisation" and have developed quite comprehensive group-wide programmes against ML/TF risk. Nevertheless, new markets (including some in Latin America) serve to increase the overall risk profile of Andorran banking groups.

427. Asset managers and insurance companies that are a part of banking groups were also able to articulate their understanding of risk. They also explained that: (i) they apply the same policies and procedures as their parent; and (ii) typically provide products and services only to persons who are also customers of the bank (involving a double level of due diligence on customers). They explained that this helped to mitigate the different risks inherent in these complementary activities.

428. Smaller FIs (asset managers and insurance companies) and DNFBPs appeared less clear about risks, but operate straightforward business models for a limited number of customers, such that risks can be easier to understand. They explained that they have no appetite for high-risk relationships, such as those involving complex structures, and have close and long-standing relationships with just a limited number of customers.

429. Asset managers and insurance companies met consider that they have a low ML/TF risk. By way of comparison, the NRA suggests that asset management presents a medium-high risk and insurance a medium risk. Whereas DNFBPs met indicated that few customers are considered to present a higher risk, lawyers are assessed as presenting a medium-high risk in the NRA and CSPs and estate agents a medium risk.

430. Evaluators consider that this difference in understanding of risk arises from too great a focus by smaller FIs and DNFBPs on knowledge of the customer, without taking full account of other relevant factors such as the product or service offered (e.g. investment through collective investment funds) and context (e.g. action against tax evasion has not been taken until quite recently). Where such factors are not taken into account, or given insufficient weighting, then risk cannot be clearly understood. One practitioner also observed that clients are "like friends" (reflecting a theme picked

up in other meetings) and this may affect the objectivity of customer risk assessments. In the case of CSPs, it was not clear that the context in which legal persons could be abused by criminals was fully understood, particularly in cases where CSPs also operate in overseas markets.

431. The risks that are inherent in the use of cash are now understood much better following the introduction of new requirements by the UIFAND in this area. However, most of the FIs involved in private banking do not consider the use of cash to be unusual, and continue to permit its use so long as certain requirements are met.

432. FIs and many DNFBPs met appear to have a good level of awareness of AML/CFT obligations. However, by way of exception, the evaluation team met with one accounting firm that had only very recently become aware of its AML/CFT obligations and one *gestoria* that did not realise that it was subject to the AML/CFT Act and unaware of its requirements. This may be reflective of failings in other DNFBPs.

433. Most FIs and DNFBPs interviewed demonstrated a strong commitment to applying AML/CFT obligations. There are a number of factors to explain this, including action taken by the authorities following recent ML cases committed through a failed bank, implementation of AEOI for tax purposes with other countries, and the outcome of the NRA. These have encouraged FIs and DNFBPs to strengthen their AML/CFT policies and procedures.

434. Whilst FIs and DNFBPs appeared generally satisfied with information provided by the UIFAND on TFS, a number considered that their understanding of TF risk would benefit from the availability of further typologies shared on a more frequent basis in light of the relatively quick development of TF trends.

435. Generally, the authorities' have sent out a strong message of what can happen where a FI or DNFBP launders the proceeds of crime. They can expect to be put out of business, and those holding management positions can expect to lose their liberty. Also, the response of foreign correspondent banks and custodians to FinCEN's advisory has demonstrated that, where risks are not understood and managed, access to the international financial system and counterparts may be challenged in the context of de-risking. Nevertheless, as positive aspects, both factors have helped to facilitate the on-going work of supervisors, and to focus minds in, and the mentality of, the country on understanding ML/TF risks and obligations.

Application of risk mitigating measures

436. To mitigate risks, the private sector applies a risk-based approach. All FIs met (with the exception of one insurance company and one asset management company) have categorised their clients according to risk, in order to apply proportionate measures to mitigate risk. Most DNFBPs too have a classification system.

437. Risk assessments conducted by banks (and non-bank FIs that are subsidiaries) are based on criteria taken from customers' profiles. None of the banks met during interviews had also considered volume of transactions and/or value of customer assets held by the customer, which appear to be relevant in terms of assessing risks. Generally, some of the methodologies followed for classifying risk mainly use criteria specified in the AML/CFT Regulations and are not yet fully adapted to the specificities of their customers and their activities.

438. Evaluators noted quite a large variation amongst banks in the percentage of customers who are assessed as presenting a higher risk based on selected criteria: between 5% and 50% of customers. Whilst the profile and appetite of banks met on-site differed, they all provide private banking services to non-resident customers and so it is not immediately apparent why there should

be such a wide variation in risk ratings and consequent application of CDD measures. It also appears that there may be insufficient diversification of risk classifications. For example, one large bank reported that approximately one third of its customer base was considered to present a high risk and approximately two thirds a low risk, leaving very few assessed as presenting a risk in between the two. It was also explained that some banks consider that private banking, asset management and non-resident customers always present higher risks whereas some customers have small balances on their account (a few thousand euros). Not many use classifications such as "low-medium", "medium-high" or "very high" (or similar) which would assist in a more effective application of a risk-based approach. More generally, evaluators are concerned that the number of customers assessed by some banks as presenting a higher risk seems low taking into account the importance of private banking, growing number of non-resident customers, historic reliance on non-tax compliant relationships and continuing use of cash.

439. The effect of the above may be that enhanced CDD measures, including monitoring, will not be applied where customers that actually present a higher ML/TF risk are not rated accordingly.

440. Some smaller FIs (asset managers) and DNFBPs have established less sophisticated risk classification models. However, this may be appropriate given their size, the number and profile of customers (mainly individuals), and limited nature of activity conducted.

441. Customer profiles and ratings are reviewed periodically by FIs and DNDBPs. One bank explained that its client risk profiles were updated monthly, taking account of transactional data; others reviewed CDD information on a periodic basis, often annually (possible given the limited customer base) but less frequently for lower risk accounts (up to 5 years).

442. Evaluators were told that simplified CDD measures would be applied only where permitted by the AML/CFT Act, and enhanced measures would be applied where risk is higher. Accordingly, the application of simplified measures is not prevalent. Banks (and non-bank FIs that are subsidiaries) make quite extensive use of compliance resources in on-boarding decisions. Accordingly, in many cases, accounts will not be established without an independent review of information and documentation obtained to open the account. This is the case also in some other FIs, but is less common in DNFBPs. The application of CDD measures is considered later in this chapter.

443. Banking groups have developed comprehensive policies, procedures and controls in order to respond to risks identified. These are reviewed annually by the UIFAND (along with other FIs). Compliance functions have been reinforced, additional training has been provided, and new technology used to monitor transactions in response to risks identified. However, screening procedures to ensure high standards when hiring employees appear light, given integrity issues identified under IO.3. Variable policies, procedures and controls are in place at others FIs, reflecting straightforward business models for some. The NRA has highlighted that not all CSPs or estate agents have policies and procedures in place. The application of CDD measures is considered later in this chapter.

Application of CDD and record keeping requirements

444. FIs and DNFBPs rely on various sources of information to determine beneficial ownership of legal persons. They make use of: (i) customer declarations; (ii) information held in public registries; and (iii) external data sources. However, since many legal persons are established in Panama and Belize, it is not clear to what extent information available publicly will help to identify who is the beneficial owner and so over-reliance might be placed on information provided by the customer. Some deficiencies in the definition of "beneficial ownership" were also observed in manuals provided by three of the banking groups to evaluators (failure to acknowledge that a legal person may be controlled through means other than ownership). Most FIs and DNFBPs explained that, when

beneficial ownership information could not be obtained, or only with great difficulty, they would prefer not to enter into a business relationship, and complex ownership structures appear to be quite rare. Very few provide accounts to trusts, since the arrangement is not recognised in Spain or Andorra (countries in which most customers are resident).

445. FIs and DNFBPs met said they apply high standards to establish the origin of money of new customers. Many (but not all) said that they would require corroborative documents to certify the origin of funds (e.g., contract of sale of real property or shares in a corporation) which would vary according to risk. In respect of tax, they would request a declaration and, based on an assessment of risk (e.g. taking account of tax domicile) would conduct more extensive reviews. FIs appear to be particularly cautious in this area and indicated that they would not accept a new customer if the origin of funds or tax compliance status of that person could not be established.

446. FIs explained that, for non-resident cash deposits equal to or greater than EUR 10 000, they would review the declaration form processed by the Customs Department in line with requirements set by the UIFAND.

447. The use of "omnibus" accounts appears to be limited, and most banks and custodians met do not appear to make extensive use of the exemption in the AML/CFT Act that permits them to operate an account for a counterparty (an intermediary) acting on behalf of third parties without: (i) having assessed the ML/TF risk of that third party; or (ii) applying CDD measures to those underlying third parties. Instead, most bankers and custodians explained that they would apply some CDD measures to underlying third parties – effectively duplicating CDD already conducted by asset managers. During on-boarding of the relationship with the intermediary, banks and custodians explained that they would require the agreement of their governing bodies for such relationships to be set up.

448. None of the FIs or DNFBPs met by evaluators rely on CDD measures already applied by third party introducers. They explained that they will apply their own CDD measures (and so CDD is applied twice to the same customer (including beneficial owner)). This is consistent with information provided by the authorities that only two banks have relied on CDD applied by a third party, and only in very limited circumstances. This information is held by the UIFAND since a requirement is placed on FIs and DNFBPs to notify any cases where reliance is placed.

449. Numbered accounts are commonly offered in Andorra by banks and account for around 20% of total customers. Banks explained that the practice is necessary in order to safeguard the privacy of domestic customers, given the small size of the population in Andorra, where bank employees will know many of their customers. It was not explained why such accounts should also be offered to non-resident customers. Exactly the same CDD measures are applied to numbered customers as "nominal" customers, though some banks said that CDD information is sometimes recorded physically or in separate databases, which may present difficulty when screening for TFS (see below). The necessary front office and compliance staff have access to information on holders of numbered accounts.

450. FIs and DNFBPs are aware of the requirement that they should refuse to establish or terminate a client relationship if CDD measures cannot be completed and have declined to establish relationships. As a result of new tax agreements, FIs have also closed accounts where CDD information has not been provided. According to information provided by the ABA, around 3% of applications to establish banking relationships in 2016 were rejected. This included cases where relationships were not established as a result of incomplete CDD. There was a similar level of rejections in 2015.

451. Whilst the above presents a generally positive picture, the banking failure highlights a failure to apply basic AML/CFT requirements in that case. It appears that CDD measures had not been in

place at the bank since many deficiencies were found in customer files and documents (see box 4). There have also been cases when banks have failed to apply CDD requirements in accordance with the AML/CFT Act, including in two cases opened by the UIFAND during the on-site visit. In the first case, the bank concerned had failed to identify a customer's connection to an organised crime group, and, in the second, the bank had failed to identify that a person connected to the customer had been convicted for fraud. An older on-going case also highlighted failure by four separate banks to recognise the connection of a customer to an organised crime group.

452. FIs and DNFBPs (where applicable) generally comply with their obligations to apply on-going monitoring. The largest FIs have tools to automatically monitor the transactions of their clients, which can detect unusual transactions. For example, two banks explained that they had recently implemented latest generation software which checks data for consistency and monitors changes in behaviour patterns. For lines of activities considered to present a high risk (private banking and wealth management), FIs met apply enhanced CDD at a number of levels, including verification of transactions. However, thresholds applied in practice for cash transactions are considered by evaluators to be relatively high. Whilst some smaller FIs and DNFBPs monitor accounts manually, they have a very limited customer based and little transactional activity.

453. Banking groups apply a risked-based approach to ensuring that documents, data or information collected under CDD measures is kept up to date and relevant. In the case of higher risk relationships, accounts are reviewed at least annually. In other cases, relationships will be reviewed on the basis of trigger events, such as when an unusual transaction occurs or negative information is reported in the press. This means that some large institutions that are active in retail banking and have very many customers may review information only every 3 to 5 years where there is no transaction on an account. This is not considered to be sufficient. Smaller FIs and DNFBPs (with fewer customers) are able to review customer relationships more frequently.

454. Practices on updating information held about "existing customers" (as defined under c.10.16) in the banking sector are heterogeneous as a result of insufficient guidance from supervisors, though higher risk customers have been targeted first. One bank reported that it had already remediated a substantial proportion of its historical customer base, whereas another had covered only a small percentage.

455. For other FIs, the review of existing customers is still on-going. Some asset management companies reported that they still encounter some difficulty updating information held for existing portfolios where the relationship has been established for many years. Where CDD information or documentation is incomplete or inaccurate, risk may not be managed effectively. FIs have also applied defined measures in advance of the application of tax information exchange agreements and introduction of tax evasion as a predicate offence. A number have lost quite a considerable number of customers.

456. The UIFAND explained that it had not detected a breach of record-keeping requirements. Banks (and non-bank FIs that are subsidiaries) keep records longer than is required in hard and soft forms (in some cases, considerably longer than is required). Notaries are required to hold onto records for a significant length of time. However, compliance by other DNFBPs with record-keeping requirements is not as strong. One CSP met on-site explained that it had started to keep records only since the start of 2017 (which may indicate that there is also an issue with other CSPs), and the NRA highlights failure on the part of a small percentage of some DNFBPs to keep records.

Application of EDD measures

(a) PEPs

457. Andorra did not require enhanced CDD measures to be applied to domestic PEPs at the time of the on-site visit.

458. Both FIs and DNFBPs explained that they adopt a cautious approach to PEPs and apply stronger measures in situations involving PEPs. As part of their risk-based approach, some have gone further than the legal provisions in Andorra require and have extended enhanced CDD measures (in line with the standards) also to domestic PEPs.

459. Extensive use is made by FIs of external databases (e.g., WorldCheck, Dow Jones etc.) to highlight relevant connections. One bank explained that clients classified as PEPs are not able to make or receive wire transfers and two others explained that transactions were always subject to enhanced monitoring. Some DNFBPs also rely on databases, but could not explain whether those databases also cover domestic PEPs. Lawyers and notaries can make use of a database through the Andorran Bar Association. According to a survey conducted by the authorities as part of the NRA, quite a number of DNFBPs do not identify whether a customer is a PEP. The survey also suggests that notaries tended to identify only domestic PEPs (as at the time they did not have access to the Bar Association database).

460. The number of connections with foreign PEPs is low and the amount of assets held is usually quite limited. The NRA states that Andorran banks have relationships with 125 foreign PEPs – the majority of which come from OECD countries.

461. Due to the small size of the country, most FIs and DNFBPs reported that domestic PEPs were well known to them and not difficult to detect.

(b) Correspondent banking

462. Andorran banks do not offer correspondent banking services (except to group entities). Neither do they act as intermediary payment institutions. All have respondent relationships with banks outside the country.

(c) New technologies

463. FIs explained that they have a very conservative approach to the use of new technology and risks appear to be limited: the use of internet banking is quite limited and higher risk products such as prepaid cards and mobile real-time payments are not offered by banks. Nevertheless, all banks (not part of groups established outside Andorra) explained that their compliance functions would be involved in the roll-out of new technology (and products and services more generally too).

464. It was not apparent that there is any extensive use made by DNFBPs of new technology.

465. However, awareness of developments in this area and related ML/TF risks could be improved through the provision of additional guidance by supervisors.

(d) Wire transfer rules

466. With the exception of two foreign post offices, only banks can act as money remitters in Andorra. This limitation on market access reduces the risk that is associated with the cross-border transfer of funds. Amounts remitted through are not material: around EUR 12 million per annum.

467. All banks have automatic systems to ensure that accurate information on the payer and beneficiary is included in transfers (though the latter was not a requirement at the time of the on-site visit). Banks indicated that nothing other than full compliance with wire transfer rules would be

acceptable now to correspondent institutions. However, not all policies and procedures make reference to the collection of beneficiary information, and, until quite recently, it appears that the necessary information was not included in domestic transfers.

468. During interviews, banks explained that incoming messages provided all of the necessary information and that data fields were not left blank and did not include information such as "one of our customers". Data provided by the Andorran authorities shows that approximately 500 wire transfers (representing around 1% of the total and mostly international) were rejected by banks in 2015 and 2016.

(e) Targeted financial sanctions

469. Banks make extensive use of private sector data sources and screening systems available through NameBook and the Society for Worldwide Interbank Financial Telecommunication to comply with legislation implementing TFS when relationships are established, periodically thereafter, when lists changes, and when there are transactions. In practice, this means that searches cover persons not designated in Andorra. FIs did not highlight the use of other measures to detect funds or other assets connected to designated persons. There have been no true positive hits to date.

470. As noted above, numbered accounts are still used quite extensively in Andorra, and interviews highlight that screening of such accounts is often still manual. Evaluators consider that the use of manual searches for such a large number of customers presents unacceptable risks. These risks are recognised by banks which are taking remedial action.

471. The MVTS provider indicated that its internal database for screening was updated only on a monthly basis and so there would be a gap in screening persons designated in Andorra.

472. FIs and DFNBPs also indicated that they are notified of changes to TFS by the UIFAND (in a limited number of cases) or their professional association. This means that smaller FIs and many DFNBPs who are not members of professional associations and who do not regularly check the UIFAND's website may not be aware of changes.

473. For smaller FIs and DNFBPs, screening against TF lists is less common and, when done, is often manual because the majority of FI and DNFBPs have only small numbers of customers. It was explained that lists are not always used given the profile of customers (mainly Andorran and Spanish) and length of the relationship. It is noted that the Andorran Bar Association provides access to a private sector data source to its members (and notaries) at no cost.

474. Whereas the UIFAND has explained that its on-site supervisory visits randomly check whether designated persons would be picked up by FIs and DNFBPs, external AML/CFT audits conducted for FIs do not consider compliance with TFS requirements. There seemed to be a good level of awareness of guidance issued by the UIFAND on TFS, notwithstanding that it has been published only in February 2017.

(f) Higher risk countries

475. Through the use of TCs, the UIFAND publishes lists of higher risk countries that have been identified by the FATF. It is noted also that, since 2014, Andorra considers Panama to present a higher risk and therefore obliged entities are required to apply enhanced CDD.

476. Many FIs and DNFBPs are not even willing to establish business relationships with clients having connections to higher risk countries. Some banks explained that they blocked transfers to higher risk countries and other FIs and DNFBPs explained that they applied stronger CDD measures, including monitoring, in such situations. The NRA states that: (i) banks have around 45 customers that come from countries identified by the FATF as having strategic deficiencies; and (ii) transfers to and from such countries represent just 0.01% of international transfers.

477. FI and DFNBPs indicated that they are notified of changes to the list of higher risk countries by the UIFAND (in a limited number of cases) or their professional association. This means that smaller FIs and many DFNBPs who are not members of professional associations and who do not regularly check the UIFAND's website may not be aware of changes.

478. According to a survey conducted by the authorities as part of the NRA, most DNFBPs have not had a business relationship with a customer in any of the countries listed by the FATF as having strategic AML/CFT deficiencies.

Reporting obligations and tipping off

479. The number of reports made to the UIFAND – set out under Chapter 3 - has increased since the 4th round MER. Most reports made to the operational unit of the UIFAND come from banks which have strong procedures in place regarding reporting obligations. The UIFAND considers the quality of reports received from banks to be good and points to the high percentage of files disseminated to competent authorities for further investigation. In contrast, the number of SARs made by non-banking FIs and DNFBPs is very low. Indeed, the securities sector has never made a SAR and the insurance sector has made just one report (2010 to 2015). The NRA concludes that the level of reporting by lawyers, accountants, CSPs and high value dealers is below expectations.

480. However, the level of reporting by banks might be expected to be higher. The increase in reporting levels does not appear to reflect the substantial efforts taken by FIs and DNFBPs to prepare for: (i) the introduction of tax information exchange agreements; and (ii) criminalisation in Andorra of the offence of tax evasion, the effect of which has been to terminate a considerable number of customer relationships. Whilst tax crime was not a predicate offence at the time of the on-site visit, it appears that banks have not considered the possibility that funds that have not been declared to revenue authorities will have their origin in criminal activities as defined in Article 409 of the CC. This possibility is highlighted in guidance published by the UIFAND late in 2016 (TC-10/2016), which, although published at around the same time as the NRA was adopted, perhaps came too late to have a greater impact. Notwithstanding this, some lawyers explained that they are waiting for the introduction of tax evasion as a predicate offence in order to consider whether to make a SAR.

481. There are some other indications of under-reporting by banks during the period under review. In 2015, the UIFAND compared the total number of information requests made to banks to the number of those requests that had led to a positive result (i.e., the bank held and disclosed relevant information about the subject of the request). In the case of one bank, it was noted that it had held information on 42% of requests made by the UIFAND which was considered to be high compared to the low number of SARs made by that particular bank[66]. Across all banks, the UIFAND found that 26% of requests had led to a positive result, and considers that a percentage over 20% should be studied to identify any vulnerabilities or threats within banks' systems. The UIFAND explained that this points to banks holding information that should have formed the basis for a SAR, where a SAR had not been made.

482. Non-banking FIs and DNFBPs explained that the low numbers of SARs reflected: (i) the profile of their customer base; and (ii) the CDD measures that had been initially applied to customers. Based on meetings with CSPs, an alternative explanation might be that some reporting entities are unaware of, or not familiar with, their reporting obligations.

[66] It must be noted that the number of SARs from the bank concerned increased significantly in 2016.

483. The UIFAND has issued several TCs to assist FIs and DNFBPs in detecting suspicious transactions. Despite this, most FIs and DNFBPs met asked for more feedback, training and typologies to be provided by the UIFAND on reporting obligations, especially for TF.

484. The NRA notes that some reporting entities have involved third parties (e.g. outside lawyers) in analysing and deciding whether SARs should be submitted. In line with this, evaluators met one FI whose legal advisor sits on the committee charged with making reports to the UIFAND and where the lawyer is designated as one of the bank's representative at the UIFAND. Evaluators do not consider this to be good practice: the decision as to whether to make a report to the UIFAND should be taken only by officers of the FI or DNFBP. Whilst banks appear to have practical measures in place to prevent tipping off and this does not appear to have caused any difficulty, the involvement of third parties in the reporting process does not sit comfortably with c.21.2.

Internal controls and legal/regulatory requirements impending implementation

485. Larger FIs and DNFBPs have established a function in charge of compliance and prevention of ML/TF, which is often independent from business lines and reports directly to the board (rather than through the executive). They have also established, or are covered by, an internal audit function which independently evaluates effective implementation of manuals, policies and procedures, and systems and controls. The NRA highlights that banks have provided their compliance functions with additional resources and capabilities and have reinforced their independence and authority in recent years, something that was confirmed in meetings during the on-site visit. One bank explained that it had increased the size of its compliance team by 11 in the last year (bringing it up to 35 people). Compliance officers met on-site appeared to be experienced and knowledgeable in their fields.

486. Not all smaller FIs and DNFBPs have established independent compliance functions (due to their size and scale) or have an independent audit function to test the system (despite there being a legal requirement to do so). One CSP met on-site explained that it did not have a compliance officer and this may be reflective of failings in other CSPs.

487. Under the Code of Conduct approved by the ABA in January 2017 (updating an earlier version), banks are required to ensure that all selected staff are honest and skilled, and, where appropriate, to take measures to check the information supplied by applicants. Inter alia, they are also required to: (i) have a training plan in place to ensure improvement of professional and personal skills and adequate knowledge of products and services provided; and (ii) supply adequate information to their staff about applicable legal, regulatory and ethical standards and provide them with appropriate training on those subjects.

488. Despite this, recruitment checks appear light. One bank said that it would rely on press reports and CDD data sources in order to promote high standards when hiring employees. Another explained that the criminal records of foreign employees were checked by the Government and that it applied checks only to specialised positions and not more generally. Accordingly, further steps seem to be needed to more formally ensure high integrity standards. In order to check the on-going probity of staff, the UIFAND explained that some banks restrict or monitor transactions over personal staff accounts.

489. The NRA reports that employee training in banks has increased significantly in recent years – with resources invested in training doubling between 2014 and 2015 – but suggests that programmes could be further customised to different employee groups. The NRA notes that approximately half of total compliance employees are currently undergoing specialised training. The ABA has also recently signed an agreement with the University of Andorra to provide an AML certificate – and the first group of students started their studies in February 2017. Use is also made

of on-line training and staff bulletins. In the case of other FIs and DNFBPs, the NRA notes that training is not systematic or frequent enough.

490. The NRA has also highlighted that not all CSPs or estate agents have policies and procedures in place and quite a number of non-incorporated DNFBPs do not have written internal AML/CFT procedures.

491. Financial groups have defined AML/CFT policies and procedures that are applicable to all entities in their group (occasionally with some adaptions). Groups monitor compliance with both group and local requirements through: (i) head office involvement in local boards and committees; (ii) periodic reporting and returns, e.g. covering risk; and (iii) internal audit reviews. No impediments to the implementation of group-wide programmes were identified. It is not clear to evaluators, however, that such controls are in place for CSPs based in Andorra which also operate outside the country through subsidiaries.

Overall Conclusions on Immediate Outcome 4

492. **Andorra has achieved a moderate level of effectiveness for IO.4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

Taking into account the size of the supervisory unit during the period under review, the UIFAND is to be commended on what is has achieved since the last evaluation. Amongst FIs and parts of the DNFBP sector, there was a high awareness of the unit's activities and widespread recognition that the team was knowledgeable and experienced in AML/CFT matters. However, the limited resources available to the UIFAND have hampered supervision and there is significant key-man risk present. The UIFAND had to curtail a large part of its inspection programme in 2015 and 2016 to deal with a banking failure and the NRA.

Whilst the INAF may take action against a FI, it does not have a direct power to: (i) remove a particular shareholder or to freeze a particular shareholder's rights or; (ii) permanently remove a director or senior manager from their post (except in the case of a bank). Retrospective external checks have not been performed by the INAF on shareholders, or by the Government on shareholders, directors or managers of insurance companies. Except for banks, those holding senior compliance roles are not vetted by supervisors.

Risk-based supervision is not fully applied to FIs and DNFBPs by the UIFAND. AML/CFT supervision is largely focused on checking: (i) that policies and procedures are in place; and (ii) CDD applied, rather than on an assessment of the effectiveness of the governance and business models. The use of external auditors in off-site supervision is more effective: each year the UIFAND scrutinises audit reports on FIs' level of compliance with the AML/CFT Act, which are prepared annually on its instruction by external auditors (external AML/CFT audit reports).

The amount of information available to supervisors to assist them to identify and monitor ML/TF risks on an on-going basis - for both a firm and sector basis - is still quite limited and there is limited analysis of information held. There are a number of activities provided by FIs where the UIFAND has yet to develop an understanding in order to consider whether risks are properly mitigated.

There is insufficient strategic engagement and co-ordination of activities between the supervisory authorities to leverage off the overlap between prudential and AML/CFT supervision in relation to governance and internal controls and to share expertise, knowledge, experience and information. Whereas the UIFAND relies upon the INAF's cooperation with foreign regulators in order to exercise consolidated supervision of the significant overseas activities of subsidiaries, it does not seem that engagement on AML/CFT matters between the prudential supervisor and its counterparts abroad fully takes account of knowledge and expertise present in the UIFAND.

There is limited supervisory engagement by the UIFAND with the DNFBP sector, including the on-going collection of data for off-site analysis. The supervisor is limited by incomplete knowledge of who is providing corporate services within certain categories of DNFBPs.

It is clear that action being taken in respect of major ML cases has been dissuasive of non-compliance with AML/CFT requirements. Except for withdrawal or modification of an authorisation, it is the Government rather than the UIFAND which determines the sanctions to be imposed for serious and very serious breaches of the AML/CFT Act, based on proposals made by the UIFAND. This could allow the Government to exercise undue influence on AML/CFT matters (though there is no evidence that this has happened).

There has been limited outreach (outside of direct supervision) to help educate industry to raise

standards.

Recommended Actions

- There should be consistent market entry and on-going "fit and proper" controls for DNFBPs. "Fit and proper" checks should be applied to all senior compliance staff. Supervisors should complete their retrospective application of "fit and proper" checks to FIs.
- The UIFAND should develop and implement a comprehensive risk-based approach to on-site and off-site supervision of FIs and DNFBPs which is sufficiently resourced and more focussed on governance and business models. This should reflect findings from the NRA, data collected in business risk assessments and annual returns, and information held by other supervisors.
- There should be greater coordination of supervision amongst supervisors in order to: (i) pool the expertise and knowledge that is held in the different supervisors; and (ii) promote consolidated AML/CFT supervision of group activities conducted abroad.
- Measures should be put in place to ensure that Government powers to sanction FIs and DNFBPs for serious and very serious contraventions of the AML/CFT Act could not be used to unduly influence the UIFAND's operational independence on AML/CFT matters.
- Legal information exchange gateways between auditors and the UIFAND should be developed.
- Supervisors should provide: (i) periodic aggregated feedback to FIs and DNFBPs on supervisory approach and AML/CFT findings from supervisory activities; and (ii) guidance on the application of requirements of the AML/CFT Act and AML/CFT Regulations, e.g. customer risk assessments and reporting of suspicion.

Immediate Outcome 3 (Supervision)

Licensing, registration and controls preventing criminals and associates from entering the market

493. The authorities recognise that integrity within the financial services sector is of significant importance. However, it is not clear that governance and business models are being effectively challenged by the supervisory authorities (considered later in this chapter).

FIs (except insurance companies and post offices)

494. Following changes to legislation in late 2012 and 2013 expanding existing "fit and proper" requirements, the INAF has widened its policies and procedures to assess the integrity of shareholders (holding 5% (or 10%) or more in an "operative entity" in the financial system[67]) and directors and senior managers of such entities. Since 2013, the INAF has denied, on grounds of insufficient experience, the authorisation of three individuals proposed for senior appointments – the chief executive officer and deputy director in an investment firm and the chief executive officer of an asset management company. It has also denied the change of a sole shareholder in an investment manager, and its actions have led to one bank removing a member of senior management following a judicial investigation.

495. Its policies and procedures include: (i) obtaining criminal records; and (ii) conducting enquiries and background checks with the UIFAND, Police Department and, where relevant,

[67] All FIs except insurance companies and two foreign post offices.

Andorran judicial authorities and any relevant foreign supervisors. The table below shows the number of requests made to the UIFAND and the Andorran Police Department.

Table 18: Number of requests made to the UIFAND and the Andorran Police Department

	2013	2014	2015	2016
UIFAND	25	22	33	34
Police Department	0	15	34	31

496. The INAF also undertook an exercise in 2014 covering all current directors and managers of banks and other operative entities at that time, in order to reflect the enhanced measures introduced by the INAF in 2013. Just over 110 individuals were required to provide updated information to enable the INAF to: (i) re-assess their professional background and identify any criminal behaviour over the previous 5 years, if appropriate; and (ii) digitalise its database. The exercise did not cover shareholders, though many also act as directors.

497. As noted under c.26.3, the INAF does not regulate who may be appointed as the regulatory compliance officer of a FI, except for banks where there has been a requirement since January 2017 for the officer to form part of senior management. In practice, the authorities advised that many compliance officers did form part of senior management before this change, but evaluators are aware of one bank where this had not been the case. Also, the UIFAND does not check the integrity or suitability of the manager who is a member of the body of internal control and communication (see c.18.1(a)), despite the important role held.

498. The INAF receives between two and four applications each year for operative entities, including one change of control application in 2016. Since 2012, out of a total of 15 applications: (i) eleven were authorised; (ii) three were withdrawn by the applicant; and (iii) one was rejected. In the case of the rejection, it had specific concerns: (i) around the origin of the source of funds to acquire the FI; (ii) that proposed activities could breach banking regulations; and (iii) about the insufficient experience of the proposed general manager. It worked in conjunction with the UIFAND on this case.

499. In January 2017, the INAF issued TC-245/17 establishing mandatory corporate governance requirements for all banks. These included a new requirement for banks' boards of directors to review periodically (at least annually) the board's structure and on-going suitability of each board member. The INAF had requested to see conclusions of the first round of such assessments before July 2017. The TC also requires the board to carry out certain key functions, among which are principally the establishment and supervision of policies on: (i) the nomination and plans for succession of individuals with key functions in the bank; and (ii) framework of long-term remuneration for the senior executives and board members in line with the bank's and the shareholders' interests and with the bank's risk strategy. At the time of the on-site visit, the INAF had yet to consider recruitment or remuneration policies and procedures (board of directors or employees) or their application in practice, e.g. risk presented by dominant and long-standing senior executives.

500. It appears that co-operation between the INAF and LEAs is quite limited and that the supervisor does not receive all of the information that is relevant to its statutory functions, including details of on-going cases relating to FIs.

Insurance companies

501. For the insurance sector, which is supervised by the Ministry of Finance, an amendment to introduce a requirement for business and professional repute criteria to be taken into account was made to the Insurance Law in 2015. As a result, the Ministry undertook an exercise requiring existing shareholders, directors and managers of 28 companies to provide information on their professional experience and criminal background. However, the Ministry did not consult with domestic or foreign counterparts or the operational unit of the UIFAND about these individuals. The Ministry also advised that it had not considered whether it should consult with other competent agencies in future if presented with an application in respect of a new company or individual. The Ministry does not inspect the insurance companies that it supervises, so governance controls and practices, recruitment and remuneration policies and practices are not considered by the supervisor, though these matters are considered as part of external AML/CFT audit reports.

Other FIs and DNFBPs

502. As explained in the Technical Annex, two foreign post offices provide financial services in Andorra under historic agreements and without specific licensing to provide those services. This is not considered to present a ML/TF risk in practice.

503. There are various measures in legislation on market entry for lawyers (but not law firms), notaries (but not notary offices) and estate agents (sole traders or companies), but there are gaps in some of this legislation in relation to registration and an assessment of professional and business standing (as explained under R.28 in the Technical Annex). No measures are applied to other types of DNFBPs to prevent their control or management by criminals or associates of criminals (except where owned or managed by foreigners - under investment and immigration legislation respectively).

Unauthorised activities

504. The authorities have explained that enforcing registration requirements (where there are such requirements) is the responsibility of the Centre Against Professional Intrusion of the Government of Andorra. Between January 2012 and March 2017, this specialised unit undertook over 500 inspections, of which ten where initiated by the INAF. See also c.14.2 in the Technical Annex. In addition, the NRA explains that the *Col.legi Professional d'Agents i Gestors Immobiliaris d'Andorra* (Professional Association of Andorran Estate Agents) believes that a number of estate agents are operating without the required authorisation. This was reinforced on-site during meetings with representatives of the sector.

Supervisors' understanding and identification of ML/TF risks

UIFAND

505. The supervisory unit of the UIFAND closely co-operates with the operations unit. The positive effect that this has on supervision can be seen in the cases where administrative sanctions have been applied for compliance failings, which in almost all cases had arisen from analysis conducted by the operational unit. A representative from the operations unit also accompanies the supervisory unit on its on-site inspections of banks. However, whilst the supervisory unit can draw on intelligence from the operational unit, this source of information does not appear to have been fully factored into the UIFAND's supervision of the banking sector.

506. Whilst not mandatory under the AML/CFT Act at the time of the on-site visit, each bank has initiated a process to self-assess the ML/TF risks it faces. These were provided to the evaluation team shortly before the on-site visit and had not yet been considered by the UIFAND. These risk

assessments are based on a methodology developed by the ABA (which, in turn, has based it on risk assessments required by the Bank of Spain). Along with external AML/CFT audit reports and banks' policies and procedures, these self-assessments will assist in the UIFAND's future assessment of risk for banks.

507. FIs and DNFBPs are currently assessed on the basis of the risk that is inherent in their activities and customer base. In respect of FIs, this assessment is updated in light of the following supervisory activities: (i) annually following analysis of each external AML/CFT audit report (see below), which includes the FI's business data (activity, customer numbers and profile) and copies of policies and procedures; and (ii) after an on-site inspection. The evaluators formed the impression that the above risk assessment exercise is reliant on the considerable knowledge of two long-standing employees in the supervisory unit, which presents a significant "key man" risk.

508. It is not clear that supervisory activities would always provide sufficient information for supervisors to identify and monitor ML/TF risks on both a firm and sectoral basis. This is because: (i) although the NRA identifies that 50% of assets under management held by Andorran banking groups resides in foreign subsidiaries, there is limited evidence that the UIFAND had assessed controls that the parent bank has over its foreign operations and too little engagement by supervisors in Andorra with host supervisors of those foreign operations in respect of AML/CFT matters; (ii) there are certain activities and services which the UIFAND had not yet analysed (or fully analysed) (see below); and (iii) there is an absence of data about the origin of the beneficial ownership of banks' customers (though general information is held on the profile of banks' customer and beneficial ownership bases) and failure to evidence an analysis of wire transfers to some higher risk countries.

509. At the date of the on-site visit, there was good evidence that the UIFAND is analysing and assessing information in external AML/CFT audit reports on control measures and procedures in place within each bank, and across the banking sector as a whole, enabling it to identify "outliers." However, such analysis is not evident for the period from 2012 to 2014 and has not been extended to other sectors, albeit those sectors are considerably smaller and largely concentrated on the domestic market. The UIFAND has not yet aggregated and analysed the detailed customer information these audit reports contain.

510. The basis for assessing the risks of DNFBPs is rather more limited. There is: (i) no requirement to appoint an auditor to report on compliance with the AML/CFT Act or to periodically supply information to the UIFAND on areas such as level of activity and number and type of customers (to update information collected from DNFBPs through surveys); and (ii) little supervisory engagement with DNFBPs through which supervisors would become informed on ML/TF risks. This means that the UIFAND has yet to prepare a bespoke risk assessment for the majority of DNFBPs.

The INAF

511. The INAF receives copies of the external AML/CFT audit reports from the FIs it supervises. Since 2013, it has also required these FIs to inform it of reputational issues that arise and it also monitors external information sources – principally Andorran and Spanish press.

512. Since 2013, the UIFAND and the INAF have shared their annual supervisory plans, and findings from supervisory on-site inspections through working meetings on a largely case-by-case basis. The two supervisors do not appear to have worked together strategically to optimise resources and knowledge through, for example, joint on-site inspections. Evaluators are also of the view that the INAF's role in AML/CFT supervision is not fully recognised by the other authorities, despite the obvious overlaps between prudential and AML/CFT supervision in relation to governance and control frameworks (one of the pillars of the INAF's supervisory approach), and its

important "home" supervisory role in respect of the foreign subsidiaries of Andorran banks and some asset managers. The INAF has arranged supervisory colleges in which the UIFAND has played no active role, despite overlaps in responsibility.

513. Limited strategic engagement and limited co-ordination of activities between supervisors does not permit experience, specialist knowledge and information on emerging potential risks to be shared.

Ministry of Finance

514. The supervisory activities of the Ministry of Finance, which is responsible for the prudential supervision on the insurance sector, are limited to solvency issues and, as such, consist solely of reviewing the annual accounts of insurers. Unlike the INAF, it does not receive copies of external AML/CFT audit reports or undertake inspection visits, and it has no supervisor to supervisor contact with the UIFAND or the INAF on AML/CFT matters (despite the fact that a significant proportion of the insurers it supervises are bank-owned). This is set to change in 2018 when supervisory responsibility for insurance companies will be transferred to the INAF.

515. Accordingly, the Ministry operates in isolation and supervisory experience and knowledge of the insurance sector is not shared or emerging ML/TF risks identified.

Identification of risks

516. The UIFAND undertook a survey of the DNFBP sector in 2013 (participation in which was mandatory) as a first step towards understanding the composition and activities of the sector and level of awareness of AML/CFT obligations. It identified the formation of companies as a higher risk activity which led to first time inspections of 14 lawyers and business economists in 2014. It also conducted a survey as part of the NRA. However, not all operators in the CSP sector have been identified and the supervisor has yet to build up a picture of the extent to which companies are being formed and administered, in particular by *gestorias,* though it is working with the Companies Registry to help build this picture.

517. At the time of the on-site visit, the business profile of banks and investment firms had undergone profound change as a result of Andorra's move towards AEOI for tax purposes and criminalisation of tax evasion. It appears that account closures have been widespread and, in the case of one bank alone, amounted to a significant percentage of its private banking customers. Despite this, there have been no SARs because tax crime had not been criminalised at the time of the on-site visit. Evaluators are concerned that, in the absence of any analysis of the "regularisation" of tax affairs of current and former customers, supervisors' awareness of the nature of ML risks in Andorra, and subsequent ability to respond on a timely basis, will be limited.

518. Whilst the use of cash in Andorra is quite tightly regulated, particularly following publication of a TC in 2015, it is still not uncommon for customers to withdraw cash (average for private banking customers is EUR 22 000) from accounts. Whilst FIs and DNFBPs must be satisfied as to the provenance of funds before permitting such withdrawals, aggregated information about these transactions is not collected and analysed by supervisors in order to inform their understanding of risk in the financial sector.

519. Understanding of risk is also limited in two other areas. The UIFAND does not hold meaningful information on the profile of collective investment schemes (which are "in-house" funds of banks) managed in the country (notwithstanding the significant size of this sector), e.g. number of investors and type of investments, or the extent and nature of the use made of safety deposit boxes, e.g. profile and number of customers and types of assets held.

Risk-based supervision of compliance with AML/CTF requirements

520. Since the 4th round MER, the UIFAND has started to undertake supervisory on-site inspections of FIs and DNFBPs and increased the areas covered in external AML/CFT audit reports. The UIFAND also undertook a survey of the DNFBP sector in 2013 to provide it with more information about the sector's activities and this has provided the foundation of its supervision since.

Bottom-up approach

521. Risk-based supervision is not yet fully applied. Whilst risk is taken into account at various times in the supervisory programme, AML/CFT supervision appears to be largely focused on checking that: (i) policies and procedures are in place and applied; and (ii) CDD measures are properly applied across a range of accounts, including numbered accounts, foreign PEPs and foreign legal persons (customers which would generally be considered to present higher risks). There is a lot of evidence of the UIFAND testing files for the application of CDD measures and transaction monitoring, and, in some smaller FIs and DNFBPs, a significant proportion of the client base is being reviewed. The UIFAND was able to point to significant action taken by one bank to address recommendations made following an on-site supervisory inspection, including redefinition of the compliance governance structure and reinforcement of compliance staff.

522. However, there has been little assessment by the UIFAND of the effectiveness of the control and governance framework in place within FIs and DNFBPs to prevent and mitigate ML and TF. Evaluators have the impression that inspections take a "bottom-up" approach with little assessment of how well a FI or DNFBP manages and mitigates its ML/TF risks, or of the supervisor challenging governance and business models. This focus may explain why few significant issues have been identified through supervision.

Supervisory plan

523. The supervisory unit of the UIFAND has assessed each of the five banking groups as presenting a high risk, and, within the constraints of its current resources, aims to visit one group (including domestic subsidiaries) each year as part of its annual supervisory plan - which roughly translates into each high risk entity being visited once during a five year period. This suggests that: (i) a truly risk-based approach has not yet been adopted for determining the overall nature and frequency of supervisory engagement with FIs and DNFBPs; and (ii) information held by the UIFAND on each banking group (including wholly-owned domestic subsidiaries) has not been fully exploited as each of the banks presents different risks[68]. This supervisory plan for full bank on-site visits does not sit comfortably with: (i) the relative size and significance of the banking sector; (ii) the failure of a bank during the period under review; and (iii) operational intelligence which has led to the application of administrative sanctions to three banking groups.

524. The on-going cycle for on-site supervisory inspections of non-bank owned FIs and DNFBPs is not clear. Generally, the number of non-bank owned FIs visited has been low in all years except 2014 and there is limited supervision of the DNFBP sector. Supervision of this latter sector appears to take the form of education on the role of the UIFAND and DNFBPs' obligations.

525. The inspection programme was largely suspended in 2015 and 2016 as the two staff in the UIFAND's supervisory unit were deployed on issues related to a banking failure and then managing

[68] The UIFAND holds information that would allow it to "nuance" the timing and scope of its on-site supervision of banks relative to peers, e.g.,: (i) SAR record; (ii) number of low risk customers; (iii) type of transactions observed; (iv) domicile of foreign subsidiaries; and (v) off-site work, e.g. external AML/CFT audit reports.

the NRA process. In addition, there is little, if any, general feedback on supervisory issues to the financial sector. At the time of the on-site visit the unit's resources had been increased from two to four staff.

526. The table below shows the number of on-site supervisory visits conducted by the UIFAND between 2012 and 2016.

Table 19: Number of on-site supervisory visits between 2012 and 2016

	2012	2013	2014	2015	2016
Banks	2	1	2	2	0
Non-bank FIs	0	0	4	0	0
Insurers	0	0	2	0	0
Post office	0	0	1	0	0
Real estate agents	0	0	9	1	0
Lawyers /notaries	0	0	9	3	1
Economists/*gestorias*/auditors	0	0	5	2	1
Traders in high value goods	0	0	3	0	0

527. Some non-bank FIs met by the evaluators said that on-site supervisory inspections to their premises in 2014 had lasted for a day, but there is evidence that the UIFAND is now spending considerably longer on-site and, in the case of banks, an on-site inspection will include two weeks at bank premises. Its visits consist of: (i) interviews with the management team, compliance staff and client-facing staff; (ii) an analysis of internal controls and systems; (iii) a review of compliance committee minutes; and (iv) a review of a selection of accounts, CDD measures and client risk assessments. A supervisory manual has recently been prepared, covering the areas which should be considered within an on-site inspection, and this will help to ensure consistency of approach in future.

External AML/CFT audits

528. As noted above, all FIs (but not DNFBPs) must submit annually to the UIFAND an external AML/CFT report. The scope of the audit, which is broad in scope and set by the supervisor in December each year, has grown over the years to cover: (i) the structure and operation of an FI's internal control body; (ii) internal communications; (iii) control measures; (iv) the operation of foreign and domestic affiliates and offices; and (v) sampling of client files. In addition, the auditor must provide an opinion on certain matters, including deficiencies picked up from client files. Considerable reliance for off-site supervision is placed by the UIFAND on these reports. The UIFAND takes a rigorous approach to following up with FIs identified deficiencies and recommendations from the auditors. For example, in 2016, the UIFAND requested further information from a non-bank FI on certain transactions which had been flagged by its auditor which resulted in that FI seeking an explanation from the bank which had referred the client. The bank in question, after reviewing its files, proceeded to submit an SAR to the operational unit of the UIFAND, and the case was successfully disseminated to LEA for further investigation with weeks.

Table 20: Action taken on external audit reports

Off-site Supervision/audits		Audit reports received	Additional information requested	Reports leading to recommendations or corrective measures
2013	Banking groups	5	5	5
	Non-bank FIs	7	0	7
	Insurance companies	11	0	11
2014	Banking groups	4	5	4
	Non-bank FIs	9	4	9
	Insurance companies	11	11	11
2015	Banking groups	4	2	4
	Non-bank FIs	9	4	9
	Insurance companies	11	3	11

529. Auditors met by evaluators were considered to take their role seriously. They are required to provide details to the UIFAND of the AML/CFT training that audit staff have had and to give confirmation that they provide no other service to the FI they are auditing. Although legal channels formalising communication between the UIFAND and auditors could be developed, the UIFAND does approach auditors too with additional questions. Auditors explained that they would welcome more opportunities to meet with the UIFAND to discuss AML/CFT findings, though they can engage on a face-to-face basis. One audit firm indicated that the scope of the external AML/CFT audit could be extended to testing and reporting on areas of weakness within an FI's wider compliance controls - where potential exposure to ML or TF might lie.

530. It appears that a large part of the data collected through the external AML/CFT audits is not yet subject to any sectoral analysis of areas such as business patterns and trends.

The INAF

531. Whilst not directly responsible for AML/CFT supervision, as a prudential supervisor the INAF assesses the risk posed by FIs to the banking and financial system, which includes analysis of strategy and business models and governance and risk management framework. These are relevant to the supervisor's understanding of ML and TF risks. Its supervision consists of both on- and off-site supervision for which there is dedicated teams.

532. Within off-site supervision, the INAF has dedicated one supervisor to each banking group, the equivalent of 1.5 supervisors to other non-bank FIs, and 1.5 supervisors to collective investment schemes. This work covers the FI's corporate governance and institution-wide controls and also analysis of findings from annual reports on the effectiveness of controls and risk management, including: (i) a review of the design and operational effectiveness of the risk management framework (which must cover compliance with the AML/CFT Act) set out in a long-form audit report prepared in line with TC 157/03 and TC 157/13 quater ; (ii) the external AML/CFT audit report required by the UIFAND; and (iii) information on supervisory or compliance issues in subsidiaries in line with TC 220/11. On-site inspections (which focus on themes) are risk-based and, as a consequence of the significant size and nature of the banking sector, focused on inspecting banks. As with the UIFAND, the INAF's involvement in the management of a banking failure affected its inspection programme in 2015 and 2016.

Box 13 – Supervision and resolution of failed bank

Box 4 describes the background to the domestic bank with a significant subsidiary in Spain identified as a FI of primary ML concern.

In response, significant action was taken by the Andorran authorities. This included: (i) the appointment of provisional administrators following suspension of the bank's board and some senior members of management; (ii) engagement of an international consulting firm to review each of the bank's customers and their accounts and transactions in order to identify those with no AML/CFT risk indicia and to segregate those accounts from the accounts of those exhibiting indicators of high risk activity commonly associated with ML, TF or sanctions; and (iii) takeover of the bank by a Government recovery and resolution agency and approval of a resolution plan, under which the bank's ''good'' and ''bad'' assets, liabilities, and clients were separated and transferred to a "bridge" bank, and then the "bridge" bank sold.

Evaluators consider that supervisors did not take sufficient risk-based AML/CFT supervisory action. The UIFAND had undertaken no detailed on-site supervisory inspection of the bank to assess its governance and controls framework, and there was insufficient challenge of the bank's governance and business models by either supervisor.

Notwithstanding this, the UIFAND had already initiated a sanctioning proceeding against the bank in 2013 that was about to be concluded when the FinCEN Notice of Finding was published. At this stage, the UIFAND suspended its sanctioning proceeding and disseminated all of the investigatory work conducted during the previous two year period to the judicial authorities.

Remedial actions and effective, proportionate, and dissuasive sanctions

533. The range of actions and sanctions available to the authorities is broad enough to deal with the types of FIs found in Andorra. It includes: (i) sanctions set out in the AML/CFT Act; (ii) actions, precautionary measures and sanctions that may be applied by prudential supervisors; and (iii) use of a new framework for the restructuring, recovery and resolution of banks (explained in Chapter 1).

534. As indicated under R.27 in the Technical Annex, except for the withdrawal or modification of an authorisation, it is the Government rather than the UIFAND which decides the sanction to apply for serious and very serious infringements of the AML/CFT Act, based on a recommendation from the UIFAND. It is understood that the Government has accepted every sanction proposed by the UIFAND, except for the first case highlighted below, where the UIFAND had also sought the temporary suspension of the bank's compliance officer. Nevertheless, it is possible that the exercise

of such powers by the Government – which may have objectives that do not always align with the supervisor's - could be used to unduly influence the UIFAND's operational independence on AML/CFT matters.

535. The following table explains the sanctions that were applied in 2013 and 2014. No sanctions were applied by the UIFAND in 2015 or 2016. It is worthy of note that sanctions were applied against a bank that failed to report a suspicion of ML.

Table 21: Sanctions for failure of AML/CFT obligations

Sanctions failure of AML/CFT obligations			
Sector	Infringements	Sanctions (EUR)	Status of the appeal
Banking (2013)	Failure to submit an SAR.	80 000	2x Not challenged 4 x Confirmed by Courts
	Failure to notify the UIFAND before conducting transaction.	80 000	
	Failure to request sufficient evidence regarding origin of funds of a transfer.	30 000	
	Failure to comply with a TC	5 000	
Banking (2014)	Failure to notify the UIFAND before conducting transaction.	120 000	2 x Confirmed by Courts
	Failure of internal controls.	25 000	
Insurance (2013)	Failure to submit external AML/CFT audit report to the UIFAND.	7 000	Not challenged
Legal (2013)	Failure to comply with a requirement to provide information to the UIFAND.	600	1 x Not challenged 1 x Confirmed by Courts
	Failure to comply with a requirement to provide information to the UIFAND.	600	

536. Sanctions attracting higher penalties have arisen from individual cases originating from the operational side of the UIFAND, rather than from supervisory action identifying serious deficiencies. However, on-site supervisory findings often do lead to recommendations which call for appropriate corrective measures to be applied.

537. There appears to be no general mechanism to publicise the imposition of administrative sanctions. However, Andorra is a small jurisdiction with a few main financial players within which information about the actions taken by supervisors percolates through the financial community. Whereas sanctions are not public, appeals against those sanctions will be publicised in the Andorran Gazette. The UIFAND's annual report also contains information on an anonymised basis of cases it has dealt with and sanctioned.

538. Administrative sanctions have been applied to three banks with the highest cumulative fine applied of EUR 160 000. The UIFAND has no agreed methodology against which to gauge what fine to propose within ranges set in the AML/CFT Act, but, in the cases it has taken, it was able to point to strong mitigating circumstances to justify why it felt the fine imposed was proportionate and dissuasive. These factors included: (i) self-reporting; (ii) co-operation with the supervisor; (iii) nature and sums involved in the cases giving rise to the breach; and (iv) impact the sanction would have on the bank's relationship with foreign supervisors responsible for supervising its overseas subsidiaries.

539. Since many banks now operate through subsidiaries abroad, the effect of sanctions applied in Andorra is exaggerated as sanctions may affect licensing decisions taken by foreign supervisors. Andorran FIs also depend on market counterparties and correspondent banks in other countries in order to have access to the international financial system, and these counterparties will be very sensitive to sanctions applied, given recent events in Andorra.

Impact of supervisory actions on compliance

540. There is evidence that TCs issued by the UIFAND and its supervisory activities have a positive impact on private sector practice. TCs issued to banks on the application of enhanced CDD to customers who are foreign exchange houses and on the use of cash in internal transfers by customers addressed risks that the UIFAND had identified. Its TC on the application of additional controls around the deposit and withdrawal of cash has also helped to manage risk in this area. FIs and DNFBPs are also obliged to notify the UIFAND should they wish to place reliance upon a third party to verify the identity of a customer. It would appear that this requirement has had the effect of discouraging use of reliance provisions as only two banks have relied on CDD collected by another party and only in very limited circumstances.

541. The UIFAND highlighted a case where its remedial supervision following an on-site inspection that had identified deficiencies had resulted in improvements in the level of transactions controls and governance within a bank. It has also started to analyse banks' policies and procedures in order to identify good practices which it can promote to industry to encourage improvements

542. The UIFAND was also able to show that it had pursued remedial action with FIs where deficiencies had been identified either in an external AML/CFT audit or through its on-site supervisory inspections. FIs met by evaluators spoke of the steps they had taken to remediate deficiencies and which, in some cases, the UIFAND had verified through a follow-up inspection. However, it does not appear that the UIFAND has previously considered if there are any trends in its supervisory findings or how findings should influence its supervisory actions, but it is beginning to look at the sector that it supervises, and sub-sectors within it, holistically.

543. The INAF also issues TCs, including on governance matters. In particular, as already noted, TC-245/17 - issued in January 2017 - requires banks to periodically test their own governance structure and on-going suitability of each board member and delegated audit committee. This exercise by the INAF is likely to have a positive effect on compliance, given that there is significant shareholder representation on bank boards which could undermine the ability of independent non-executive directors to effectively challenge decision-making. At the time of the on-site visit, one bank with no independent directors had already commenced a process of appointing two independent board members. ML cases related to the banking failure have sent out a strong message to banks to ensure their controls are effective, something that was picked up by the assessors during many on-site meetings.

Promoting a clear understanding of AML/CTF obligations and ML/TF risks

544. Where FIs and DNFBPs met by evaluators said that they had approached the UIFAND directly, they spoke favourably on the accessibility of the UIFAND's supervisory staff and their competency and knowledge. But evaluators have the impression that there is insufficient resource within the UIFAND's supervisory unit to develop means of reaching a wider audience to give feedback on supervisory issues. There was a view expressed by both larger and smaller FIs and DNFBPs that the UIFAND could provide more guidance and ML typologies.

545. The UIFAND has provided some training opportunities to FIs and DNFBPs covering the concepts of ML and TF and AML/CFT obligations such as due diligence and reporting suspicion. This was principally done in 2013 and 2014 and sessions were largely aimed at the DNDBP sector rather than FIs. There was considerable engagement with banks and other FIs in 2015 and 2016 as part of the NRA process, but this largely covered data collection for the NRA and sharing of findings. The sectoral action plans arising from the NRA propose further AML/CFT training.

546. There is no regular engagement whereby off-site and on-site supervisory findings, current issues and good and bad practices observed through supervision are shared with industry. However, some information is understood to be available through the UIFAND's annual reports.

547. TCs are used by the UIFAND to convey to FIs and DNFBPs information on their AML/CFT obligations and on supervisory messages. This included a TC in December 2016 on reporting suspicion in preparation by FIs and DNFBPs for the AEOI for tax purposes and criminalisation of tax evasion. However, this appears to have been issued too late to influence behaviour. The INAF also uses TCs to: (i) collect information; and (ii) set out the supervisor's expectations. These have covered implementation of: (i) reporting mechanisms for tax information exchange; and (ii) effective risk management systems to identify, manage and mitigate various risks, including reputational risk.

548. However, there appears to be scope for more guidance to be issued on other areas by the UIFAND and the INAF. Evaluators were informed that the ABA had stepped in to fill a gap on guidance on the self-assessment of ML/TF risk. Guidance could also be issued on supervisory topics emerging from the UIFAND's on-site supervision, e.g. on application of a risk-based approach to CDD measures (a need for which is identified under IO.4) and use of numbered accounts.

549. There is limited supervisory engagement by the UIFAND with the DNFBP sector. Evaluators met an accountant and CSP that were unaware of obligations under the AML/CFT Act which suggests that the supervisor has still some way to go to promote a clear understanding by DNFBPs of AML/CFT obligations.

Overall Conclusions on Immediate Outcome 3

550. **Andorra has achieved a moderate level of effectiveness for IO.3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

The NRA includes quite a comprehensive assessment of ML risks involved in the use of Andorran shell companies and considers TF risks presented by NPOs (foundations and associations). It does not consider how companies may be used more generally for TF.

The NRA and interviews have highlighted past and current involvement of banks, lawyers, accountants and *gestorias* in the formation of legal persons. Interviews with the private sector raise the possibility that some professional trustees resident in Andorra are administering foreign legal arrangements (though activity is thought to be limited). Evaluators do not consider that the use of service providers has been considered sufficiently in the NRA.

Measures are in place to prevent misuse of Andorran companies. A combination of: (i) controls exercised over foreign investment by the Ministry of Tourism and Commerce; (ii) use of notaries (which are subject to the AML/CFT Act) when there is a change in ownership; and (iii) requirement to hold a bank account (nearly always in Andorra) when a company has foreign ownership are the key elements of a comprehensive process for mitigating the risk of misuse. However, it is noted that: (i) controls over foreign investment (based on a threshold of 10% of shares or voting rights held, irrespective of the amount) may not identify all "controllers" (in line with the FATF definition of beneficial ownership); (ii) changes in ownership may be kept private for some time (though they are not enforceable against third parties until notarised) and there has been limited supervision so far of compliance by notaries with AML/CFT requirements; and (iii) there have been cases when banks have failed to apply CDD requirements in accordance with the AML/CFT Act.

The Foreign Investment Act has a very limited application to foreign investments in collective investment schemes. Such schemes must also be authorised by the INAF and distributed and managed in Andorra by a FI that is subject to the AML/CFT Act. Significant assets are held in such investment schemes.

Relaxation of controls over foreign investment appears to have eradicated the historical use of "name-lenders" – Andorran nationals fronting the ownership and control of companies by foreigners.

Associations (not all of which must be registered) and foundations can also be formed as legal persons. They are required under the AML/CFT Act to keep records of persons who receive funds, but the UIFAND does not supervise compliance with this requirement.

There is no mechanism to ensure that basic information recorded by the Registries is accurate and updated on a timely basis. The Companies Registry is currently in the middle of a project to verify the accuracy of information that is recorded on its system.

Sanctions have not been applied for failing to provide information to the Companies Registry or historical use of nominee companies. Sanctions cannot be applied to foundations or associations where they fail to provide information to their respective registries.

Gestorias are commonly used to incorporate companies in Andorra. Whilst they are subject to the AML/CFT Act, supervision of this sector is insufficient.

Legislation does not permit LEAs to set deadlines for information to provided, so access may not be timely. However, FIs and DNFBPs interviewed on-site did not recognise any such delays.

Recommended Actions

- ML/TF risks present in the formation and administration of companies by lawyers, *gestorias* and other CSPs should be assessed and addressed. Additional information should be collected on the use of Andorran shell companies in order to conclusively determine the risks present in their use.
- The imminent and planned implementation of a central register of beneficial ownership should be used to address deficiencies observed in the current mechanism for mitigating the risk of misuse of companies.
- A mechanism should be introduced to ensure that basic information held by Registries and companies is accurate and up to date, and dissuasive and proportionate sanctions should be applied where there is failure to meet requirements.
- The UIFAND should supervise compliance by associations and foundations with applicable requirements under the AML/CFT Act.

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

551. The most commonly used types of legal persons which can be established in Andorra (with numbers at 28 February 2017) are: (i) limited liability companies (9,791); and (ii) public limited companies (2,165). The law also recognises cooperative form companies (1). Foundations (29) and associations (659) may also be established for non-profit purposes.

552. Information on the creation of companies is provided by: (i) the Chamber of Commerce of Andorra (www.ccis.ad/creacio-empreses-i-societats) and ACTUA (www.actua.ad), a promotional body of the Government of Andorra. This information also explains the additional requirements that foreign investors are subject to before investing in Andorran companies. This is in addition to information on the creation and types of legal persons to be found in legislation published in the Andorran Official Gazette. All of this information is available to the public. The authorities have not pointed to the publication of any guidance on the creation on foundations or associations.

553. Like in Spain, *gestorias* are found quite widely in Andorra. One of the purposes of *gestorias* is to act as an interface between the public and the public administration and they will know their way around the intricacies of Andorran administrative requirements, as well as knowing with whom to speak to get things done quickly.

554. Andorran law does not recognise any legal arrangements. As regard trusts, Andorra is not a party to the Hague Trust Convention. As such, trusts do not have any legal status in Andorra though there use is not prohibited.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

555. The NRA includes quite a comprehensive assessment of ML risks involved in the use of companies created in Andorra. It highlights the significant increase in the number of Andorran companies formed since foreign investment in the country was liberalised in 2012. Out of the 11 956 companies on the register in February 2017, 2 203 were established by foreigners (mainly Spanish and French nationals).

556. In particular, the NRA highlights the use of shell companies - entities that are formed for the purpose of holding property or funds that do not themselves engage in any significant business activity. It highlights a risk that some domestic players could try to use shell companies to hold assets for their clients in order to avoid disclosure of such assets to foreign tax authorities under tax information exchange agreements that came into effect at the start of 2017, notwithstanding that financial accounts held by reportable persons through such companies are understood to be subject to tax reporting obligations. As a result of this assessment, there is a proposal to prevent their establishment in future. However, statistics published by ACTUA highlight that over half the companies formed in 2016 by foreigners were used to manage assets, many presumably for legitimate purposes, and it seems that additional information may be needed in order to fully identify, assess and understand vulnerabilities in this area.

557. The NRA briefly mentions other ways in which Andorran companies can be used to launder criminal proceeds. It does not consider how companies may be used for TF

558. The 4th round MER highlighted the long-standing practice of "name-lending" (or *prestanoms*) in Andorra. It was explained that the liberalisation of foreign investment in 2012 meant that it was no longer necessary for foreigners to find Andorran nationals to front the ownership of legitimate business activities in the country. Whilst controls over foreign investment are still quite strict, the threat that nominees may be used to circumvent the Foreign Investment Act was assessed as being negligible by the authorities. The threat of abuse of "nominee" shareholders more generally was also assessed as negligible. Accordingly, neither is mentioned in the NRA report.

559. The NRA and interviews have highlighted past and current involvement of banks, lawyers, accountants and *gestorias* in the formation of companies, something that evaluators consider has not been sufficiently considered in the NRA. In particular, interviews with DNFBPs pointed to quite extensive use of *gestorias* to incorporate companies in Andorra (it was estimated that around 80% of companies are formed using such parties and most of the rest by lawyers). This highlights a vulnerability that is not addressed in the NRA: whereas lawyers must be registered (at least as individuals) and are subject to ethical codes, relatively little is known about *gestorias*.

560. The TF risk presented by foundations and associations (NPOs) is also considered in the NRA. Given the financial size of the sector, the ML risk of NPOs was assessed as being negligible by the authorities, and is not mentioned in the NRA report.

Mitigating measures to prevent the misuse of legal persons and arrangements

561. The Andorran authorities have three particular measures in place to prevent the misuse of companies: (i) it is necessary for foreigners investing in Andorra through Andorran companies to have their investment approved under the Foreign Investment Act; (ii) it is generally necessary for the purchase of shares in every Andorran company to be recorded in a public deed by a notary; and (iii) it is necessary for every Andorran company with foreign ownership to open an account with an Andorran bank or bank in a country with equivalent AML/CFT requirements (at the time of incorporation of the company).

Foreign Investment Act

562. All foreign investors[69] wishing to purchase shares in an Andorran company (except all but one collective investment scheme) have to fulfil the requirements provided for in the Foreign Investment

[69] A foreign investor is: (i) a foreign natural person who does not live in Andorra; (ii) a foreign legal person; or (iii) an Andorran company with foreign ownership of 50% or more of its shares or voting rights.

Act. A foreign investor may not make an investment of 10% or more in the shares or voting rights of an Andorran company (at the time of, and subsequent to, incorporation) without prior approval from the Ministry of Tourism and Commerce, and, post-acquisition, must disclose every purchase of shares (including any acquisition of shares or voting rights less than 10%) to the same Ministry. The effect of this is that the Ministry should know, at any one point in time, which foreigners have invested in foreign companies.

563. Foreign investors must fill out a form to apply to hold shares in an Andorran company. This must be sent to the Ministry of Tourism and Commerce, and, in the case of an applicant who is an individual, must include: (i) disclosure of any criminal record in any country that the applicant is connected to; and (ii) a copy of that person's national identity card. In the case of an applicant that is a company, beneficial ownership of any individual with a shareholding of 10% or more in that company must be disclosed. All applications are then considered by the operational unit of the UIFAND which analyses the investment and applicant and makes a recommendation to approve or reject it. In every case, applicants will be checked against Police Department, Interpol and internal databases. Sometimes the UIFAND decides to extend its analysis to an investigation involving the Police Department[70]. If the applicant is a natural person, the UIFAND's assumption is that this will be the beneficial owner. If the applicant is a company, they will ask for documentation to support beneficial ownership, including incorporation documents and documentation certifying ownership of shares. On the basis of a recommendation made by the UIFAND, the Ministry of Tourism and Commerce takes the decision to accept or reject the application. In the case of a decision to reject, the applicant can appeal. Out of 2 063 applications made between 2012 and 2015, 1 901 were authorised. 10 applications were rejected in 2015[71] and 20 in 2014. In practice, the Ministry always follows the advice of the UIFAND since it does not have capacity to assess applications itself.

564. However, it is noted that controls over foreign investment are based on control through ownership (percentage held in shares or voting rights) and do not extend to control through other means. Accordingly, controls may not identify all "controllers" (as required under R.24). Also, where an investment is made through a foreign company, and the beneficial ownership of that foreign company subsequently changes, this change of ownership will not be disclosed to the Ministry of Tourism and Commerce. The NRA also observes that negative opinions are very limited. One reason for this is "lack of competences" to provide a negative opinion, where the suggestion is that other agencies may be better suited to considering applications than the UIFAND.

565. The Foreign Investment Act has a very limited application to foreign investments in collective investment schemes. Instead, such schemes must be authorised by the INAF (which does not collect information on beneficial ownership) and distributed and managed in Andorra (by FIs subject to the AML/CFT Act) and there is little use of omnibus accounts (explained under IO.4). At 30 August 2016, there were 91 collective investment schemes holding net assets of EUR 3 512 million – a significant amount.

Role of notaries

566. Under the Companies Act, a change in ownership of a company must be recorded in a public deed (except for companies that are collective investment schemes). Notaries are required under the AML/CFT Act to find out the identity of the beneficial owner of every person who is purchasing

[70] 20 cases were investigated by the Police Department in 2014 and a further 37 in 2015.

[71] Five applications were rejected because of nationality or connection to a country that did not have AML/CFT legislation in line with international standards. Four were rejected because the applicant had a police record, was under judicial investigation, or was otherwise the subject of negative information. One other was rejected for providing incomplete information.

shares in an Andorran company, and also take measures to ensure that: (i) investments by foreigners have been approved under the Foreign Investment Act and are subsequently disclosed to the Ministry of Tourism and Commerce; and (ii) a bank account has been opened for that company in Andorra or a country that applies equivalent AML/CFT measures to Andorra. Most investors are individuals, and notaries have explained that they see few complex holding structures.

567. However, there has been only limited supervision so far of compliance by notaries with AML/CFT requirements, and there is no requirement for the notary to keep the information that it has recorded up-to-date (e.g., where there is a change in the ownership of a foreign company that has invested in an Andorran company). Moreover, no deadline is set for changes in the beneficial ownership of an Andorran company to be recorded in a public deed (or penalty set). Accordingly, where both parties wish to keep the change of ownership private, there could be a delay in recording that change in ownership - until such time as the person who owns those shares wishes to sell them to a third party or otherwise enforce them against a third party. In addition, the NRA highlights that some bank account information provided to notaries has been false or inaccurate.

Requirement to open bank account

568. Banks play an important role as gatekeepers at the time that an Andorran company with foreign ownership is established and outlined to evaluators their reluctance to provide banking services to shell companies (Andorran and foreign). This cautious approach is seen in a case study provided by the authorities, where a bank made a SAR on the basis of an application to provide banking services to Andorran and foreign shell companies.

569. However, not all companies establish banking relationships in Andorra. A very small number of companies have opened accounts outside the country (in Spain and Luxembourg) rather than with Andorran banks, and there are no checks subsequent to incorporation to ensure that accounts opened with Andorran banks are maintained. Also, there have been cases when banks have failed to apply CDD requirements in accordance with the AML/CFT Act, as explained under IO.4.

Bearer and nominee shares

570. It must be noted that bearer shares were prohibited in 1983 and companies had 20 years to convert such shares to registered form. At the time of the 4th round MER, 17 companies had still not done so. Since then, four have converted their shares into registered form, 12 have been struck-off by the authorities, and just one – which is subject to on-going judicial proceedings - remains.

571. Andorra has also prohibited a person from acting as a nominee shareholder since 1981. Notwithstanding this, the 4th round MER established that the practice of legally resident Andorrans "lending their names" to companies continued. In response to this, amendments were made in December 2013 to the Companies Act (see c.24.12 in the Technical Annex).

Other legal persons and legal arrangements

572. The authorities have sought to mitigate the risk that foundations may be used for ML/TF purposes. Only public interest foundations may be formed to benefit generic groups of people, rather than specified natural or legal persons or classes thereof. The effect of this is that foundations cannot be used like trusts found in other jurisdictions.

573. As regards trusts, though not recognised under Andorran legislation, there is no prohibition on residents acting as trustee to a foreign trust. This was confirmed by FIs that have trustees and trusts as customers, although this is not common in practice. Measures have not been taken to mitigate any risks presented by the administration of trusts in Andorra, though numbers involved are thought to be limited.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

574. In practice, basic and beneficial ownership information on Andorran companies will be available to competent authorities through: (i) registries for companies, foundations, and associations, as well as the Ministry of Tourism and Commerce (Foreign Investment Act); (ii) notaries; and (iii) banks. Andorra does not currently require companies themselves to obtain and hold beneficial ownership information.

575. The Companies Registry has 15 days (by law) in which to update basic information provided to it. It usually takes just 6 or 7 days to do so. However, as noted above, the Companies Act does not set a timeframe for recording a change in the ownership of a company in a public deed, and so it is not clear that current information will always be held by the Companies Registry or Ministry of Tourism and Commerce (under the Foreign Investment Act)[72]. In addition, a company is required to register a buyer of shares in its register of shareholders only at the request of a member or members, and so it is not entirely clear that information on registered shareholders would be always held by the company itself.

576. The Companies Registry does not have the responsibility for checking the accuracy of basic information provided to it, though its publication will allow those with access to it to identify circumstances where there are errors. It follows that the Registry has no compliance unit to ensure that information is accurate and updated on a timely basis (though the use of notaries under the Companies Act may partly address this gap). Whilst basic information could also be held by other Government agencies, no other mechanism is in place to ensure that basic information held is accurate and up-to-date. Despite this, an audit is currently underway comparing information recorded in the register to underlying documentation submitted to the Registry. Whilst this exercise is to be commended, it suggests that basic information has not always been correctly recorded on the system. Once the audit has been completed, the authorities will consider offering wider access to information recorded in the Registry and also the need for a compliance unit to be established.

577. As noted above, the authorities rely on the Ministry of Tourism and Commerce, notaries and banks to ensure that beneficial ownership information is available. As there are only four notaries operating in Andorra, in practice, it does not take long to find out which notary will hold the necessary information (and, as a result, also which bank). However, the deficiencies identified above could have an impact on the extent to which competent authorities could obtain adequate, accurate and current information in a timely manner. In addition, there is no requirement to record any person who is the holder of a specific power of attorney[73] (distinct from general power of attorney) in a public deed, though interviews did not identify any particular issues in this respect.

578. In the case of associations and foundations, whilst the AML/CFT Act requires such legal persons to keep records on the identity of all persons that receive funds, the UIFAND has explained that it does not oversee compliance with these requirements. Accordingly, it is not clear that adequate, accurate and current beneficial ownership information will be available on a timely basis. Some other technical deficiencies are also highlighted under R.24 in the Technical Annex in respect of associations and foundations. In particular, registries are repositories of information and accept submissions that are required by statute in good faith. Accordingly, they do not check the accuracy of

[72] Until a change in ownership is recorded in a public deed by a notary, there is no control to ensure that the change has been approved under the Foreign Investment Act.

[73] Written for specific action, e.g. to buy real estate or to set up a company. Such powers fall away once used.

information provided, or that it has been updated on a timely basis. No other mechanism is in place to do so.

579. All basic and beneficial ownership data is available to the authorities (using statutory powers). In the case of the UIFAND, it also has direct access to all of the registers for companies (including information held under the Foreign Investment Act), foundations and associations. According to interviews, powers are generally sound and widely used by the authorities. However, the NRA highlights that banks and notaries do not provide information requested in a timely manner to judicial authorities, as they have no means to establish deadlines for receiving the requested information. FIs and DNFBPs interviewed on-site were not aware of any such delays.

580. Information is exchanged most often by the Companies Registry with the Ministry of Finance in its capacity as the competent authority for the exchange of information for tax purposes. Information requested is sent within less than a week. The Registry has never had any feedback on information provided (i.e. to confirm that it is accurate, up to date etc.).

Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

581. Interviews with the private sector raise the possibility that trusts are administered to a limited extent by professional trustees who are resident in the country, although this activity is said to be much less now than in the past. Whilst the UIFAND is aware of one such service provider, in the absence of a full list of trust service providers that provide such services, it is not clear that there would be timely access to basic and beneficial ownership information, or that it would be adequate, accurate and current. However, there are no obstacles to accessing information where held in the country by trustees, provided that law enforcement is able to identify who holds the necessary information. This is likely to involve substantial investigative resources which would negatively impact on timeliness of access.

582. The Companies Registry has never received, nor requested, information concerning trusts (or other legal arrangements), except in cases where such arrangements hold an interest in an Andorran company. Nor is it aware of any attempt to request information from trustees of foreign trusts resident in Andorra. The number of requests made, or received, by other authorities has not been provided.

583. Where legal arrangements are banked or provided with other financial services in Andorra, then basic and beneficial ownership could be accessed through information held by FIs, to the extent that it is possible to identify which FIs hold that information. Based on interviews on-site, it does not appear that many FIs do, in fact, maintain relationships with trustees. However, it is noted under c.10.11 in the Technical Annex that there is no explicit requirement to identify the settlor or protector of a trust (other than if exercising effective management) and so this information may not be held by FIs.

Effectiveness, proportionality and dissuasiveness of sanctions

584. The most common violation of information requirements relates to the use of name-lenders by Andorran companies (a problem identified in the 4th round MER). Whereas the authorities are aware of around 250 companies that have "regularised" information disclosed on beneficial ownership and directors since 2012, no action has been taken to prosecute those companies for breaches of legislation, including the Companies Act.

585. Not all relevant requirements in the Companies Act are backed by a sanction, and the Companies Registry has not taken any action against companies that have failed to comply with

information requirements where sanctioning powers are in place. However, as mentioned above, it took action to strike-off 12 companies that had failed to register bearer shares. The authorities have suggested that current resourcing levels do not permit it to enforce compliance with the law.

586. No sanctions are set out in foundations or associations legislation in cases where foundations and associations fail to comply with information requirements. However, for the first time, 59 associations were struck-off in 2016 for failing to have provided information required under article 12 of the Law on Associations within the necessary period (10 years). Sanctions may be applied under the AML/CFT Act in any case where there has been a failure to keep: (i) records of the identity of persons who have received funds; or (ii) a register of members (in the case of an association). Sanctions have not been applied.

587. Failure to comply with a request for information from an investigative judge, public administration or public servant can be punished by detention and a fine up to EUR 6 000. It is not clear how such a fine could be considered to be proportionate or dissuasive in a case where the circumstances of the case do not warrant detention.

Overall Conclusions on Immediate Outcome 5

588. **Andorra has achieved a moderate level of effectiveness for IO.5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

The international cooperation constitutes a significant part of the Andorran AML/CFT system, considering that most of the predicate crimes to ML are committed abroad. Andorra has a sufficiently comprehensive legal system for conducting formal international cooperation, nevertheless, in practice the major share of the cooperation falls under direct communication with the competent authorities of foreign states.

All competent authorities, including the judicial authorities and the LEAs, demonstrated a remarkable level of direct communication with their counterparts in Spain and France predominantly, but also Portugal, the US and some countries in Latin America, which is consistent with Andorra's ML/TF national risk profile. However, the use of diplomatic channels with countries with which Andorra does not cooperate frequently takes a slower course. Nevertheless, even though some cases of delays were observed and a few causes were identified, the authorities usually establish direct contacts with the other States immediately after the initial communication, in order to ensure a more speedy and efficient cooperation.

Andorra is capable of executing different types of cooperation requests including assets tracing and identification, freezing, seizing, confiscation, evidence collection, etc. Given that most of the predicate offences to ML are committed abroad, Andorra proactively seeks legal assistance from foreign authorities. As in incoming cases, for the outgoing cases also the largest portion of cooperation is conducted with Spanish and French authorities.

Despite the absence of formally established prioritisation mechanisms for MLA, the establishment of specialised investigative sections in the Courts (which are in charge of investigation of economic crimes and international cooperation related to these matters), highly contributed to the prioritisation of ML cases and ML related international cooperation. Moreover, in practice requests received via direct communication have been observed to be of a higher importance and urgency, and prioritised accordingly.

The case-management system differs for each authority. Usually basic information is preserved electronically, whereas the documentations and files are managed manually. Nevertheless, the investigative judges do not have a case-management system and do not keep detailed statistics with regard to MLA requests other than the manual preservation of documentation.

Although being a formal reason for which MLA requests can be refused, the dual criminality requirement in cases of tax crimes is strictly applied only if no link with another predicate offence can be identified. Even though the Andorran legislation provides for a possibility of issuing a judicial secrecy for the maximum of 6 months for serious offences, this can impair cooperation in terms that the investigations being conducted in other countries under secrecy can be jeopardised.

Despite the existence of dual criminality limitations, the UIFAND has demonstrated that it is able to provide assistance even when a foreign request did not involve information regarding the predicate offence.

Recommended actions

- Andorra should consider, as a matter of priority, signing and ratifying the UNCAC and CETS 198 in order to enhance its mechanism for international cooperation.
- In line with the FATF methodology Andorra should not make dual criminality a condition in

rendering MLA at least for requests which do not involve coercive actions.

- Additional resources should be allocated to international cooperation in judicial authorities and LEAs in order to eliminate undue delays.
- Case management system should be improved in judicial authorities and LEAs to promote the timely management and execution of all MLA requests. This case management system shall also enhance the quality of statistics, including with regard to MLA requests received via direct communication.

Immediate Outcome 2 (International Cooperation)

589. Since Andorra frequently investigates ML cases where the predicate crimes were committed abroad, international cooperation plays a significant role in the Andorran AML/CFT system. Although Andorra's legal acts demonstrate a detailed approach to regulation of particular aspects of formal international cooperation, in practice Andorra cooperates with foreign states predominantly via direct communication. In terms of quantity, the highest level of international cooperation Andorra has demonstrated with France, Spain, Portugal, and to a lesser extent – Latin America, US, and with countries of Eastern Europe, which is consistent with the Andorra's ML national risk profile. Countries, with which Andorra does not cooperate more actively, usually have to pass through either diplomatic channels, or the central authority indicated by Andorra under the declarations of the particular MLA Convention under which the request is being submitted.

Providing constructive and timely MLA and extradition

590. Due to the fact that the vast majority of cases investigated by Andorran LEAs involve predicate offences that were committed abroad, including the neighbouring countries, Andorran authorities prefer direct communication with their foreign counterparts. With Spain, France and other EU jurisdictions the creation of working-groups for carrying out diverse joint investigative activities is a common practice.

Box 14 – Operation Sunbird

Eurojust supported and coordinated judicial and LEAs in the Netherlands, Andorra and Spain in Operation Sunbird, a successful joint operation to disrupt ML activities.

The operation took place on 6 November in all three countries simultaneously and was carried out in the Netherlands by the Dutch national police, in Andorra by the Investigating Judge, the Public Prosecutor and the *Policia d'Andorra*, and in Spain by the Investigating Judges of Villajoyosa (Alicante) and Marbella with the assistance of the *Guardia Civil* and the *Policía Nacional* under the coordination of the International Cooperation Delegates in the Prosecution Offices of Alicante and Málaga. The Public Prosecution Service of the Netherlands has issued European Arrest Warrants for the suspects held in Spain and an extradition request has been made to the Andorran authorities. All of the suspects are expected to be transferred to the Netherlands soon.

In Spain and Andorra, jewellery, EUR 60 000 in cash and a number of luxury vehicles and houses – including a villa valued at more than EUR 6 million – were seized and bank accounts frozen. In Andorra one person was arrested.

The centre of the ML operation was a construction company in Andorra that invested in large-scale construction projects. EUR 16 million was deposited in bank accounts in Andorra, most of it from a

Dutch drug trafficker who was killed in Spain in 2008.

A coordination meeting involving the Netherlands, Spain and Andorra was held at Eurojust in September 2013. An operational coordination centre was set up on the action day, run by Eurojust's Dutch and Spanish Desks with the assistance of the Case Analysis Unit.

591. Even though no statistics were provided due to the nature of the direct cooperation, each relevant authority met on-site confirmed that the vast majority of international cooperation is conducted via direct communication, when there is a treaty or a MoU allowing such cooperation between Andorra and other states, or where previous successful cooperation has been established. The authorities have demonstrated that direct international cooperation is a daily routine for both the judicial and law-enforcement authorities. This cooperation is multidirectional and included various forms of cooperation, phone-calls, meetings and different daily operations with foreign counterparts. During the on-site visit the authorities were able to present a number of recent cases during which channels of direct communication with foreign counterparts were used.

592. In other cases, it is the responsibility of either the Ministry for Foreign Affairs or the Ministry of Home Affairs and Justice to receive the petitions and to send them back as soon as they have been formalised. When they receive a petition, they send it to the President of the Bailiffs Court, sending a copy to the Public Prosecutor's Office for purposes of formality.

593. In 2014, Qualified Law on Justice was modified in order to, *inter alia*, create and establish investigative sections of the Courts in charge of economic crimes. All ML investigations were from there on assigned to the newly established investigative sections, which, according to the authorities, contributed to the achievement of a more efficient and targeted approach with regard to ML. Apart from being in charge of the investigation of economic crimes, these sections also deal with the international cooperation related to the investigation of these crimes. This new legal framework has contributed to the prioritisation of ML related cases and international legal assistance for that matter in a more efficient way.

594. Regarding the MLA statistics, the following figures mirrors not one MLA request, but a number of consecutive requests concerning the same case in order to identify a clear traceability of the MLA case. In general terms, each MLA case is composed by several single MLA requests. Even though some minor delays were detected in provision of MLA through official channels, no extended delays were observed. It must be emphasized that the great majority of the requests involve complex financial information and beneficial owner related information which requires time).

Table 22: Statistical data on MLA requests received

	Received	Pending[74]	Refused	Executed	Average time of execution (days)	Refusal grounds applied
2012	15	2	0	13	228	N/A
2013	12	3	1	8	279	Lack of dual criminality
2014	13	2	2	9	216	Lack of dual criminality
2015	31	9	1	21	264	Lack of dual criminality

[74] In the context of this table, word 'pending' indicates that the request(s) was not executed by the end of the year it was received.

595. As for the few cases where delays were detected, a number of explanations were provided. The provision of MLA via diplomatic channels, the lack of human resources in LEAs to deal with all of the incoming MLA requests, constant appeals to the Constitutional Court by the party concerned and time taken to collect information were amongst the vulnerabilities that in fact were observed to cast some undue delays in provision of MLA in practice. The authorities, apart from the UIFAND, also indicated that receiving information from financial entities was also time-consuming, since financial entities often delay providing the information to judicial authorities, and the judicial authorities have no means provided under the legislation to establish deadlines for setting out time limits to receive the requested information.

596. Nevertheless, the authorities explained that despite some rather inferior shortcomings related to cooperation through official channels, usually the cooperation takes a faster course after the initial contact is established. More precisely, with countries that Andorra does not have a previous experience of regular cooperation, after the initial contact through diplomatic channels, direct communication is established among the competent authorities of Andorra and the other State in order to promote a more speedy and efficient cooperation. This direct contact ensures a prompt response to the MLA request through direct channels before the response through official channels can be sent or received. This position was also confirmed by other States in the feedback on international cooperation received by the Secretariat. Moreover, it shall be noted that Andorra got a positive feedback in general and there were no complaints by States regarding continuous delays or constant late responses. Generally satisfactory quality of cooperation was indicated.

597. It was also observed by the assessment team that even though there is no regulation with regard to prioritisation of cooperation requests, in practice some MLA requests are prioritised, before dealing with domestic cases. According to the information acquired onsite, MLA requests with regard to seizures and confiscations are usually executed in a rather short period of time, around 24 hours. The authorities indicated that priority is given by the authorities to cases communicated directly, rather than through channels of the central authority or the diplomatic channels, the reason being the urgency and significance of directly communicated cases. In cases when Andorran authorities have already cooperated with the authorities of the requesting state, a request for assistance is constantly received and executed directly via informal channels, before the formal request is received through the central authority, or through diplomatic channels.

598. Each competent authority dealing with international cooperation has its own case-management system. Usually these are electronic documents involving, for some - basic, and for others - detailed information about each incoming and outgoing case, which facilitate the monitoring of the documentation flow with other states. The central authorities usually keep basic information. As it was demonstrated during the onsite visit, the central authorities usually keep information regarding the requesting state, the requested information, relevant treaties and dates, the status of the request, etc. During the onsite visit it was observed by the evaluators that the Ministry of Home Affairs and Justice had allocated only one person to deal with MLA requests. This was observed to have the potential of slowing down the assistance process, nevertheless caused no major delays.

599. The NRA indicated that obtaining information with regard to MLA had been hard and time consuming. It was established during the onsite visit that the investigative judges for example, who dealt with the greatest share of the MLA requests, had no electronic case-management system in place to deal and prioritise MLA, and hardly preserved statistics. All the files regarding the MLA, request, accompanying documents, internal document flow, answers are kept in files manually. The reason for this, according to the authorities met onsite, was lack of human resources and the high number of cases.

600. There are no manuals or handbooks used by Andorran authorities to facilitate MLA, the quality of assistance is usually ensured by practice and also the investigative judge's supervision. The dual criminality requirement related to tax crimes is usually strictly applied in cases of ML where no link with other predicate offence can be found. However, this is the primary reason for which MLA requests, including both coercive and non-coercive measures could be refused. The cases of concern mostly include requests with regard to tax crimes, which are not criminalised in Andorra, as well as lack of criminal liability for legal persons. Nevertheless, despite the dual criminality requirement, with regard to cases involving criminal liability for legal persons, the authorities advised that they always seek a possibility to get additional information on possible involvement of natural persons in order to provide assistance. After association with an individual is established, MLA is executed. In practice, no request of MLA involving criminal liability for legal persons has been refused.

601. Nevertheless, according to the authorities, after receiving a request for cooperation, the case is properly analysed in order to find legal or factual grounds that allow cooperation (mostly any other link with another predicate offence). The authorities also demonstrated a case where the Constitutional Court confirmed the exchange of information ordered by the competent judiciary authorities in a tax related MLA case. What is more, the Constitutional Court has established a precedent where it confirmed that when an MLA request is not only related to a tax crime, the international cooperation shall be carried out by the Andorran judicial authorities. The Constitutional Court has further established that in cases where an MLA request refers to conduct that is not criminalized in Andorra *per se,* the terminology of the crime (*nomen iure*) is not decisive, but what matters is that the underlying facts can be included in relatively equivalent crimes under the foreign and the Andorran legislation. Thus the Constitutional Court created a precedent which would award the opportunity to provide MLA to the widest extent, taking into account the absence of tax crimes in the Andorran legislation. The authorities do not usually refuse cooperation based on other restrictive conditions. Few cases may be observed. Nevertheless, during the onsite visit it was observed that there was no coordination and a unified approach with regard to the dual criminality requirement – some authorities indicated a strict application of this criterion, the other authorities, however, demonstrated flexibility.

602. However, even if the precedents established by the Constitutional Court allow a wider range of cooperation with foreign authorities, nevertheless, this cannot be considered as a complete solution to the hindrances with regard to proper execution of MLA caused by the dual criminality requirement, since in case no link to another predicate offence is established, or when there can be no requalification of the crime, the dual criminality requirement would prevail.

Box 15: Sentences of the Constitutional Court regarding the exchange of information in tax related MLA cases

i) Sentence of the Constitutional Court (Cause 2013-9 and 13-RE), of 7th October 2013

An appeal was filed before the Constitutional Court because, amongst others, the applicant considered that an International Letter Rogatory (MLA) had its origin in a tax crime. The Constitutional Court stated that the object of the letter was not only related to a tax crime and, therefore, the appeal was dismissed and the international cooperation carried out by the Andorran judicial authorities was confirmed.

ii) Sentence of the Constitutional Court (Cause 2017-4-RE), of 13th March 2017

An appeal was filed before the Constitutional Court because, amongst others, the applicant considered that an International Letter Rogatory (MLA) referred to crimes and facts that were not a crime in Andorra.

The Constitutional Court considered that the important issue is not the terminology of the crime

(*nomen iure*), but the fact that the underlying facts can be included in relatively equivalent crimes under the foreign and the Andorran legislation. The appeal was dismissed and the international cooperation carried out by the Andorran judicial authorities was confirmed.

603. The AML/CFT Act sets a number of conditions for the provision of MLA, which are mostly generally accepted conditions. According to the Law, the facts giving rise to the action should be of sufficient importance as to justify the intervention of the institutions of the Andorran justice system. Even though this notion of 'sufficient importance' is too broad and is not specified anywhere in the legislation, the authorities have confirmed that this usually concerns misdemeanours such as violations of traffic regulations and do not pose effectiveness issues.

604. The information provided by the authorities during the onsite visit indicated that Andorra is capable of executing different types of cooperation requests including asset-tracing and identification, freezing, seizing, confiscation, evidence collection, etc. The indicated activities usually need a judge authorization in order to be executed. Taking into account that most predicate offences of ML are committed abroad, the authorities have advised that the most of the times financial information is the main data exchanged with foreign counterparts.

605. Direct cooperation is principally robust and developed with Spain and France, which also cover the majority of international requests received and sent. In other cases, where Andorra has not had a previous communication with a requesting State, use of official channels is required. Although cooperation through official channels sometimes can take a slower course, usually after the initial cooperation through diplomatic channels or the central authority a direct contact is established.

606. As identified in the National level NRA, the authorities also encounter issues with regard to secrecy requirements during conduct of MLA concerning investigations being conducted in other countries under secrecy. According to the Andorran domestic legislation, a judge can issue a *sub judice* secret of a criminal case (in total or in part) for serious offences. Article 46 of the CPC allows extending the *sub judice* secret for a maximum of 6 months in cases of serious offences[75]. This means, that when the judge receives an MLA request with regard to a certain individual from a foreign authority, and the said person has any suspicion of being investigated, the individual can ask the judge if there are any criminal investigations against him, and the competent Judge is obliged to notify him with the details if no secrecy order - during 6 months - has been issued by the judge. While the judge can maintain the information under secrecy, this can be done only for serious crimes and for 6 months the longest. Although this legal requirement has a high risk of jeopardizing the foreign investigations, the authorities clarified that they have not experienced such a case so far.

607. With regard to requests for extradition, requests must be sent via diplomatic channels. According to the statistics, during 2011-2015 Andorra has received 14 requests for extradition. Three of the requests were refused, reasons being lack of dual criminality, Andorran citizenship[76] or lack of enough information on the facts of the case. While these restrictions are usually generally accepted in different legislations, the lack of criminalization of tax offences is a setback taking into account the dual criminality requirement. According to the authorities, arrests are usually made very quickly, often within a couple of hours, due to the small size of the country. Although Andorra demonstrated cases where the execution of extradition lasted a reasonable time-period of around 45 days from the moment of receiving the request, in some other cases 201-579 days were observed

[75] Crimes for which the law prescribes a maximum penalty beyond 2 years of imprisonment are considered to be serious crimes.

[76] When the Andorran judicial authorities were about to open a case against this national citizen, he voluntarily turned himself in to the foregin authorities.

due to the fact that, in these cases, persons had been previously convicted in Andorra and had to comply their penalty in Andorra prior to the execution of the extradition. Andorra does not extradite its own nationals, however can open an investigation or prosecution in Andorra on behalf of the other country. Nevertheless, no such case has occurred.

608. As for the outgoing extradition requests, during 2011-2015 only two extradition requests were sent by Andorran authorities, even despite the great number of investigations carried out in Andorra, during which cases where the person has not been found are not few. This fact raises concerns, especially with regard to ML, whether Andorra is proactively seeking means to bring to justice the persons involved in ML crimes, even if they are not found in Andorra at the time of the investigation. There is a simplified mechanism for extraditions provided by the Andorran legislation (direct transmission of requests for provisional arrests between appropriate authorities or simplified extradition of consenting persons who waive formal extradition proceedings, which takes a much faster course and is usually executed in around a month).

609. Depending on the types of cooperation required, international cooperation with regard to terrorism and TF can be achieved through a number of channels – judicial, law enforcement, FIU, direct communication via all competent authorities. However, no request with regard to terrorism or TF has been received to or sent by the Andorran authorities. Nevertheless, the authorities have indicated that they have worked closely with other countries, predominantly with Spain, in joint activities and trainings in fight against terrorism and TF, sharing experience and techniques.

Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements

610. With regard to outgoing requests of legal assistance, it is the evaluation team's opinion that the Andorran authorities seek for cooperation with foreign counterparts on all levels, at a timely basis, both directly and indirectly, especially with regard to ML cases. Due to the fact that most of the predicate offences to ML are usually committed outside of Andorra, the Andorran authorities proactively cooperate with foreign counterparts, seeking not only judicial legal assistance, but also joint investigations, meetings, think-tanks, etc.

Table 23: Outgoing MLA requests

	Sent	Pending	Refused	Executed	Average time of execution (days)	Refusal grounds applied
2012	26	13	3	10	211	N/A
2013	27	6	4	17	190	Formalistic issues
2014	25	10	2	13	235	Formalistic issues
2015	35	16	1	18	130	Person not found

611. While the above table shows the documented outgoing MLA requests that were sent via formal channels, Andorran authorities have advised that the vast majority of cooperation sought by the Andorran authorities were through direct communication. The cases communicated directly are usually not documented by the authorities due to the fact that those are conducted on daily basis as a part of a regular workload. As in the case of incoming requests, the Andorran authorities seek assistance most frequently from Spanish and French counterparts, however, the level of cooperation with Latin America countries, the US and the Eastern Europe countries is constantly increasing.

Other forms of international cooperation

612. Other than MLA, Andorra makes use of other means of communication, as indicated above. Besides cooperation under various international treaties, the different authorities have MoUs with some foreign counterparts, which regulate their cooperation more precisely. The authorities are also able to cooperate with foreign counterparts on ad hoc basis, without a treaty or a MoU, based on domestic regulations. Even though Andorra is not part of EUROJUST, the authorities indicated that they have participated in coordination and cooperation meetings a number of times which led to successful international operations against crime. Andorra is also a party of the IberRed network.

Police

613. The onsite visit confirmed that the Police Department cooperates closely with their foreign counterparts in Spain and France directly, on daily basis. The Police Department has signed MoUs with Spain, France and Belgium. Other forms of communication include predominantly channels of Interpol. Between 2015 and 2016 the Police Department received 69 requests through Interpol for information on ML cases.

Box 16: Joint operation with France (*still under judicial investigation*)

In 2015, the Police Department received information that several French citizens that were residing in Andorra and had a legal company created in the Principality, had been involved in a ML scheme of important amounts originated by a lawful activity with international impact, linked to Internet and presumably affecting intellectual property rights.

The case was reported to the Public Prosecutor, who opened a criminal investigation for alleged crimes of ML and intellectual property rights violation and instructed the Police Department to investigate further and allowing exchange of information with foreign counterparts.

As a consequence of this exchange of information, the Police Department was informed that in France, the *Gendarmerie* opened an investigation against these individuals for their participation in a scheme designed to launder funds acquired fraudulently, from actions that may qualify as reproduction, representation or diffusion of works in violation of copyright, concealed work and ML in organized group. The investigation revealed that the investigated persons were the owners of a website created to download movies and music that was providing thousands of artworks available to Internet users.

With the purpose to coordinate the investigations, several meetings were held in France and in Andorra, with the participation of the investigative judges and prosecutors of both countries. The investigation revealed that financial contributions to accounts of the suspects were coming from a tax haven country in Central America and from two European countries, as well as from various cash deposits.

By late November 2016, and in coordination with the French authorities, the Police Department proceeded to dismantle the organization, arresting the main perpetrators. The mastermind of the criminal organisation was detained in France, while the individual in charge of the technical part was arrested in Andorra, as part of the execution of a warrant issued by the International French Judicial Authority.

Simultaneously, their property and bank accounts with an approximate amount 300.000 euros were seized in Andorra and the value of three cars, two of which were of high quality.

614. While the Police Department shows a good level of direct communication with foreign counterparts in neighbouring countries, these direct communications are usually based on inter-personal connections and trust and take an informal course. Moreover, other requests are usually dismissed as of lower importance and can take up to several months or years, mainly due to lack of human resources and the high number of cases.

615. From 2010 until 2015, the Unit has had 6 police officers for ML investigation, adding 3 more police officers in 2015 for specific economic crimes, such as fraudulent credit card use, bank checks frauds, amongst others. The group that deals with ML affairs is also in charge of the ARO.

ARO

616. Even though the ARO has sufficient legal mechanisms for proper implementation of its functions, it faces a number of challenges from a practical point of view. Due to lack of IT resources, the ARO uses a single e-mail address to exchange information with foreign counterparts, which is not a part of the secure network. Although the regulation on ARO envisages a rapid communication with foreign counterparts, especially in cases where the information requested can be accessed in the database directly accessible to the Police Department, ARO can directly identify information only with regard to vehicles. Other information, such as real estate and property registration information, banking information, etc., can be accessed only after the approval of the investigative judge.

617. ARO is not a member of CARIN, and according to the authorities, membership or observer status has never been requested by ARO.

Customs Department

618. The Customs Department is a member of the World Customs Organization (WCO) and participates in periodic meetings of the Execution Committee. The Customs Department 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.

619. A number of provisions of the Customs Union Agreement, of 28 June 1990, concern co-operation and agreement between the Customs Department and those EU member states. Moreover, Andorra has signed administrative agreements in customs-related matters, which permit the communication and exchange of information obtained through customs operations.

620. The Customs Department also conducts joint operations with neighbouring countries, the main subject being tobacco smuggling. An example of a joint operation with the Spanish and French authorities called ARAMIS is demonstrated above under the analysis of Immediate Outcome 8.

FIU to FIU cooperation

621. The UIFAND is able to share information with its foreign counterparts, regardless of the existence of a cooperation agreement or a MoU. Nevertheless, the UIFAND has signed agreements with a number of foreign FIUs[77]. The UIFAND usually cooperates with foreign counterparts via the Egmont Secure Web. The UIFAND provides information both spontaneously and upon request. The reasons that UIFAND may refuse a request are mainly limited to dual criminality. Nevertheless, the UIFAND has demonstrated cases where it provided assistance when the request did not involve information regarding the predicate offence and, in practice, applied the principle to cooperate to a maximum extent and in line with the approach of other authorities with regard to dual criminality principle (further elaborated under IOs 7 and 8). Andorra can directly request information from domestic authorities and banks, without the prior authorization of the domestic courts. Nonetheless,

[77] Spain, France, Belgium, Portugal, Luxembourg, Monaco, Poland, the Netherlands Antilles, the Bahamas, Thailand, Albania, Mexico, Panama, Peru, Saudi Arabia, Georgia, San Marino, Ukraine, Serbia, Moldova, Russia.

the UIFAND shall enhance the use of mechanisms and tools available to proactively seek international cooperation.

Table 24*:* Statistics regarding international cooperation of the UIFAND

	Requests of information sent by the UIFAND	Requests of information received by the UIFAND	Average time in responding
2013	12	26	33,75 days
2014	11	22	25,23 days
2015	7	41	18,50 days

Supervisory authorities

622. The INAF has memoranda of understanding in place with relevant foreign prudential supervisors (direct or through the IOSCO MMoU) and, in order to exercise consolidated supervision, it arranges supervisory colleges for Andorran banks which have an international presence. Colleges are held with one European supervisor each year, and periodically with five other European and Latin American supervisors. The INAF, as home supervisor, usually arranges these colleges outside Andorra, in an effort to ensure participation by relevant host supervisors of a bank's foreign operations, but meetings can also be held through conference calls. At these meetings, supervisors discuss and exchange information about subsidiaries of Andorran banks, including AML/CFT matters, but supervisory dialogue does not benefit from participation of the supervisory unit of the UIFAND.

623. The authorities have explained that several meetings and conference calls were held with foreign supervisors in relation to the banking failure.

624. The following tables shows the total number of exchanges between the INAF and foreign supervisory authorities by letter (including requests linked to authorisation and registration, exchanges of information on supervisory matters, and exchanges of information under the IOSCO MMoU). Numbers include AML/CFT exchanges.

Table 25: International requests (including AML/CFT matters)

	2012	2013	2014	2015	2016
Incoming	15	12	25	21	35
Outgoing	13	7	19	15	30
Total	28	19	44	36	65

625. The supervisory arm of the UIFAND indicated to the evaluators that there was a need for it to strengthen cooperation with foreign AML/CFT supervisors. Two banks were subject to non-public administrative penalties, but neither supervisor in Andorra had spontaneously inform supervisors responsible for the operation of these banks' foreign subsidiaries that the parent had been sanctioned for AML/CFT deficiencies, at time that the sanctions had been applied.

626. Information has not been exchanged by the Ministry of Finance with foreign supervisors in respect of insurance.

International exchange of basic and beneficial ownership information of legal persons and arrangements

627. Andorra is able to provide basic and beneficial ownership information of legal persons and arrangements both via FIU channels and through judicial cooperation. This information is usually acquired through sending a direct request to the banks, which shall have the BO information. As indicated by the authorities, the banks take more time answering to the requests sent by judicial authorities, since unlike the UIFAND, the judicial authorities have no means provided under the legislation to establish deadlines to receive the requested information. For this reason, banks take around one month to respond to beneficial ownership information requests by the judicial authorities. As opposed to this, the UIFAND is able to gain beneficial ownership-related information within a week.

Overall Conclusions on Immediate Outcome 2

628. Andorra has many of the characteristics of an effective system in the area of international cooperation with moderate improvements needed. The Andorran authorities proactively cooperate with foreign counterparts, providing and seeking not only judicial legal assistance, but also basic and beneficial ownership information, exchange of financial intelligence, joint investigations, meetings, etc., with several successful cases. The key authorities (the UIFAND, the Police Department, the investigative judges and the Public Prosecutor's Office) have been very active in the area of informal exchange of information with foreign counterparts. This is not the case for the supervisory authorities where AML/CFT matters are rarely raised by the INAF during supervisory colleges and there is a need for the UIFAND to strengthen its cooperation with foreign counterparts.

629. In addition, international cooperation could still suffer from the dual criminality requirement related to the lack of a full criminalisation of tax offences, the potential impact of the judicial secrecy limits, the absence of formal prioritisation criteria for MLA cases and a case management system for some authorities, and the lack of human resources. The access by the judicial authorities to financial information held by FIs can still be time-consuming. Notwithstanding these deficiencies (some of which are of a technical nature) the evaluation team is of the view that for reasons stated earlier in the analysis, in practice Andorra has achieved the goals of this immediate outcome to a large extent.

630. **Overall Andorra has achieved a substantial level of effectiveness with Immediate Outcome 2.**

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerological order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the MER.

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2012. This report is available from http://www.coe.int/en/web/moneyval/jurisdictions/andorra.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

3. ***Criterion 1.1*** - Andorra completed its first NRA in December 2016 using the World Bank methodology from which it concluded that its overall ML risk was medium-high and its overall terrorist financing risk was medium- low. Both ML and TF risk have been assessed at a national and sectoral level.

4. Prior to this, the only assessment of ML and TF risks faced was an assessment of the DNFBP sector in 2013 by the UIFAND, which concluded that lawyers, economists and *gestorias* were potentially higher risk because of their involvement in forming companies.

5. It is a candid NRA highlighting the significance of the ML threat posed to the jurisdiction because tax crimes were not a predicate offence for ML at the time of the on-site visit and because relatively significant criminal proceeds are estimated to be generated from domestic tobacco smuggling. It also recognises that, with Andorra's full commitment to tax transparency and information exchange, the jurisdiction has seen a short-term rise in legal and other measures to avoid, or delay, the AEOI for tax purposes from 2018. These issues are highlighted in the associated national action plan for further analysis and assessment. A potential domestic threat in relation to terrorist financing is also identified, together with a number of vulnerabilities in legislation.

6. The assessment was based upon public sector and private sector workshops, surveys and interviews and some quantitative data. However, some key qualitative data was not available: (i) information on the residence of beneficial owners of banks' customers was absent; and (ii) data on financial inflows and outflows was not uniformly collected, which could undermine Andorra's understanding of its TF threat.

7. Furthermore, despite Andorra's status as a regional finance sector, the expansion of its banking sector into parts of Latin America, and its geographical position between France and Spain, the authorities do not appear to have proactively reached out to AML/CFT agencies in those jurisdictions for their insights on the ML and TF threats and vulnerabilities facing Andorra which would give a more rounded and completed view to the process. This apparent lack of outreach is surprising given that the public source material issued by the Spanish authorities, which the assessment does drawn upon, indicates Andorran financial services being used in Spanish ML cases.

8. ***Criterion 1.2*** - The Head of the UIFAND was designated with responsibility for co-ordinating the NRA and led a working group comprising of Andorra's AML/CFT agencies including: the UIFAND; the Courts of Justice; Public Prosecutor's Office; the Police Department; the Customs Department; Tax; the INAF; Ministries of Finance, Home Affairs and Justice, Foreign Affairs, Tourism and Commerce; and the National Gambling Authority, together with private sector representatives drawn from Andorran banks, branches of the two foreign post offices operating in Andorra, and professional associations.

9. ***Criterion 1.3*** – The NRA was based upon information obtained during the period 2010 to 2016 and was adopted in December 2016. It has been approved by the Government and responsibility for updating it rests with the UIFAND. It is intended to update the assessment at intervals not exceeding 3 years.

10. ***Criterion 1.4*** – An un-redacted NRA explaining national level vulnerabilities and threats and the sectoral angle has been provided to all key AML/CFT agencies. Un-redacted versions of the relevant areas of the report regarding vulnerabilities have been provided to private sector members of each NRA sector group. The (sanitised) sectorial report will be published on the UIFAND's website in Catalan.

11. ***Criterion 1.5*** – The NRA was completed three months before the on-site visit. It includes a national action plan to: (i) establish a clear AML/CFT policy and strategy through PC1; (ii) address deficiencies in legislation such as criminalising tax offences and the introduction of criminal liability of legal persons; and (iii) address personnel and technological resourcing deficiencies within key AML/CFT agencies. Assessors agree that these are key priorities.

12. There are separate sectoral action plans for FIs and DNFBPs. These include proposals which would appear to fall to the UIFAND as AML/CFT supervisor to oversee as they relate to enhancing due diligence measures, risk assessment measures and training enhancements with FIs. A detailed action plan for mitigating vulnerabilities identified in the DNFBP sector has also been drawn up consisting of high and medium priority actions and quick wins to achieve before the end of 2017. Given the issues identified in the DNFBP sector, current concentration on this appears appropriate.

13. ***Criterion 1.6*** – Whilst the Andorran authorities have advised that there are no exemptions from complying with AML/CFT Act, as highlighted under c.10.18, Article 49 ter of the AML/CFT Act sets out provisions where "simplified CDD" is permitted or prohibited. Article 49 ter (4), states that obliged parties shall obtain sufficient information to confirm that a customer meets the conditions for the application of simplified CDD measures, which implies, at a minimum: (i) identifying and verifying the customer's identity; and (ii) monitoring the business relationship to ensure continuous compliance with the requirements set out for the implementation of the article". As explained under c.10.18 these simplified measures are in effect an exemption rather than a reduction in due diligence as an obliged party is permitted to dis-apply some required CDD measures, e.g. due diligence on the beneficial owner in the circumstances prescribed in Article 49 ter (which according to article 8 of the AML/CFT Regulations includes the operation of global or omnibus accounts). These circumstances are based upon examples of lower risk presented in the interpretative note to R.10 but there has been no commensurate risk assessment by the Andorran authorities to determine that it is appropriate to dis-apply aspects of the FATF's CDD requirements. However the current AML/CFT Act does pre-date the NRA. Moreover, each of the exemptions may be applied without a clear need for risk to be first assessed (though exemptions shall not be applied in situations presenting a *high* risk). Accordingly, it seems that some exemptions, in particular those set out in article 49 ter (1) of the AML/CFT Act and article 8 of the AML/CFT Regulations, may be applied in situations where there is not a proven low risk of ML/TF. This has a cascading effect on c.10.5

14. ***Criterion 1.7*** – Where higher risks are identified, the authorities have addressed these through TCs which require FIs and DNFBPs to take enhanced measures. Examples are given under c.10.17. Within the NRA action plans other areas are highlighted for further assessment or consideration, including those topics referred to under c.1.1. The results from such exercises may lead to FIs and DNFBPs being required to take or apply certain actions and measures. For example, further work is proposed on understanding the extent of the use of "fiduciary arrangements". More immediate proposals in the action plans relate to FIs and DNFBPS being required to apply enhanced due

diligence measures to tobacco-related businesses. However, the AML/CFT Act has not yet been amended to accommodate the findings from the NRA which has only recently been completed.

15. ***Criterion 1.8*** - Under the AML/CFT Act (which pre-dates the NRA), a FI or DNFBP may apply simplified CDD measures: (i) when it identifies a lower risk under article 49(2); and (ii) in the particular cases identified in article 49 ter. The UIFAND may also issue a TC stating that a certain product or transaction represents a low risk – though it has not done so (see c.10.18). However, as explained under c.1.6, it appears that the effect of simplified measures under article 49 ter is to allow nothing to be done for certain elements of the CDD process, i.e. it provides for "exemptions" (which are considered under c.1.6). When applying measures under article 49(2), it is not clear that a FI or DNFBP should take account of findings in the NRA (though they must demonstrate to the UIFAND that measures adopted are appropriate in view of risk.

16. ***Criterion 1.9*** - The UIFAND is responsible for supervising compliance by FIs and DNFBPs with the AML/CFT Act, which does not cover all of the obligations set out under c.1.10 and c.1.11 (in particular business level risk assessments). The INAF is responsible for supervising compliance by FIs (except insurance companies and foreign post offices) with Law 8/2013 on the organisational requirements and terms of operation of operating entities of the financial system, protection of investors, market abuse and financial guarantee agreements (Law 8/2013). As part of its off-site supervision, the INAF requires auditors to assess and report on the design and operational efficiency of the risk management framework of FIs (identification, assessment, management, monitoring and reporting) under TC-157/03 and TC-157/13 quater. This report must cover the process of legal and regulatory risk management, including the risk of failing to comply with AML/CFT requirements, but does not explicitly refer to the identification, assessment and understanding of ML/TF risk.

17. Supervision by the UIFAND and the INAF is assessed under R.26 and R.28, where some limitations are identified in the supervision of FIs and DNFBPs. NRA action plans propose some significant supervisory developments to address ML vulnerabilities in the DNFBP sector within a year, where parts of it are not subject to supervisory authorising/licensing regimes in line with c.28.4.

18. ***Criterion 1.10*** – Article 6 of Law 8/2013 (which applies to FIs except insurance companies and two foreign post offices), requires the board of directors to define the risk level that the entity is willing to assume. This article does not expressly refer to ML/TF risk and the INAF has not specified (in a TC) that these risks hould be specifically considered. As noted under c.1.9, there is no explicit requirement for the risk management framework (which includes identification and assessment of risk) that is assessed and reported on under TC-157/03 and TC-157/13 quater to cover ML/TF risk (distinct from the risk of failing to comply with AML/CFT requirements).

19. There are no explicit requirements under the current AML/CFT Act for other FIs and DNFBPs to identify, assess and understand the ML/TF risks present in their activities, taking into account the types of customers they have, products and services offered, transactions and delivery channels. Whilst there are requirements to: (i) apply a risk-based approach to business relationships and occasional transactions (articles 49(2) and 49 quater of the AML/CFT Act); and (ii) establish in writing internal policies and procedures of control for accepting new clients based on risk (article 18 of the AML/CFT Regulations), these do not explicitly address the areas covered by c.1.10.

20. ***Criterion 1.11*** – Article 6 of Law 8/2013 (which applies to FIs except insurance companies and two foreign post offices), requires the board of directors to: (i) approve the respective risk management policies; (ii) periodically supervise compliance therewith; and (iii) adopt suitable measures to correct any deficiency. However, as noted under c.1.10, this article 6 does not make express reference to ML/TF risk. Nor is there an explicit requirement for the risk management framework (which includes managment, monitoring and reporting of risk) that is assessed and

reported on under TC-157/03 and TC-157/13 quater to cover ML/TF risk (distinct from the risk of failing to comply with AML/CFT requirements).

21. Under Article 18 of the AML/CFT Regulations, written policies and procedures must be established covering client take-on, CDD, record-keeping and reporting suspicions (monitoring appears to be excluded). However, there is no obligation to develop risk-based policies, procedures and controls which are: (i) relevant to a FI or DNFBP's business; and (ii) based on risks identified by the country or that FI or DNFBP. Under article 52 of the AML/CFT Act, FIs and DNFBPs are required to establish: (i) internal control procedures that consider the adequacy and efficacy of control measures; and (ii) an internal control function to monitor compliance with AML/CFT legislation, which must include at least one individual at manager level, but which need not report to senior management.

22. Whilst there is no requirement in the AML/CFT Act or the AML/CFT Regulations for policies and procedures to be approved by senior management, they may be held liable for infringement of the obligation to establish an internal control function and internal control procedures (under article 57 of the AML/CFT Act). However, as there is no requirement for these policies and procedures to take into account risks identified by the country or by the FI or DNFBP, it is open to question how policies, procedures and controls will manage and mitigate risk effectively.

23. FIs and DNFBPs are required to take enhanced measures where higher risks are identified. See c.10.17.

24. ***Criterion 1.12*** - C.1.8 explains how simplified measures may be applied under article 49(2) of the AML/CFT Act. Such measures may not be applied where there are suspicions of ML or TF. However, Andorra partly meets c1.9 to 1.11 which must be taken into account under c.1.12.

Weighting and Conclusion

25. Andorra meets c.1.2 to 1.5 and mostly meets c.1.1 and 1.8. It partly meets c.1.6, 1.7, and 1.9 to 1.12. **Andorra is largely compliant with R.1.** In reaching this conclusion, the following aspects have been considered: (i) the extent to which simplified CDD measures may be applied (c.1.12) is not significant and cannot be applied where ML/TF is suspected; (ii) the authorities do require FIs and DNFBPs to take enhanced measures where higher risks are identified (c.1.7); and (iii) whereas both c.1.10 and c.1.11 are rated as partly met, FIs (except insurance companies and two foreign post offices) are subject to Law 8/2013 which does require steps to be taken to assess and mitigate risk generally.

Recommendation 2 - National Cooperation and Coordination

26. In the 4th MER Andorra was rated partially compliant with former R.31 (paragraph 776 to 800). The main deficiencies identified were the lack of co-operation and co-ordination through the Standing Committee, the lack of consultation/coordination between the UIFAND and the INAF, in matters of oversight and the absence of co-operation between the UIFAND and the Customs Department for monitoring cross-border transportations of currency.

27. ***Criterion 2.1*** – Up until the adoption of the NRA that includes a comprehensive national level Action Plan (which in turn envisages establishment of a clear policy and strategy to prevent and fight ML/TF) by the Government in December 2016, Andorra had no clear national AML/CFT policies which would be informed by the risks identified.

28. ***Criterion 2.2*** - The authority designated to develop and co-ordinate national AML/CFT activities is PC1[78], set up in 2008. It is also supported by another coordination mechanism - PC2 (articles 75 to 79 of the AML/CFT Act). However, PC1 is a technical and consultative body with the main purpose to coordinate the various ministries, the UIFAND and the INAF in matters of the fight against ML/TF. It has no clear responsibility allocated for developing national AML/CFT policies. Moreover, PC1 is not formally established and its members have not been officially designated by the competent ministries.

29. ***Criterion 2.3*** - At the policymaking level, PC1 is supposed to be (see c.2.2 above) the main instrument assigned to enable domestic cooperation and coordination between relevant competent authorities concerning the development and implementation of AML/CFT policies. It is composed on an informal basis of representatives of the Ministries of the Presidency, Finance (also the Customs Department and the Tax Department), Home Affairs and Justice,, Economy, Foreign Affairs, the UIFAND and, if subjects related to financial system are involved, the INAF. It held several meetings on relevant coordination topics such as implementation of European Directives and other international conventions as well as dealing with cases on a national level. From the operational perspective, the AML/CFT Act[79] and the AML/CFT Regulations (articles 22 and 23) provide necessary legal bases for national cooperation. In addition, a number of bilateral cooperation mechanisms exist between the UIFAND, the Police Department and the INAF.

30. ***Criterion 2.4*** - PC2 is competent to coordinate the various ministries in order to prevent, combat, supress and disrupt, amongst others, the proliferation of weapons of mass destruction and its financing (articles 75 to 79 of the AML/CFT Act). PC2 is composed by representatives of the UIFAND (the competent body for promoting and coordinating the measures for the prevention of proliferation[80]), the Ministry of Finance (in practice, the representative is the Director of the Customs Department and Tax Department), the Ministry of Home Affairs and Justice (i.e. the Police Department), and the Ministry for Foreign Affairs. PC2 meets at least once every three months.

Weighting and Conclusion

31. At the time of the on-site visit, Andorra has not yet formally adopted any national AML/CFT policy/strategy addressing its risks identified in the NRA. At the same time, the main coordination mechanism - PC1 is not formally set up and lacks the responsibility for developing and coordinating national AML/CFT policies. **Andorra is partially compliant with R.2.**

Recommendation 3 - Money laundering offence

32. In the 4th MER, Andorra was rated Partially Compliant with former R.1. The main deficiencies identified were: i) non-compliance of the laundering offence with the conventions with regard to concealing, disguising, possessing and using assets of criminal origin; ii) list of predicate offences did not cover all the designated categories of offences[81]; iii) immunity for self-laundering offence.

[78] Article 56 quinquies (2) 2nd of the AML/CFT Act.

[79] Article 53(2)(d), Article 53(2)(j), Article 54 (1)

[80] Article 53 of the amended AML/CFT Act

[81] It was recommended to extend the list of predicate offences be extended to cover at least all the designated categories of offences, by adding the missing offences - participation in an organised criminal group and racketeering, smuggling, migrant smuggling without aggravating circumstances, counterfeiting and piracy of products without aggravating circumstances, environmental crime without aggravating circumstances, forgery other than counterfeit money or identity cards, fraud, other than aggravated fraud, and insider

Concerning the effectiveness, the conclusions were that: (1) proactive approach was weak; (2) modest results were achieved with regard to prosecuting ML, particularly in view of the disparities between the numbers of prosecutions and convictions; (3) resources and manpower allocated to the courts and prosecution authorities were judged as insufficient.

33. Since then, the CC was amended, in March 2011, October 2013 and July 2015, specifically addressing the ML offence.

34. ***Criterion 3.1*** – Andorra is part of both Vienna and Palermo Conventions[82]. ML is criminalised in article 409 ("laundering of money or valuables") of the CC, which now covers all the elements/activities referred to in these treaties. Following the amendments to the CC, the offence now includes "*possession and use of funds*", and also "*concealment or disguising of the true nature, source, location, movement, ownership or rights with respect to funds*", knowing that they are proceeds, directly or indirectly, of any of the predicate offences listed in article 409 of the CC. The conducts mentioned in article 409 committed with gross negligence are also criminalised.

35. ***Criterion 3.2*** - Andorra has a combined approach by which predicate offences are both - those included in article 409 of the CC and those with a minimum term of imprisonment of six months. All the categories of crimes listed in the FATF Glossary are considered "predicate offences", apart from tax crime, which was not criminalised at the time of the on-site visit and this presented a serious shortcoming, given the risks of abuse of foreign tax criminals. Smuggling is listed as a predicate offence of ML but it is criminalised only in relation to tobacco. Bribery in private sector is not fully criminalised and this might also affect the LEAs ability to combat laundering the proceeds of this offence committed in another country.

36. ***Criterion 3.3*** - Article 409 of the CC states that any *"criminal activity punishable with a minimum term of imprisonment exceeding six months*" is a predicate offence of ML. Therefore sub-criterion (c) has been applied in case of Andorra.

37. ***Criterion 3.4*** – ML offence was last amended by the Qualified Law 10/2015 and, therefore, the objective element of the ML offence includes "*funds which are the proceeds, directly or indirectly, of a criminal activity*". According to article 409 (4) of CC, the definition of *funds* shall be understood in line with paragraph 3 of the article 366 bis of the CC, which is in line with the conventions and the requirements for this criterion.

38. ***Criterion 3.5*** - The law does not require a previous conviction for the predicate offence in order to prove that property is the proceeds of a crime. The case law confirmed such approach through several cases presented to the assessment team (e.g., Judgement of 2 April 2014, of *Tribunal de Corts* (009-04/11)[83].

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trading and market manipulation - and by reducing the minimum sentence for any predicate offence, or simply by adopting an "all offences" approach (2012 MER, paragraph 92)

[82] Andorra deposited its instrument of ratification of the Vienna Convention on 23 July 1999 and the Convention entered into force on 23 October 1999. Palermo Convention was signed on 11 November 2001 and entered into force on 21 October 2011.

[83] This judgement, inter alia, stated that "*With respect to the objective element, there is a reiterated case law of our Courts according to which direct proof is not demanded of the crime which is the origin of the moneys or valuables in as much as its existence may be established by circumstantial evidence, and much less is it demanded that such crime have been tried, or that its perpetrator or perpetrators have been determined by sentence. The crime of money laundering does not require the prior condemnation of the crime from which proceed the money or valuables which are the object of the laundering*".

39. ***Criterion 3.6*** – Article 412 of the CC (*application of criminal law*) states that article 409 ("laundering of money or valuables") of the CC is applicable "*even if the predicate offence was committed abroad, provided that this offence is criminally punishable under the Andorran Law"*. The authorities indicated relevant case law in this regard (*Judgement of 22 April 2015, of Tribunal de Corts -3400169/2003).*

40. In the 2012 MER the evaluators concluded that the dual criminality principle, as per article 412 of the CC, requires the laundering offence to be criminalised in both jurisdictions. The fact that the actions taken abroad constitute an offence is therefore a necessary precondition for a prosecution of ML in Andorra (paragraph 84 of 2012 MER). However, since Andorra uses a combined approach regarding the predicate offence, it is necessary to establish the *nature* of the predicate offence, in order to prove that the perpetrator knew that the funds were *proceeds of any of the predicate offences listed in paragraph 1 of the Article 409 of the CC or exceeds the 6 months penalty threshold.* The judges apply the principle that predicate offences for ML should extend to conduct that occurred in other country and are not bound by the qualification of the crime in foreign jurisdiction.

41. ***Criterion 3.7*** – The 4th MER noted that the former Article 409 of the CC excluded self-laundering from its scope - it was stipulated that the perpetrator of the ML offence could not be convicted as the perpetrator of or accomplice to the predicate offence (paragraph 78). This paragraph was amended in 2015 and now clearly indicates that all conducts described under the ML offence "*shall constitute a ML offence, regardless of the fact that the money laundered had committed or been involved in the commission of the predicate offence*". Therefore, it can be concluded that Article 409 of the CC now includes self-laundering.

42. ***Criterion 3.8*** - The criminal law does not explicitly foresee that the intentional element of ML can be inferred from objective factual circumstances, but this principle is expressly reflected in the jurisprudence[84]. Andorra judicial system relies on the principle of free evaluation of evidence by judiciary (Article 160 of the CPC).

43. ***Criterion 3.9*** – For the simple form of the offence, the penalty provided by the law for natural persons is imprisonment from 1 to 5 years *cumulated* with a fine up to 3 times the value of the laundered funds (Article 409(1 and 3) of the CC). Gross negligent conducts are punished with an imprisonment term of up to 1 year (Article 409(2) of the CC). Article 410 of the CC establishes an imprisonment sentence from 3 to 8 years if ML is committed under one or more of the following aggravating circumstances: a) when it is committed through an organised criminal group; b) when the perpetrator acts on a regular basis; c) when the perpetrator acts in the framework of a banking or financial entity, a real estate agency or an insurance company. In this case, additional criminal penalty of *professional disqualification* may be imposed. Considering the amount of the cumulative pecuniary sanction[85], the sanctions when committing ML under aggravated circumstances, and the fact that the imprisonment sanction for the simple form of ML offence is in line with other serious

[84] For instance, when a person was convicted for ML, it was clearly established that the intent and knowledge required to prove the ML offence could be interfered from objective factual circumstances: "*In the case of the crime of money laundering, circumstantial evidence is of capital importance*, is stated in the Sentence of the Criminal Division of the High Court of Justice of 29/11/2010 (Roll no. 12/10*).*
'Given the more than probable impossibility of obtaining direct evidence, the incriminating evidence would be provided by prima facie evidence, circumstantial evidence or indirect evidence, which would effectively refute the presumption of innocence as long as it is grounded on fully proven evidence that bears a direct material relation to the criminal fact and its perpetrator.' (Sentence, of 7 May 2014, of the *Tribunal de Corts* (009/4/12)).

[85] According to the statistics, the average penalty imposed by the courts in the evaluated period is 3 years imprisonment cumulated with a fine of approximately 750 000 EUR.

economic offences provided by Andorran CC[86], the criminal sanctions appear to be proportionate and dissuasive.

44. ***Criterion 3.10*** – There is no criminal liability for legal persons in Andorra. Fundamental principles of domestic law do not preclude that, since this is not confirmed by any provision in the Andorran Constitution, nor through a ruling to that effect by the High Court of Justice. A similar conclusion was mentioned in the 3rd MER (paragraph 175). As a general rule (included in the *Book One. General part* of the CC), the Court ***may*** impose additional measures to legal persons (enterprises[87], associations or foundations) simultaneously with a conviction against a natural person (Article 71 of the CC). Such measures include: *the dissolution of a legal entity; its temporary or permanent closure; suspension of its activities; judicial administration over the legal entity; a ban on the company's right to sign contracts with any public authority; and pecuniary sanction of up to EUR 300 000 or up to 4 times the benefit obtained, or sought to be obtain, through the commission of the crime*). The special part of the CC (*Book Two - Crimes*) contains provisions *on measures ('one or more') which courts are required to impose-to legal persons in ML cases* (Article 411(2)(3)(4) and (5) of the CC). These include: *dissolution of the legal person or final closure of its premises or establishments open to the public; suspension of the activities of the legal person, or closure of its premises or establishments open to the public for a period of not more than five years; prohibition to carry out the activities, mercantile transactions or business through the exercise of which the crime was facilitated or covered up, for a maximum of five years; and a fine under the terms provided in Article 71*. These sanctions are proportionate and dissuasive and do not prejudice to the criminal liability of natural persons[88].

45. ***Criterion 3.11*** – Attempt, conspiracy[89] and incitement[90] are specifically covered by the Article 409(5) of the CC. All other forms of participation, association with, aiding and abetting, facilitating and counselling the commission of the offence are punishable as a form of complicity under the Article 23 of the CC.

Weighting and Conclusion

46. The fact that tax crime is not an offence in Andorra and, therefore, not a predicate offence for ML presents a serious shortcoming, given the risks posed by foreign tax criminals to Andorran financial environment. Legal persons cannot be held criminally liable and this is particularly important as the country presents medium risks of ML through legal entities. **Andorra is rated partially compliant with R.3.**

Recommendation 4 - Confiscation and provisional measures

47. In the 2012 4th MER, Andorra was rated Largely Compliant with former R.3. The seizure and confiscation system was considered to be solidly based in the law and the only technical deficiency identified was the lack of legal basis for the confiscation of funds which were subject of the offence in

[86] It is the same with the penalty for *qualified scam* (Article 209 of the CC)

[87] According to the Andorran authorities, the term *enterprise* covers any legal person with an economic purpose

[88] Article 24 of the CC

[89] Conspiracy (Article 18 of the CC)

[90] Provocation (Article 19 of the CC)

autonomous laundering cases (Article 70 of the CC[91] did not authorise this). It was concluded that, even though case law and legal theory accepted the hypothesis of laundered money as the instrument used to commit the ML offence, considering that confiscation by equivalence did not apply to instruments, it would not apply to the subject of the offence as well (paragraph 142).

48. Article 70 of the CC (as amended by the Qualified Law 40/2014 of 11 December[92]) now authorises the confiscation of the equivalent value of instrumentalities. *Extended confiscation* was introduced in the legislation. The law also provides for mandatory confiscation of property belonging to a convict *where there is sufficient objective evidence that the aforementioned property derives, directly or indirectly, from criminal activities and its lawful origin has not been proven;* this measure applies to the list of criminal offences (Article 70 (2) of the CC)[93] which includes ML and terrorism financing. In principle, confiscation can be applied once a conviction has been secured. However, there is an exception to this rule in Article 129 of the CPC. It refers to event of death of an accused or discontinuation of the proceedings (2012 MER, paragraph 122), and conditions[94] needed for confiscation in such cases.

49. ***Criterion 4.1*** - Article 411(1) of the CC provides for the confiscation of *the proceeds of ML offence* and states that - for the effects of the application of the forfeiture and the forfeiture by equivalence (Article 70 of the CC) - the money, property or valuables which are the *object of laundering*, committed or attempted, are considered as proceeds from crime. These provisions do not prohibit confiscation of the property laundered and held by third parties, so it can be concluded that general rules apply to third party confiscation (Article 70 (3) paragraph 2 of the CC). The definition of *funds* (the object of ML offence) covers the elements of *property* provided by the FATF Methodology (Article 409 (4) and 366bis (3) of the CC)[95]. As regard the issue raised under 2012 MER paragraph 127 (the lack of legal basis for the confiscation of funds which were subject of the offence in autonomous laundering cases), it can be noted that the amended Article 70(4) of the CC now provides the confiscation of i) the corresponding value of the instrumentalities used or, in the case of punishable attempt, intended for use to commit the offence, and ii) the proceeds and any profits deriving from them and their subsequent conversion.

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[91] Forfeiture of instruments, profits and gains

[92] Which entered into force on 15 January 2015 (2015 Progress report)

[93] Andorra has already transposed the Directive 2014/42/EC of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the EU, pursuant to the Annex of the Monetary Agreement signed with the EU.

[94] In the case of final or provisional dismissal, as long as in such cases the criminal act is verified, the instruments used or, in the case of punishable attempt, which were to be used to commit the offence, the proceeds obtained and the profit which may have been derived from them and its possible subsequent transformation, should be the object of forfeit in accordance with the provisions of Paragraphs 1, 3 and 4 of Article 70 of the CC. To this effect, the proceedings should continue with the person charged or prosecuted, his legal representative or the representative of the heirs, who are considered direct civilly liable parties with respect to the assets which are the object of the forfeiture, unless they relinquish the ownership of same; the hearing of the case should be held; and sentence should be passed, decreeing or not the existence of the crime and ordering or not the forfeiture (Article 129 (3) CPC).

[95] According to Article 409 (4), the definition of *funds* (the object of ML offence) shall be understood according to paragraph 3 of article 366 bis of the CC, which are the following: the financial assets, the property of any nature, tangible or intangible, movable or immovable, acquired by any means, legal or illegal, and the documents, titles or legal instruments of any form, including electronic or digital, which certify a right of ownership or an interest in such assets or property, especially but not exclusively including the bank account funds, traveller's cheques, bank cheques, payment orders, company shares, securities certificates, bonds, bills of exchange and letters of credit.

50. According to Article 70 (1) of the CC, when the accused is found guilty and, *in the absence of a sentence, in the cases specified in the CPC,* the Court shall order the confiscation of instrumentalities used or, in the case of a punishable attempt, intended for use to commit the offence, its proceeds and *any profits* deriving from them, and their subsequent conversion. The object of ML offence, which is considered to be *funds which are the proceeds, directly or* ***indirectly****, of a criminal activity* (Article 409 (1) of the CC), can be a subject of confiscation measure provided by Article 411 (1) of the CC. As regard the possibility of the confiscation of the property laundered[96] (sub-criterion 4.1 a), the amended Article 70(3 and 4) of the CC now extends the confiscation of the corresponding value to the instrumentalities used or, in the case of punishable attempt, intended for use to commit the offence, the proceeds and any profits deriving from them, and any subsequent conversion.

51. Article 366ter a) of the CC on terrorist financing, explicitly provides that, in relation to the infringements provided in the CC Chapter regarding crimes of terrorism, the Court may order the forfeiture of the proceeds from crime as well as the funds which are the object of terrorist financing. The definition of funds is provided in Article 366bis (3) and includes *property of any nature*.

52. ***Criterion 4.2*** - Article 116 of the CPC regulates provisional measures to prevent any dealing, transfer or disposal of all the funds for which there is sufficient indicative evidence to believe that they are **proceeds**, direct or indirect, of a crime in order to assure the fulfilment of the forfeiture and of the forfeiture by equivalence as provided in Article 70 of the CC. These measures may be applied *ex parte* and without prior notice to the parties concerned.

53. ***4.2 (a)*** - In the course of a criminal investigation, upon judicial order, the Police may trace and identify property subject to confiscation. The competent authority which might be assigned by the Court (Article 116(3) (b) of the CPC) to identify, trace and evaluate property that is subject to confiscation, is the ARO. The Office is a part of Police.

54. In line with Article 87 (4) of the CPC, information from any financial entity or any natural or legal person subject to professional secrecy can be obtained only with the prior approval of the Judge of the First Instance, by reasoned order.

55. ***4.2 (b)*** - Article 116 of the CPC, states that in order to ensure the confiscation and the confiscation of equivalent value as provided in Article 70 of the CC and without prejudice of a possible civil liability, the court may order the seizure and forfeiture of all funds, when there are sufficient objective indications that they are direct or indirect proceeds of crime. In the course of investigation the police may retain all the pieces and objects which relate to the infringement (Article 26(b) of the CPC). The court may also order the seizure of property belonging to a third party, unless such third party has lawfully acquired them. The seizure is made ex-parte and without prior notice.

56. ***4.2 (c)*** - In the 4th MER the part of the standard which overlaps with criterion 4.2(c), was found to be satisfied. The authorities emphasised the Article 70 (3) of the CC, regarding third party confiscation, as being relevant to this standard. *In order to secure third party confiscation, according to Article 116 of the CPC, the investigative judge may order provisional measures against the property belonging to a non-liable third person, unless such third person has acquired them legally in accordance with the provisions of Articles 119 and 120.*

57. The authorities advised that the Court could continue proceedings in response to actions or contracts that would impede seizure or confiscation orders and that had been initiated or concluded in bad faith Article 220 of the CC criminalises the fraudulent bankruptcy and sub paragraph (c) of this Article criminalises any act of disposal of the assets, in order to intentionally create a state of

insolvency. The premise is that the perpetrator is a debtor, civilly responsible for committing an illicit deed, which might be an illicit civil fact (e.g., breaching a contract) or other offence (e.g. fraud). Even though there is no legal basis to cancel the disposing of assets which might be subject to seizure and confiscation, the owner might be criminally reliable (for frustrations of executive payment procedures) if he/she sells/donates, etc. these assets in order to avoid the civil responsibility, if the conditions of Article 220 of the CC are met (e.g. the pre-existence of the debt).

58. ***4.2 (d) -*** The CPC provides for a range of measures to identify and trace property subject to confiscation, triggered after the initiation of a criminal case. The police are authorised to undertake a broad range of investigative measures in support of such actions, including controlled delivery (Article 122 bis of the CPC) and delay of seizures in ML or its predicate offences, in order to identify the involved individuals or to gather the necessary evidence (Articles 116 (4) of the CPC)[97]. The ARO may exercise all the powers assigned to Police Department, to which the ARO belongs and may co-operate with equivalent foreign bodies by exchanging information and best practices. (Article 2 of the Regulation on organisation, functioning and powers of the ARO, from June 2014).

59. ***Criterion 4.3*** - Bona fide third parties' property is exempted from forfeiture (Article 70 (3) of the CC) and provisional measures (Article 116 (1) of the CPC). These parties may challenge the seizure order through a request for reconsideration to the judge of the first instance (Article 120 of the CPC) including also a right to appeal against the first instance decision. The third party whose property may be affected by a possible confiscation shall be informed of the judicial proceedings and is entitled to take part in the trial in order to exercise its right of defence through the same means used by the suspected, accused or convicted person (Article70(3) of the CC).

60. ***Criterion 4.4*** - Article 116(3) of the CPC foresees that the Judge of the First Instance Court is obliged to take all necessary measures to ensure the preservation of seized goods, and their proceeds and accessions, appointing, if appropriate, an administrator. Additionally, the Court can entrust the conservation, management and sale of the funds to the JAMB[98]. The seized effects of illegal commerce may be sold, if no danger derives from this; otherwise, they should be destroyed or rendered useless. When the seized effects are from the legal commerce, they should be sold in a public auction (Article 177 of the CPC). In cases of money or financial products located in a FI, the court may order their deposit under the INAF, with prior clearance sale in case of financial products. The INAF will make them available to judicial authorities including the common interests produced (Article 116 (3).c) of the CPC).

Weighting and Conclusion

61. All criteria under R.4 are met. **Andorra is compliant with R.4**.

Recommendation 5 - Terrorist financing offence

62. In the 2012 4th MER, Andorra was rated partially compliant with former SR.II. The TF offence was considered not fully consistent with the TF Convention. Subsequently, Andorra adopted the Qualified Law 18/2012, which amended the wording of the TF offence and extended the definition of *terrorist acts*, in a manner that is now fully compliant with the requirements under the TF Convention. In addition, the penalties available for terrorism financing were increased by Qualified Law 40/2014, amending Article 366bis of the CC.

[97] Reference is made under Recommendation 31.

[98] Not regulated

63. ***Criterion 5.1*** - TF is criminalized in a manner that is fully consistent with the TF Convention. CC incriminates the *financing of terrorist acts* (Article 366 bis (1) of the CC) and then defines the notions of "financing" (Article 366 bis (2) of the CC), "funds" (Article 366 bis (3) of the CC) and "terrorist acts" (Article 362 (1) of the CC), all of them being in line with the standards. Therefore, the financing of 3 distinct types of terrorist acts is covered – in defining the first 2 categories of *terrorist acts*, the CC (Article 362(1) (a),(b))[99] mirrors the language of Article 2(1)(a) and 2(1)(b) of the TF Convention and the third category goes beyond the requirements (the original acts qualified as terrorist acts, now Article 362(1)(c), remain as such after the amendments). The annex offences of the TF Convention was included in the CC and the TF offence refers them directly, eliminating therefore the purposive element which triggered concerns at the time of the 4th round assessment; each of the 9 Conventions is expressively mentioned in the text. Andorra has ratified all of the 9 Conventions (4th MER paragraph 98).

64. ***Criterion 5.2*** - According to Article 366 bis (2) of the CC, *financing* refers to any action that, by any means, directly or indirectly, *unlawfully and intentionally,* consists of the *provision* or *collection* of funds with the intention of using them *in whole* or *in part*, in Andorra or abroad: (i) by a terrorist group or a terrorist or (ii) to commit one or more terrorist acts. The deed of financing of terrorist organisations and individual terrorists constitutes a TF crime in Andorra regardless of whether the funds were used to plan, prepare for or carry out a specific terrorist act. The single aspect which must be demonstrated is that whether or not the group/individual to which funds are provided is, in fact, a terrorist group or a terrorist individual.

65. ***Criterion 5.2bis*** - The TF offence must cover financing of travel of foreign terrorist fighters, the requirement which was added to Interpretative Note 5 in October 2015, in order to implement UNSCR 2178. Andorra criminalised the activities in UNSCR 2178, through the TF offence. The TF offence would apply in cases in which a form of cooperation between an individual traveller and a terrorist group or a terrorist may be demonstrated (as any form of cooperation, help or mediation with terrorist activities[100] would be considered as cooperation with a terrorist group, according to Article 366 (2) last paragraph of the CC) and, consequently, the TF offence provisions under Andorran CC would apply to the act of financing its travel. Financing may not be considered criminal in the unlikely event where the person traveling abroad would not be (yet) associated with a specific group or a specific terrorist act, or considered a terrorist.

66. ***Criterion 5.3 -*** The definition of funds and other assets provided by Article 366 bis (3) of the CC covers any funds and other assets whether from a legitimate or illegitimate source. However, the existing definition does not encompass any interest, dividends or other income on or value accruing from or generated by such funds or other assets (mentioned in the Glossary of the FATF Methodology).

67. ***Criterion 5.4 -*** Article 366 bis (2) of the CC does not require that funds be actually used in order to perform or attempt a terrorist act, or that they should be linked to a specific act.

68. ***Criterion 5.5 -*** Intent and knowledge may be inferred from factual circumstances. In the previous MER it was noted that the CC does not explicitly state that in the case of terrorism financing proof of intention can be adduced from objective circumstances. However, in accordance with the

[99] i) the specific terrorist acts which are set aut in the 9 Conventions listed in Annex 1 of the TF Convention, in line with Article 2(1) (a) of the TF Convention; ii) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.

[100] Including the organisation of training activities or attendance at such activities.

general principles of Andorran criminal law, the element of intention is assessed in the light of the circumstances of the case and the material elements of the offence (paragraph 104).

69. ***Criterion 5.6*** - The simple form of TF offence is punished with imprisonment from 2 to 8 years and the aggravated one is punished by a penalty from 3 to 10 years, when any of the following circumstances occur: a) if the funding is committed by an organised group; b) when the offender is a habitual offender. In addition, article 366 ter of the CC establishes some additional consequences, such as the seizure of the funds used for financing, the dissolution of the legal persons, its temporary or permanent closure, the suspension of its activities, or a pecuniary sanction of up to EUR 300,000 or 4 times the proceeds obtained or which it has sought to obtain, amongst others. The sanctions applicable to natural persons are proportionate and dissuasive.

70. ***Criterion 5.7*** – There is no criminal liability for legal persons and the fundamental principles of domestic law do not seem to preclude that. Although, Andorra applies other criminal measures for legal persons (Articles 71 and 366 ter of the CC), in the event of a conviction for a natural person (which seem to be proportionate and dissuasive and represent "an *ad hoc* solution in the context of terrorism and terrorism financing legislation"[101]), this cannot be considered as formally introducing this principle in the Andorran criminal justice system. This is particularly important following the new global context.

71. ***Criterion 5.8*** **-** Attempt to commit the TF offence and conspiracy[102] are punishable (Article 366bis (1) and (4) of the CC). TF complicity and all other forms of participation and co-operation are covered by Article 23 of the CC (complicity).

72. ***Criterion 5.9*** **-** TF offence is a predicate offence for ML, since the applicable penalty (from 2 to 8 years) goes beyond the threshold of 6 months imprisonment established by article 409 (ML offence) of the CC. In accordance with Article 409 of the CC any "criminal activity punishable with a minimum term of imprisonment exceeding six months" is predicate offence of ML.

73. ***Criterion 5.10*** **-** Article 366 bis of the CC does not require for the perpetrator to be in the same country or different country from the one in which the terrorist or terrorist organisation is located or the terrorist act occurred. Furthermore, the law provides that the financing consists of the provision or collection of funds with the intention of using them in whole or in part, in Andorra or abroad.

Weighting and Conclusion

74. Andorra meets most of the criteria under R.5, except c.5.2^{bis}, 5.3 which are mostly met, and c.5.7 which is partly met. Travel for terrorist purposes is not specifically criminalised in Andorra, and it is not clear that the TF offence is sufficient to cover such cases. There is no criminal liability for legal persons. Certain limitations exist in the definition of funds and other assets. **Andorra is largely compliant with R.5**.

[101] Para.118 of the 4th Round MER of Andorra.

[102] Conspiracy (Article 18 of the CC) - (1) Conspiracy exists when two or more persons agree to commit a crime and decide to execute it. (2) Conspiracy to commit crime is only punishable in the cases expressly provided by Law.

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

75. In its 4th MER Andorra was rated non-compliant with former SR.III. Since then, Andorra introduced a comprehensive framework for applying TFS under UNSCRs 1267/1989 and 1988, and pursuant to UNSCR 1373 through amendments made to the AML/CFT Act. In the third report submitted by Andorra under the regular follow-up process, adopted at MONEYVAL' 48th Plenary meeting in September 2015, it was concluded that the framework in place in Andorra implementing SR.III was equivalent to largely compliant.

Identifying and designating

76. ***Criterion 6.1*** – In relation to designations pursuant to UNSCR 1267/1989 and 1988:

77. ***6.1 (a)*** - The authority for proposing persons or entities to the 1267/1989 and 1988 Committee is PC2, within the Government of Andorra, consisting of two representatives of the UIFAND and one representative each from the Ministries of Finance, Home Affairs and Justice, and Foreign Affairs.

78. ***6.1 (b)*** - Andorra has a formal mechanism for identifying targets for designation based on the criteria set out in the relevant UNSCRs, included in the AML/CFT Act. PC2 may request all information necessary from any relevant administration or other party, either directly or through the UIFAND or the Police Department (Articles 68 (1) and 78 (2) letter a) of the AML/CFT Act).

79. ***6.1 (c)*** - The authorities apply an evidentiary standard of proof of "reasonable grounds" when deciding whether or not to make a proposal for designation (Article 68 (1) paragraph 3 and Article 78 of the AML/CFT Act) and any proposal for designation is not conditional upon the existence of criminal proceedings, although it does constitute reasonable grounds for inclusion (Article 68 (1) paragraph 4 of the AML/CFT Act). PC2 must evaluate if there is reasonable evidence that the persons or entities proposed are terrorists, finance terrorism or belong to organisations involved in the same (Article 68 (1) paragraph 3 of the AML/CFT Act).

80. ***6.1 (d)*** - The procedure for listing is set out in Article 68 (5) of the AML/CFT Act. The persons and entities have to meet the specific criteria for inclusion in the lists in accordance with resolutions of the UN Security Council (UNSC).

81. ***6.1 (e)*** - PC2 is assign to obtain all possible information in support of UN listing, to identify and to determine the identity and the circumstances of the proposed name and the resolution adopted in this regard must contain its reasoning (Article 68 (1) paragraph 2 and 3 and Article 78 (2) letter a of the AML/CFT Act).[103]

82. ***Criterion 6.2*** - In relation to designations pursuant to UNSCR 1373:

83. ***6.2 (a)*** - The competent authority responsible for designation of persons or entities that meet the criteria for designation as stipulated in UNSCR 1373 is PC2. The list may include persons and entities the inclusion of which has been requested by a third state and persons or entities designated by the Andorran state (article 68 (3) and (4) of the AML/CFT Act).

84. ***6.2 (b)*** - The mechanisms and procedures described in criterion 6.1 apply to identifying targets for 1373 designations (Article 68 of the AML/CFT Act). Andorra has not had any designations at its own initiative or at the request of another country yet.

[103] No proposal has been yet submitted.

85. ***6.2 (c)*** - According to Article 79 (2), (3) of the AML/CFT Act, when a request is received from a third country for a person or entity to be included on the list, an extraordinary meeting of PC2 must take place. The committee is authorised to obtain, directly or through the UIFAND or the Police Department, all possible information to determine the factual circumstances, in order to assess whether there are reasonable grounds or a reasonable basis to suspect that the person or entity whose inclusion is requested is involved in terrorism, financing of terrorism or belongs to organisations involved in the same (Article 68 (3) of the AML/CFT Act). Should it conclude that there are reasonable grounds for inclusion on the list, it would issue a specific resolution in this matter (Article 68 (1) paragraph 3 of the AML/CFT Act). PC2 shall publish on the UIFAND website the list of names and circumstances of persons and entities deemed to have links with terrorist activities and the financing of terrorism. [104]

86. ***6.2 (d)*** - The standard of proof applied when deciding whether or not to make a designation pursuant UNSCR 1373, on its own motion or at the request of another country, is of "reasonable grounds"; the existence of criminal proceedings is not a necessary requirement for designation (see Criterion 6.1(c)).

87. ***6.2 (e)*** - The law requires PC2 to obtain all possible information to identify and to determine the identity and the circumstances of persons and entities that are deemed to meet the criteria for designation (article 68(1) of the AML/CFT Act). Andorra has never requested another country to give effect to the actions initiated under its freezing mechanism.

88. ***Criterion 6.3*** – ***(a)*** PC2 has the legal authority to collect or solicit information from any relevant administration or other party, either directly or through the UIFAND or the Police Department, to identify persons and entities that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation (Article 78(2) letter a) of the AML/CFT Act). The UIFAND can use all the powers provided by Article 53 (2) letters b, d and j of the AML/CFT Act to obtain and request all the necessary information.

89. ***6.3 (b)*** - The relevant legislation on this matter (Chapter 6 of the AML/CFT Act) does not require PC2 to inform the person or entity against whom a designation is being considered.

Freezing

90. ***Criterion 6.4*** - TFS must be directly implemented by parties under obligation in general, and by financial entities in particular, "immediately, from its publication by the Permanent Committee on the UIFAND website" (article 71(3) of the AML/CFT Act). By the Resolution 1/2014, of 25 July 2014, PC2 decided that the persons listed by the corresponding UN committees and their subsequent resolutions are automatically considered as listed by Andorra. The list published on the UIFAND's webpage is automatically and immediately updated in case of update by the UN[105]. As per Resolution 1/016, of 25 February 2016 adopted by PC2, the persons and entities designated by possible future UNSC Committees are understood to be included in the list of designated persons and entities mentioned by Article 68 of the AML/CFT Act, as from the time of their designation by the UNSC Committees. For Resolution 1373, the freezing measures decided at the national level are also to be implemented immediately as from their publication on the UIFAND website.

91. ***Criterion 6.5*** - Andorra has the following legal authorities and procedures for implementing and enforcing TFS:

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[104] The authorities have indicated that a formal request through UNSRC 1373 mechanism had never been received.

[105] For the time being, no cases of persons/entities listed in relation to terrorism and terrorist financing have been detected in Andorra.

92. ***6.5 (a)*** - The law requires all natural and legal persons in Andorra to implement the restrictive measures *immediately* as from their publication on the UIFAND website (Article 71(3) of the AML/CFT Act). The mechanism established for enforcing TFS does not imply a prior notice. The same procedure applies to the list developed pursuant to Resolution 1373. For Resolutions 1267/1989 and 1988, there is the obligation to freeze all funds, financial assets or economic resources of designated persons/entities without delay (established by PC2 Resolutions 1/2014 and 1/2016).

93. ***6.5 (b)*** - The obligation to freeze extends to all funds/other assets that are wholly or jointly owned or directly or indirectly controlled by the persons or entities affected, including funds derived from the above (Article 69 (2) of the AML/CFT Act). The restrictive measures apply to: (i) the persons and entities included on the list; (ii) any entity that is either owned or directly or indirectly controlled by any person or entity on the list; (iii) any person or entity acting on behalf or under the instructions of a person or entity on the list. The law does not contain the condition for funds to be tied to a particular terrorist act, plot or threat. The existing definition of funds and other assets, however, contains certain limitations as described under c.5.3.

94. ***6.5 (c)*** - Article 71(2) of the AML/CFT Act prohibits to make any funds, economic resources or profits derived from the same available to the persons or entities included on the list, unless authorised according to Article 74 of the same law. Funds include financial assets, according to Article 67 of the AML/CFT. The prohibition from making any *financial services* available, directly or indirectly, for the benefit of the designated persons and entities is provided by point 2(b) of the Resolution 1/2016. Paragraphs 2 and 4 of the Resolution 1/2016 also prohibit from making funds or other assets, economic resources or financial or other related services available for the benefit of the entities owned or controlled, directly or indirectly, by designated persons or entities or persons and entities acting on behalf of, or at the direction of, designated persons or entities.

95. ***6.5 (d)*** - The mechanism for communicating designations to FIs and DNFPBs consists in publishing the list of persons or entities affected by restrictive measures adopted by PC2 on the UIFAND website "*for the availability of the general public*". The UIFAND website must be consulted by all reporting entities, according to article 70(4).[106] Also, according to the Article 70 (4) of the AML/CFT Act, as a subsidiary measure to the information published on the UIFAND website PC2 is obliged to provide to the financial entities, insurance entities authorised to operate in the life insurance area, remittance entities and notaries with the names of persons or entities on the list and clear instructions with the specific measures that must be taken, whether by email or by any other means that provides proof of receipt.

96. ***6.5 (e)*** - FIs and DNFBPs are obliged to inform the UIFAND of the restrictive measures taken, as well as any operation that the person or entity *intends* to carry out (this includes attempted transactions), no later than 5 days after the publication of the resolution adopting the measures by PC2 or after the date the funds or financial assets come into the possession of the person giving notice, should this be the later date (article 72(2) of the AML/CFT Act).

97. ***6.5 (f)*** - The rights of the *bona fide* third parties are protected (Article 71(5) of the AML/CFT Act).

De-listing, unfreezing and providing access to frozen funds or other assets

[106] The authorities reported that, on the basis of this legal provision, guidance has been sent to FIs, insurance entities authorised to operate in the life insurance area, remittance entities and notaries, providing them with clear instructions with the specific measures that must be taken.

98. ***Criterion 6.6 -*** The procedures for de-listing and unfreezing the funds or assets of persons and entities which do not or no longer meet the designation criteria are established by article 73 of the AML/CFT Act:

99. ***6.6 (a)*** - For 1267/1989 and 1988 designations, persons and entities included in the lists may apply directly to the UN sanctions Committee for de-listing or indirectly, PC2, which would only act to send the request to the UNSC or one of its committees (Article 73 of the AML/CFT Act). The applicant must be informed about the appeals and procedures available.

100. ***6.6 (b)*** - Pursuant to UNSCR 1373, the parties concerned can address PC2 any reasonable requests for removal from the list, which must be evaluated and resolved within fifteen days (Article 73 of the AML/CFT Act). In case of approval, PC2 has to take the appropriate actions and notify the administrative services and the reporting entities in order to release the funds and financial assets affected by the restrictive measures.

101. ***6.6 (c)*** - The designation decision pursuant to UNSCR 1373 may be reviewed before a court pursuant to Article 73(3) of the AML/CFT Act and Article 127 of the Administrative Code.

102. ***6.6 (d)*** - For designations pursuant to UNSCR 1988, the persons and entities included in the lists of terrorism-related persons published by the UNSCRs may apply directly to the UN for de-listing or through PC2, which would only act to send the request to the UNSC or one of its committees (Article 73(2) of the AML/CFT Act). There is no other mechanism (legal or otherwise) to facilitate review by the 1988 Committee.

103. ***6.6 (e)*** - The Article 73(2) of the AML/CFT Act obliges PC2 to properly inform the interested persons or entities about the mechanisms available in order to be removed from UN sanctions lists. The Consolidated UNSC Sanctions List available on the UIFAND website contains the link to webpage with information about the availability of the *UN Office of the Ombudsperson*[107].

104. ***6.6 (f)*** - Article 74 of the AML/CFT Act establishes a procedure to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism, upon verification that the person or entity involved is not a designated person or entity, described in the analysis under Criterion 6.6(b).

105. ***6.6 (g)*** - De-listing and unfreezing resolutions by PC2 are published on the UIFAND website (Article 70 (2) of the AML/CFT Act). In case of de-listing and unfreezing, PC2 must take the appropriate actions and *notify the administrative services and parties involved* in order to release the funds and financial assets, via the UIFAND (Article 73 (2) and 74 (2) of the AML/CFT Act). PC2 will also notify financial entities, insurance entities authorised to operate in the life insurance area, remittance entities and notaries with the names of persons or entities on the list and clear instructions with the specific measures that must be taken whether by email or by any other means that provides proof of receipt, according to Article 70 (4) of the AML/CFT Act.

106. ***Criterion 6.7*** - Access to frozen funds and other assets which have been determined to be necessary for basic expenses, the payment of certain types of expenses, or for extraordinary expenses is provided by article 74(3) of the AML/CFT Act.

[107] It is noted that the information may be found at: https://www.un.org/sc/suborg/en/ombudsperson (for res. 1267) https://www.un.org/sc/suborg/en/sanctions/delisting (for other Committees), https://www.un.org/en/sc/2231/list.shtml (for res. 2231).

Weighting and Conclusion

107. Andorra implemented a comprehensive legal framework under the UN sanctions regime, by amending the AML/CFT Act in 2014. However, the existing definition of funds and other assets contains some limitations. **Andorra is rated largely compliant for R.6.**

Recommendation 7 – Targeted financial sanctions related to proliferation

108. These requirements were added to the FATF Recommendations, when they were last revised in 2012 and, therefore, were not assessed during Andorra's 4th mutual evaluation which occurred in 2011.

109. ***Criterion 7.1*** - The legal basis for the application of TFS under UNSCRs 1718, 1737 and their successor resolutions is the same as for TFS related to terrorism and terrorist financing (see c.6.4). PC2 must agree to and publish on the UIFAND website, without delay, the UN list of the names and circumstances of persons and entities deemed to have links to proliferation of weapons of mass destruction and its financing and the restrictive measures adopted (Article 68- 69 of the AML/CFT Act), which must be consulted by all the parties under obligation (Article 70 (4) last paragraph of the AML/CFT Act) and directly implemented immediately as from their publication. No cases of persons/entities listed in relation to proliferation have been detected in Andorra[108].

110. ***Criterion 7.2*** - PC2 is responsible for implementing TFS in this area.

111. ***7.2 (a)*** - Restrictive measures must be implemented immediately as from their publication on the UIFAND website (Article 71(3) of the AML/CFT Act). The mechanism established for enforcing TFS does not imply a prior notice.

112. ***7.2 (b)*** - The freezing obligations cover the all the categories of funds/other assets and persons/entities mentioned in the FATF Methodology, as it is analysed under C. 6.5 (b).

113. ***7.2 (c)*** - The law prohibits funds/other assets from being made available to or for the benefit of designated persons or entities.

114. ***7.2 (d)*** - Mechanisms for communication designations and guidance to FIs and DNFBPs are the same as described above in the analysis for Criterion 6.5(d).

115. ***7.2 (e)*** - The requirement to report frozen assets or any actions taken by FIs and DNFBPs are described in the analysis for Criterion 6.5(e).

116. ***7.2 (f)*** - The AML/CFT Act protects the rights of *bona fide* third parties through Article 71(5).

117. ***Criterion 7.3*** - The UIFAND is responsible for monitoring and ensuring compliance with requirements under R.7, since supervision of obligated entities in respect of the application of the framework for the implementation of the UN sanctioning regime is undertaken within the general AML/CFT supervision. Failure to comply is considered a very serious infringement (article 57 ter of the AML/CFT Act) and results in administrative sanctions (Article 58 and 58 bis of the AML/CFT Act) with a maximum level of fine up to 1 million EUR[109].

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[108] Effectiveness MEQ, page 184.

[109] This violation is considered a very serious infringement and a legal person can be sanctioned for such breach pursuant to Article 58 of the AML/CFT Act with: "a) A fine ranging from EUR 90,001 to EUR 1,000,000. b) A temporary or permanent restriction on specific types of transactions. c) The withdrawal or modification of the corresponding activity authorisation.

118. ***Criterion 7.4*** - Article 73 of the AML/CFT Act regulates the process of removal from the lists, at the request of the parties concerned. PC2 is obliged to inform the applicant about appeals available to him in order to be removed from the list of the Committee concerned. No persons or entities designated on the list have been detected. The foreseen measures have therefore not yet been applied in practice in Andorra.

119. ***7.4 (a)*** - The persons and entities included in the UN lists relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing may apply directly to the UNSC or one of its committees for de-listing, *in accordance with established procedures, of which the applicant must be informed* or may send the request via PC2, which must then address the UNSC or one of its committees and notify them of the request to be removed from the list (Article 73 (2) of the AML/CFT Act).

120. ***7.4 (b)*** - The article 74 of the AML/CFT Act establishes a procedure to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism, upon verification that the person or entity involved is not a designated person or entity.

121. ***7.4 (c)*** - PC2 may authorise, upon request, all or part of the frozen funds and financial assets to be used by the persons or entities listed or by family members in order to meet their basic needs. The restricted measures may not be lifted or modified without PC2 to proceed to the respective communications and formalities which are required on a prior basis according to the applicable UNSCR (Article 74 (3),(4) of the AML/CFT Act).

122. **7.4 (d)** - The mechanisms for communicating de-listings and unfreezing to the financial sector and the DNFBPs are as described in the analysis for Criterion 6.6(g).

123. ***Criterion 7.5*** - *(Met)*

124. ***7.5 (a)*** - The Andorran legislation permits the addition to the accounts frozen pursuant to UNSCRs 1718 or 1737 of interests or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of this resolution (Article 71(6) of the AML/CFT Act).

125. ***7.5 (b)*** - Provisions of Article 71(6) of the AML/CFT Act authorise the payment of sums due under a contract entered into prior to the designation of such person or entity, provided that this payment does not contribute to an activity prohibited by the regulation, the payment will not be directly or indirectly received by a person or entity included on the list, and after prior notice is given to the UN Sanctions Committee (Article 74(4) of the AML/CFT Act).

Weighting and Conclusion

126. As with R.6, Andorra implemented a comprehensive TFS legal framework under the amended AML/CFT Act. **Andorra is rated compliant with R.7.**

Recommendation 8 – Non-profit organisations

127. Andorra was rated partially compliant with the previous SR.VIII. The main deficiencies were: the lack of legal framework governing the transparency, record keeping and updating of the NPOs; the lack of specific risk assessment of this sector on potential terrorist activities; the lack of awareness-raising measures regarding the risk of NPOs to be used for terrorist purpose. In Andorra, the NPO sector is essentially composed by foundations and associations which respective legal framework hasn't changed since the last MER in 2012. In June 2016, the new R.8 and its Interpretive

Note were modified to ensure that its implementation is in line with the risk-based approach and does not disrupt or discourage legitimate non-profit activities.

128. There are two kinds of NPOs in Andorra: foundations[110] and associations[111]. It should be noted that foundations and associations in Andorra must pursue a legitimate non-lucrative interests and, thus, profitable associations or foundations are not permitted in Andorra. Furthermore, foundations are obliged to pursue an aim in the general interest.

129. ***Criterion 8.1*** - Andorra conducted a review of the NPO sector in December 2016 within the framework of the NRA. This included a mapping of the NPO sector (including its size, activities, and other relevant features, an assessment of ML/TF risks and the adequacy of laws, and recommendations for the policy response). A small subset of "service NPOs" acting internationally has been identified by the authorities as likely to be at risk of TF abuse. The mapping exercise, however, appears to place excessive reliance on the findings of the 2014 FATF typology report "Risk of terrorist abuse in NPOs", with little evidence of the use of other sources of information to identify NPOs likely to be at risk of TF abuse. The authorities reported that the NRA will be updated every three years which should take into account a periodic reassessment of the NPO sector.

130. ***Criterion 8.2*** - **(a)** Andorra's legal framework[112] (has not changed since the previous evaluation) sets various provisions to promote transparency and integrity in the management of associations and foundations and, although they are not specifically designed to protect the NPO sector against terrorist financing abuse, they nonetheless help to do so to some extent. The relevant laws set out the prerequisites for the foundation, the organisation, financial management, and the dissolution of an association/foundation (please refer to para.736 – 765 of the 4th MER of Andorra). There are Registries of Foundations and Associations which are public and consultable upon request.

131. ***8.2 (b)*** - Outside of the NRA workshops held with the NPO sector (co-organised with the World Bank in 2015 and 2016), neither specific typologies of TF through NPOs (since there have been no TF cases to date in Andorra), nor specific educational programs have been undertaken to raise and deepen awareness among NPOs about the potential vulnerabilities to TF abuse and TF risks.

132. ***8.2 (c)*** - No specific measures have been taken to encourage NPOs to use regulated financial channels, although the authorities indicated that NPOs have to use formal financial system or money remittances to conduct its financial transactions.

133. ***Criterion 8.3*** - Up to date there have been no steps taken to promote effective supervision and monitoring of NPOs at risk of TF abuse as required by c.8.3.

134. ***Criterion 8.4*** - ***(a)*** With respect to foundations, their compliance (although, not related to risk-based measures applied as required by c.8.4) must be monitored by the Foundations Protectorate, and there is the obligation to file accounts. The Protectorate is required to keep and review the annual accounts and supporting information provided by each foundation[113]. The annual report of activities must include at least: details of resources proceeding from other years and pending allocation; indicators of compliance with the foundational purposes and if necessary, details of companies in which there are holdings, giving the percentage holding.

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[110] Law on Foundations.

[111] Law on Associations.

[112] Law on Foundations and Law on Associations.

[113] Article 23 of Law on Foundations and articles 63 and 64 of the Regulation of Law on Foundations.

135. There is no mandatory monitoring (nor an independent audit system) for associations, as has been confirmed in the NRA. In addition, only NPOs receiving public subsidies have a reporting obligation to the authority that awarded the subsidy regarding the use made thereof and may be audited by the Court of Auditors.

136. ***8.4 (b)*** - Administrative, civil, and criminal sanctions can be imposed against NPOs. Failure to meet the obligations under the Law on Foundations and the Law on Associations is governed by the sanctions regime set out in paragraphs 747 – 754 of the 4th MER of Andorra which has not changed since the previous evaluation. Also, under article 15(2) of the Law on Foundations, the trustees are joint-and-severally liable to the foundation for loss and damage caused by actions contrary to law or the constitution, or by non-compliance with their obligations through guilt or negligence.

137. ***Criterion 8.5*** - ***(a)*** No mechanisms exist in Andorra to promote co-operation, co-ordination and information sharing between all levels of appropriate authorities or organisations that have relevant information on NPOs. As it was identified in the NRA, the Legal office in charge of the association register had no contacts with the UIFAND concerning information sharing on NPOs.

138. ***8.5 (b) -*** Given that Andorra has never dealt with a case of TF involving NPOs and given the lack of specific training on TF issues, it is not clear whether the LEAs would have sufficient expertise and capability to examine NPOs suspected to be at risk of TF abuse. Nevertheless, it appears that the Andorran authorities have sufficient powers and mechanisms to investigate and collect information on NPOs.

139. ***8.5 (c)*** - Andorra relies on its powers to access the public registers of foundations and associations for the information it contains, including on the administration and management of NPOs. The UIFAND can request and obtain information from any official body (including the Protectorate and the Government legal offices in charge of the Associations Register and the Foundations Register) in line with Art.53 of the AML/CFT Act. In addition, according to article 45(g) of the AML/CFT Act, NPOs are parties under obligation and, therefore, the UIFAND can request all the information or documents it needs to the performance of their functions (R.29). Information held by the Government legal offices in charge of the Associations Register and the Foundations Register is also accessible by the judicial authorities in connection with an investigation.

140. ***8.5 (d)*** - The Foundations Protectorate, ex officio or following a complaint, can request the Administration of Justice to order temporary intervention in the foundation, when advised of a serious irregularity in management or when the continuity of the foundation is endangered, or there is a serious divergence between the activities carried out and the foundational purposes (Art.21 of the Law on Foundations). If the Protectorate has knowledge of information which it could lead to the committing of a crime, it must communicate these facts to the competent judicial authority, and send it the available documents and information, without this involving suspension of the liquidation process (fifth transitional provision of the Law on Foundations). Also, Art.22 of the AML/CFT Regulations provides inter alia that should the authorities discover facts that could constitute evidence or proof of ML or TF, they must inform the UIFAND in writing and provide the UIFAND with the information that it may request in the exercise of its duties. Likewise, civil servants and other personnel working for the Andorran public administration who discover such facts must immediately report them to the organisation in which they work.

141. ***Criterion 8.6*** - Andorra uses the general procedures and mechanisms for international cooperation to handle requests relating to NPOs. International requests for information regarding particular NPOs that are suspected of TF or other forms of terrorist support are dealt with by the judicial authorities in the case of international letters rogatory or the UIFAND in the case of requests received from other FIUs.

Weighting and Conclusion

142. Andorran authorities were not able to address all the deficiencies identified in the 4th MER, notably with respect to sustained outreach on TF issues, targeted risk-based supervision/monitoring of NPOs and effective co-operation, co-ordination and information-sharing. Nevertheless, it should be emphasized that most of these deficiencies have been identified in the NRA and have been listed as recommended actions in the Action Plan. **Andorra is rated partially compliant with R.8.**

Recommendation 9 – Financial institution secrecy laws

143. Andorra was rated as Compliant with the requirements set forth under former R.4. The MER noted that, whilst this recommendation was fully observed, the legislative framework should be sufficiently clear when FIs share information with foreign FIs, where required by previous Recommendations 7 and 9, so that no difficulties may arise with regard to information sharing.

144. ***Criterion 9.1*** – Professional confidentiality and exceptions thereto are provided for in: (i) article 5(4) of the Law 8/2013; (ii) article 48(2) of the AML/CFT Act; and (iii) article 48(3) of the AML/CFT Act. The effect of these provisions is to allow information and documentation to be provided by FIs (and employees thereof) to third parties - where required or permitted by legislation - without committing an offence. Information has not been provided by the authorities on any confidentiality provisions that may apply to insurance companies under the Insurance Law.

145. Competences of the UIFAND are set out under article 53 of the AML/CFT Act. According to article 53(2) (b), the UIFAND is able to request any FI to provide information or documents required to perform its duties (and it is a serious offence to fail to comply with such a request). For the purposes of prudential supervision of banking and non-banking FIs by the INAF, Law 10/2013 of 23 May on the Andorran National Institute of Finance (Law 10/2013) requires financial parties under obligation to provide any information deemed necessary. According to article 87(4) of the CPC, LEAs (including prosecutors) can obtain information from parties under obligation upon prior authorisation of the Court.

146. There are no explicit provisions allowing information to be exchanged by Andorran respondent FIs in correspondent banking relationships (R.13). Similarly, there are no explicit provisions allowing Andorran delegates to provide the necessary CDD information, identification data or other relevant documentation relating to CDD requirements under Article 7 of the AML/CFT Regulations (R.17).

147. Article 49 sexies (2) of the AML/CFT Act requires FIs to include complete information on the payer when making cross-border transfers of funds and to make such information available within three business days for domestic transfers (where complete information has not provided). However, there is no requirement to provide information on the beneficiary.

Weighting and Conclusion

148. **R.9 is rated largely compliant** since the absence of explicit provisions may inhibit sharing of information between FIs where this is required under R.13 and R.17.

Recommendation 10 – Customer due diligence

149. Andorra was rated PC with the previous R.5. The MER noted a set of shortcomings. In particular: (i) a number of technical deficiencies had been addressed through amendments to the AML/CFT Act after the on-site visit and so their effectiveness could not be considered; (ii) the use of

reliable independent sources to verify identity had not been fully covered; (iii) there were inadequate rules to identify and verify the identity of beneficiaries of professional accounts kept by lawyers; (iv) in some cases, simplified CDD measures permitted no measures to be conducted, including on-going monitoring; and (v) there was no requirement to consider filing an SAR when a relationship had not been established (attempted transactions).

150. ***Criterion 10.1*** **–** Article 49(4) of the AML/CFT Act clearly prohibits FIs from having anonymous accounts or passbooks, or accounts and passbooks with fictitious names.

151. ***Criterion 10.2*** – Articles 49(1) (c) and 49 bis (1) of the AML/CFT Act should be read in conjunction with article 3(a), (b) and (c) of the AML/CFT Regulations. According to the latter, FIs shall identify and verify the identity of their customer and their beneficial owner: (i) before establishing any business relationship or carrying out an occasional transaction over EUR 1 000 (or equivalent) (including linked transactions), without prejudice to the exceptions set out in article 49 bis of the AML/CFT Act; (ii) when there is a suspicion of ML or TF, regardless of any derogation, exemption or threshold established in other provisions; and (iii) when there are doubts about the veracity of documents, information and any other data previously obtained for the purposes of identifying and verifying the customers and beneficial owners. However, article 3 of the AML/CFT Regulations does not also specify that other CDD measures required under c.10.4 and c.10.6 must be applied at these times.

152. As noted above, CDD measures must be applied to occasional transfers of EUR 1 000 or more. Whilst this will include wire transfers in the circumstance covered by R.16, article 3(a) of the AML/CFT Regulations does not apply to wire transfers of EUR 1 000.

153. ***Criterion 10.3*** **–** Article 6(1) of the AML/CFT Regulations states that, in application of article 49 bis of the AML/CFT Act (which applies to verification before a *relationship is established or carrying out a transaction*), measures to be taken to verify the identity of customers must use reliable and independent sources. However, neither provision extends to measures to be applied under c.10.2 (d) or (e) and the circumstances in which article 6(2) is to be used are unclear. As such, there is no explicit requirement to use reliable and independent source documents, data or information in the cases covered under c.10.2 (d) or (e).

154. Article 49(1)(c) of the AML/CFT Act prescribes the minimum ways in which information provided by customers must be verified. This is developed by Article 6 of the AML/CFT Regulations. For legal persons, legislation requires: (i) an authentic document accrediting its name, legal form, registered office and corporate purpose to be obtained (article 49(1)(c) of the AML/CFT Act and article 6(4)(b) of the AML/CFT Regulations); and (ii) a further check, e.g. obtaining information from public records or contact by telephone, post or email (article 6(6) of the AML/CFT Regulations). While t is not clear that this contact by telephone, post or email would, by itself always be a reliable source, it should be noted that such information is merely complementary to the reliable information sources required by Article 49(1)(c) of the AML/CFT Act and article 6(4)(b) of thw AML/CFT Regulations.

155. ***Criterion 10.4*** **–** Article 49(1) (c) of the AML/CFT Act provides that, when establishing a business relationship with a customer who is a *legal person*, FIs must verify: (i) the identity of the individual who has powers to represent the entity; and (ii) the powers granted to that individual. This requirement is complemented by article 6(4) of the AML/CFT Regulations which, in the case of a *legal person, other legal entity or contractual fiduciary arrangement*, sets a specific requirement for FIs to verify the authorisation of the representative and determine and verify his identity. However, neither provision deals with a case where one person is acting on behalf of customer who is an individual (e.g. under a power of attorney) and requirements that apply to legal persons and legal

arrangements seem only to cover representatives who are natural persons, and not also persons purporting to act who are legal persons.

156. ***Criterion 10.5*** **–** Article 49(1) (c) of the AML/CFT Act requires that the "beneficial owner"[114] of a customer shall be identified by presentation of an official document *when establishing any business relationship*. Article 49 bis of the AML/CFT Act also obliges FIs to *verify* the identity of the beneficial owner *when establishing a relationship or carrying out a transaction*. In addition, Article 6(1) of the AML/CFT Regulations says that FIs must identify the beneficial owner and take reasonable measures to verify its identity through documents and information from reliable and independent sources. Article 6(1) does not, however, require a FI to apply measures such that it is satisfied that it knows who the beneficial owner is.

157. As explained under c.1.6, the effect of article 49 ter (1) of the AML/CFT Act and article 8 of the AML/CFT Regulations is to exempt FIs and DNFBPs from the requirement to identify and verify the identity of persons on whose behalf a customer is acting (beneficial owners). Whilst this exemption is considered to be in line with examples provided in the IN to R.10, the exemption may be applied to a customer acting on behalf of a third party where there is not a proven low risk of ML/TF. This has a cascading effect on c.10.5.

158. ***Criterion 10.6*** **–** Article 49(1) (d) of the AML/CFT Act requires FIs to obtain information on the purpose and intended nature of a business relationship, but not explicitly to *understand* the intended purpose or intended nature. However, this is implied by the requirement to conduct on-going monitoring of a business relationship, which includes verifying that operations and the relationship are "coherent" with the FI's knowledge of its customer, its business, and its risks profile (see c.10.7).

159. ***Criterion 10.7*** **–** Article 49(1)(f) of the AML/CFT Act, in combination with article 5(2) of the AML/CFT Regulations, requires FIs to conduct on-going monitoring of a business relationship "on a constant basis". This on-going monitoring obliges FIs to monitor the "operations and the business relations with their customers to verify that they are consistent with the activities as declared by such customers". This on-going monitoring shall include "transactions carried out, with the purpose of verifying that they are coherent with the knowledge the party has of the customer, of its business, of its risk profile, and when called for, the origin (source) of funds".

160. Inter alia, article 49(1) (e) of the AML/CFT Act requires FIs to update the data that they have collected so that customers can be correctly identified "when carrying out a transaction susceptible of involving money laundering or terrorism financing". The authorities have explained that the term "data" is to be understood to include also documents and information.

161. There is no general requirement to undertake a review of existing records. Instead, article 5(3) of the AML/CFT Regulations states that, when the amount or the execution conditions of any requested operation is not consistent with the normal activity or with previous operations of the customer, a FI shall request the documents deemed necessary to justify the operation. However, since this trigger is dependent upon a "requested operation", this will not ensure that records for higher risk customers are reviewed.

162. ***Criterion 10.8*** **–** Under article 4(1) of the AML/CFT Regulations, there is a general requirement to understand the shareholder structure and control of legal persons. In addition, article 6(4)(c) of the AML/CFT Regulations state that, in the case of "legal persons, other legal

[114] The definition of "beneficial owner" under article 41(g) of the AML/CFT Act broadly covers ownership and control of customers who are individuals, legal persons and legal arrangements. It also covers cases where a customer acts on behalf of a third party.

entities, contractual fiduciary arrangements or any other fiduciary structures", FIs must take reasonable measures to understand the ownership and control structure. Whilst there is no explicit requirement to understand the nature of the customer's business, this is addressed through on-going monitoring (see c.10.7).

163. ***Criterion 10.9*** **–** Pursuant to article 6(4) of the AML/CFT Regulations, in the case of any legal person, other legal entity, contractual fiduciary arrangement or any other fiduciary structure (as referred to article 41(h) of the AML/CFT Act), FIs must: (i) obtain information concerning its name and legal structure, and verify its legal status and existence through documentation required by article 49(1)(c) of the AML/CFT Act; (ii) obtain the laws governing the relationship between the entity and its authorized representatives (but not powers that regulate and bind the legal person or legal arrangement), the name of the trustees (in the case of contractual fiduciary arrangements or any other fiduciary structures) or directors (in the case of companies); and (iii) obtain an address (unspecified).

164. ***Criterion 10.10*** **–** The general requirement to identity the "beneficial owner" and to apply reasonable measures to verify identity is explained at c.10.5. Article 41(g) of the AML/CFT Act defines what is meant by "beneficial owner" in the case of a company. It is: (i) the individual(s) who ultimately control(s) the legal person through direct or indirect ownership *or* control of a sufficient percentage (25%) of its shares or voting rights; and (ii) the individual(s) who, by any other means, exercise(s) effective management over the company. The latter element appears to cover (b) and (c) of c.10.10. Article 41(g) also explains how the term "beneficial ownership" is to be understood in the case of other legal entities (which includes a foundation).

165. ***Criterion 10.11*** **–** The general requirement to identity the "beneficial owner" and to apply reasonable measures to verify identity is explained at c.10.5. Article 41(g) of the AML/CFT Act defines what is meant by "beneficial owner" in the case of "other legal entities, contractual fiduciary arrangements or any other fiduciary structures" (as referred to in article 41(h) of the AML/CFT Act). It is: (i) individual(s) who control(s) over 25% of funds – where future beneficiaries have already been determined; (ii) the class of persons in whose interest the entity or arrangement is set up or operates – where future beneficiaries have yet to be determined; and (iii) individual(s) who, by any other means, exercise(s) effective management of the legal entity or legal arrangement.

166. However, there is no explicit requirement in Andorran legislation to identify the settlor and the protector (if any) of trusts (or identity of persons in equivalent or similar positions for other legal arrangements), other than in circumstances when they exercise "effective management". Nor is there a requirement, where beneficiaries are designated by class, to obtain sufficient information in line with c.10.11.

167. ***Criterion 10.12*** **–** Beneficiaries of life insurance policies will not necessarily also be the customer or beneficial owner of a customer, and there is no specific requirement to apply CDD measures to the beneficiary of an insurance policy as soon as identified or designated, as required by c.10.12.

168. ***Criterion 10.13*** **–** There are no specific provisions requiring FIs to consider the beneficiary of a life insurance policy as a relevant risk factor when they determine whether enhanced due diligence should be applied.

169. ***Criterion 10.14*** **–** By way of derogation, article 49 bis (2) allows *verification* of identity to be conducted after a business relationship is established if this is necessary not to interrupt the normal course of business, but only where the risk of AML/CFT is considered to be low (which implies that risks are effectively managed). In case a transaction is carried out before identity is verified, FIs are require to prepare a report describing: (i) all the circumstances impeding verification; (ii) the

customer and beneficial owner's known data; and (iii) operational data, allowing transactions to be monitored and tracked. Identity must be verified as soon as practicable.

170. By way of a separate derogation, Article 49 bis (3) says that verification of identity of a customer and its beneficial owner can take place after a life assurance policy is contracted, provided that it is done before the time of pay-out or at the time that the beneficiary intends to exercise rights vested under the policy. There is no requirement to manage ML/TF risks in the intervening period. This derogation is not in line with c.10.14.

171. Bank accounts may also be opened prior to the *identification* of the customer relating thereto, provided that no transactions are completed until the identification and verification have been conducted. Whilst this does not appear to be strictly in line with the standard, safeguards must be in place to prevent the customer using the account. The effect of this is that a business relationship cannot be considered to have been established.

172. ***Criterion 10.15*** **–** FIs are not also required to adopt risk management procedures concerning the conditions under which a customer may utilise a business relationship prior to verification of identity. Whilst requirements in article 49 bis (2) to prepare a report (see c.10.14) could be considered part of a procedure to manage risk prior to verification, it does limit the circumstances in which a customer may utilise the business relationship.

173. ***Criterion 10.16*** **–** Article 49 bis (6) of the AML/CFT Act obliges FIs to apply (unspecified) CDD requirements with respect to existing customers (an undefined term) at appropriate times on a risk-sensitive basis. There is no reference to "materiality". The authorities have explained that the "appropriate time" will be as soon as a new requirement enters into force.

174. ***Criterion 10.17*** **–** Article 49 quater of the AML/CFT Act states that FIs *must* apply enhanced CDD measures, on a risk sensitive basis, in situations which can, by their nature, present a higher risk of ML/TF. This must include the following situations at least: (i) where the customer or the beneficial owner has not been physically present for identification purposes; (ii) in respect of cross-border correspondent banking relationships (see R.13); and (iii) in relation to transactions or business relationships with PEPs exercising prominent public functions in a foreign country (see R.12).

175. In order to support the general requirement to apply enhanced CDD measures set out in Article 49 quater, Article 9(2) of the AML/CFT Regulations draws attention to the need to consider applying "reinforced diligence" in other prescribed cases, including situations that may be determined by way of a TC from the UIFAND (see R.34). In this respect, the UIFAND has issued several TCs which set additional CDD requirements when dealing with: (i) high risk activities, e.g. foreign exchange houses; and (ii) cash transactions

176. Nevertheless, a number of customer risk factors that might be expected to apply in Andorra have not been considered by the authorities, e.g. provision of private-banking services, prevalence of non-residents customers, use of legal persons to hold personal assets, abuse of cash-intensive businesses, and unusual or excessively complex ownership structures given the nature of the company's business. Evaluators consider that this leaves too much discretion to FIs to determine: (i) situations when EDD is required; and (ii) the extent of those measures.

177. Provision is also made in article 9(3) of the AML/CFT Act for enhanced CDD to be applied to customers in territories that present a high risk of ML/TF (see also c.19.1) and which are included in lists sent by the UIFAND by means of a TC.

178. ***Criterion 10.18*** **–** A provision to apply some CDD measures to take account of risk is established under article 49(2) of the AML/CFT Act. This allows measures applied to take account of

both lower and higher risk. In addition, article 49 ter of the AML/CFT Act sets out all the provisions where, in accordance with the law, the application of "simplified" CDD is permitted or prohibited.

179. Article 49 ter explains that FIs may, in case of simplified CDD, *reduce* compliance with: (i) article 49(1) (c), (d), and (e), that requires the customer and beneficial owner thereof to be identified, information on the purpose and nature of the relationship to be collected, and data updated; and (ii) article 49 bis (1), which requires identity to be verified. However, simplified measures are not precisely defined, and, whilst expressed as being "simplified", they can, in fact, operate as "exemptions". According to article 49 ter (4), FIs shall obtain sufficient information to confirm that a customer meets the conditions for the application of simplified CDD measures, which implies, at a minimum: (i) identifying and verifying the customer's identity; and (ii) monitoring the business relationship to ensure continuous compliance with the requirements set out for the implementation of the article. On this basis, it appears that the effect of simplified measures will be to allow nothing to be done for some elements of required CDD measures (c.10.3 to c.10.6), e.g. identification and verification of the identity of the beneficial owner of a customer, rather than something to be reduced. Such an approach is not in line with the examples of simplified measures given in the interpretative note to R.10 and such "exemptions" will be considered instead under c.1.6.

180. Where simplified measures are applied under article 49(2), i.e. something is reduced, or something delayed, legislation (or guidance) does not explain the nature of the measures. The effect of this may be to allow measures to be applied that are not properly commensurate or proportionate to the lower risk factors identified.

181. ***Criterion 10.19*** **–** Article 49 bis (5) of the AML/CFT Act determines the consequences when a FI is not able to identify a *customer and beneficial owner*. The FI: (i) cannot establish a business relationship or carry out transactions; and (ii) must consider making a report to the UIFAND. In addition, when a relationship has already started: (i) the business relationship must be terminated; and (ii) consideration given to making a report to the UIFAND.

182. ***Criterion 10.20*** **–** This criterion is not met.

Weighting and Conclusion

183. Andorra meets c.10.1, 10.6, 10.8, 10.10 and 10.19, and mostly meets c.10.2, 10.3, 10.9, 10.14, 10.16, 10.17 and 10.18. It partly meets c.10.4, 10.5, 10.7 and 10.11 and does not meet c.10.12, 10.13, 10.15 or 10.20. In particular, beneficial ownership of global or omnibus accounts may not be found out or verified in cases where there the risk of ML/TF is other than low (c.10.5), and there are gaps in the application of CDD measures to legal arrangements and life assurance policies (c.10.11 to c.10.13). **R.10 is rated largely compliant.**

Recommendation 11 – Record-keeping

184. Andorra was rated LC with the previous R.10. Evaluators said that they could not conclude on the effective implementation by parties under obligation of record-keeping requirements, particularly in view of the fact that legislation had been amended very recently.

185. ***Criterion 11.1*** **–** Article 51 of the AML/CFT Act provides for records on transactions to be kept for at least 5 years following: (i) the date of execution of the transaction for an occasional customer; (ii) the date of termination of the business relationship with an habitual customer; and (iii) the date on which any declaration of suspicion was made to the UIFAND. Moreover, under article 10(1) of the AML/CFT Regulations, this period of time for the conservation of documents can be extended at the request of the UIFAND.

186. ***Criterion 11.2*** **–** Article 51 of the AML/CFT Act also applies the above requirements to *"information on the customer's identity…and the purpose and intention of the commercial relationship with the customer".* However, there is no general reference to records obtained through CDD measures (covering c.10.4 to c.10.7), "account files" or "business correspondence", or an explicit requirement to keep records of "any analysis undertaken".

187. INAF's TC-163/05, on rules for ethics and behaviour, states in its section 4 (Integrity and security of the financial system) that operative entities must keep a copy of the documents required from individuals and/or companies on opening accounts and carrying out operations for a period of at least five years (longer where required by law) after the date on which relations with a customer were terminated. The authorities consider that this requirement addresses gaps highlighted in the AML/CFT Act. However, the TC does not cover all FIs (it does not cover insurance companies or financial activities of the two foreign post offices) and does not cover non-operational records.

188. ***Criterion 11.3*** **–** Without prejudice to compliance with general rules to keep accounting and contractual documents, article 51 of the AML/CFT Act requires information to be hold on the customer's identity, the nature and date of a transaction, the currency, the amount of the transaction and the purpose and intention of the commercial relationship with the customer. Whilst this is considered sufficiently detailed to allow reconstruction of transactions carried out in the case of analysis and investigations, article 10 of the AML/CFT Regulations adds that documentation held under article 51 must be sufficient to reconstruct transactions.

189. ***Criterion 11.4*** **–** Pursuant to article 51 of the AML/CFT Act, FIs are obliged to ensure that the documentation and information is made available to the competent authorities as soon as it is requested. However, guidance does not explain how FIs might meet this requirement, e.g. keeping electronic records and holding information or documents chronologically.

Weighting and Conclusion

190. Andorra meets c.11.1, 11.3 and 11.4 and partly meets c.11.2. **R.11 is rated largely compliant.**

Recommendation 12 – Politically exposed persons

191. Andorra was rated LC with the previous R.6. The MER noted that the full effectiveness of the implementation of a number of measures had not been established. There were reservations about the: (i) adequate application of obligations when initiating a business relationship; (ii) sufficiency of approval levels; and (iii) sufficiency of monitoring by the authorities of FIs' effective implementation of their obligations. Moreover, the concept of PEP was not applicable to persons who exercise or have exercised important public functions in a foreign country but who reside in Andorra. Also, CDD measures relating to PEPs did not apply to beneficial owners of customers.

192. The term "PEP" is defined under article 41(e) of the AML/CFT Act and article 2 of the AML/CFT Regulations. The definition is broad enough to capture most of the definition of PEPs in the FATF Methodology, with the exception of important political party officials and persons entrusted with a prominent function by an international organisation. Article 2 establishes that a person who has ceased to occupy an important public post is not to be considered as a PEP from one year after ceasing to occupy that post, so long as this is consistent with its risk assessment of that customer, e.g. taking account of risk factors identified in the NRA, such as corruption.

193. ***Criterion 12.1*** - Article 49 quater (c) of the AML/CFT Act sets the enhanced CDD measures that must be applied to transactions or business relationships with PEPs (as defined in the AML/CFT Act) exercising a prominent public function in a third country. These include all the requirements of

c.12.1, except for the requirement of senior management approval for the purpose of continuing the relationship for existing customers. As noted above, the definition of PEP in the AML/CFT Act does not include important political party officials.

194. ***Criterion 12.2*** **–** Currently, FIs are not obliged to apply additional due diligence measures in relation to PEPs (as defined in the AML/CFT Act) who are domestic PEPs or persons who have been entrusted with a prominent function by an international organisation. As noted above, the definition of PEP in the AML/CFT Act does not include important political party officials.

195. ***Criterion 12.3*** **–** FIs are required to apply the same rules under c.12.1 to family members and close associates of individuals exercising a foreign prominent public function. A list of relationships considered to be "close family" is provided in article 2 of the AML/CFT Regulations. As noted above, the definition of PEP in the AML/CFT Act does not include important political party officials, and requirements do not extend to PEPs (as defined in the AML/CFT Act) who are domestic PEPs or persons entrusted with a prominent function by an international organisation. Accordingly, no requirements are in place for their family members or close associates.

196. ***Criterion 12.4*** – FIs are not required to take reasonable measures to determine whether the beneficiaries and/ or, where required, the beneficial owner of the beneficiary, are PEPs.

Weighting and Conclusion

197. Andorra mostly meets c.12.1. It partly meets c.12.3 and does not meet c.12.2 and 12.4. **R.12 is rated partially compliant**.

Recommendation 13 – Correspondent banking

198. Andorra was rated LC with the previous R.7. The MER noted that FIs were not required: (i) in the context of control assessments, to ascertain that the AML/CFT controls implemented by respondent institutions were adequate and effective; or (ii) to ascertain that respondent institutions were able to provide relevant customer identification data on request. Also, the full effectiveness of implementation by FIs of obligations relating to R.7 could not be established.

199. ***Criterion 13.1*** **–** Pursuant to article 49 quater (1)(b) of the AML/CFT Act, banks are required to apply most of the measures prescribed by c.13.1 to foreign respondents. However, while requiring correspondent banks to determine the quality of supervision of a respondent bank, they are not required to determine if the respondent has been subject to a ML/TF investigation or regulatory action. Moreover, requirements do not apply (where applicable) to respondent banks, and correspondents are required to document rather than clearly understand their respective responsibilities, which is a not in line with the standard which implies the need to conduct an analysis and not just to collect documents.

200. ***Criterion 13.2*** **–** Article 49 quater (1)(b) establishes that, with respect to payable-through accounts, Andorran banking entities must be satisfied that the respondent credit institution: (i) has verified the identity of, and performed on-going due diligence on, the customers having direct access to accounts of the Andorran correspondent; and (ii) upon request, may provide the necessary data for the purposes of identification and verification of the customer and the beneficial owner (but not also other relevant CDD information). This requirement provides for the possibility of conducting CDD measures on the customer of the customer (KYCC) that is expressly required by the standard in the case of payable-through accounts.

201. ***Criterion 13.3*** **–** According to article 49 quater (2) of the AML/CFT Act, establishing or continuing any correspondent banking relationships with shell banks is prohibited. Appropriate

measures must also be taken to ensure that no correspondent banking relationships are established or maintained with banks that are known to permit their accounts to be used by shell banks. However, the definition of "shell bank" does not fully align with the definition in the FATF glossary.

Weighting and Conclusion

202. Andorra mostly meets c.13.1 and 13.2 and partly meets c.13.3. R.13 is rated **largely compliant**.

Recommendation 14 – Money or value transfer services

203. Andorra was rated PC with the previous SR.VI. The MER pointed out issues of technical compliance cascading from several other recommendations, in particular the supervisory machinery, and proportionality and effectiveness of sanctions. Additionally, it was noted that branches of two foreign post offices could provide money and value transfer services outside any legal framework in Andorra.

204. ***Criterion 14.1*** **–** Articles 5 and 8 of Law 7/2013 of 9 May on the legal entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra (Law 7/2013) allow only the provision of MVTS by banking entities. Moreover under Article 5 of Law 7/2013 providing banking services, including the management of means of payment, without prior administrative authorisation is prohibited. However, one foreign post office[115] does provide these services - based on an agreement reached in 1930 - without authorisation to provide financial services in Andorra. It is the view of the authorities that this agreement should be considered an "administrative" authorisation. The agreement is currently under review and the authorities have said that activities are "very insignificant".

205. ***Criterion 14.2*** **–** The Centre Against Professional Intrusion of the Government of Andorra is responsible for identifying persons that carry out MVTS in contravention of the law (i.e., without a licence or registration). It does so through: (i) the proactive use of open source information; and (ii) tip-offs and complaints from third parties (including the INAF). The provision of unauthorised activities is an offence under article 246 of the CC and an order may be made to suspend unauthorised activities for a period up to 6 years.

206. ***Criterion 14.3*** **–** Article 41(c) of the AML/CFT Act includes expressly "*money remittance institutions*" under its definition of financial parties under obligation. Thus, MVTS providers are subject to supervision by the UIFAND.

207. ***Criterion 14.4*** **–** The use of financial agents is regulated under article 27 of Law 7/2013. No requirements are in place to regulate the use of agents under the 1930 agreement. However, it is noted that the foreign post office does not use agents.

208. ***Criterion 14.5*** **–** Money remittance institutions are not required to include agents in their AML/CFT programmes or monitor them for compliance with these programmes. However, it is noted that the foreign post office does not use agents.

[115] This post office operates in its home country without administrative authorisation according to a mandate granted by law. This legal framework is very similar to the agreement in place in Andorra. The home country has been rated as compliant with R.14.

Weighting and Conclusion

209. Andorra meets c.14.2 and 14.3 and mostly meets c.14.1 and 14.4. It does not meet c.14.5. **R.14 is rated largely compliant.**

Recommendation 15 – New technologies

210. Andorra was rated PC with the previous R.8. The MER noted that effectiveness of implementation by FIs could not be established, given the recent introduction of requirements. Furthermore, it was considered that the risk of ML through the use of new technology was insufficiently.

211. ***Criterion 15.1*** **–** Article 49(3) of the AML/CFT Act states that FIs must adopt constant monitoring measures with regard to new technologies in order to: (i) prevent any undue use for ML purposes (this outcome must implicitly involve identification and assessment of the ML risk (but not also TF risk) that may arise from the use of new or developing technologies; and (ii) any other action leading to the false identification of the customer in non-face-to-face transactions.

212. Whilst article 49 quater of the AML/CFT Act requires appropriate measures to be taken to prevent products or transactions that might favour anonymity being used for ML or TF purposes, there is no general requirement for FIs to assess the ML/TF risks that arise in relation to the development of new products and new businesses practices, including new delivery mechanisms.

213. In the context of the NRA, products and services posing higher risks to the system were identified. However, the authorities have not otherwise explained how they identify and assess ML/TF risks presented by new technology.

214. ***Criterion 15.2*** **–** There is no requirement that risk assessments should be undertaken prior to the launch of new products, practices and technologies, nor to take appropriate measures to manage and mitigate risks identified.

Weighting and Conclusion

215. Andorra partly meets c.15.1 and does not meet c.15.2. **R.15 is rated partially compliant.**

Recommendation 16 – Wire transfers

216. Andorra was rated LC with the previous SR.VII. The MER noted that: (i) verification of identity was not required in the case of transfers for an amount up to EUR 1 250 performed by occasional customers; (ii) lack of originator information was not regarded as a factor giving rise to filing a SAR with the UIFAND; and (iii) there were no preventive controls to detect transfers lacking the required accompanying information. Since the previous MER, significant changes have been made in respect of R.16 that requires FIs to collect information on the beneficiary of a transfer.

217. According to the authorities, Andorran banking entities do not provide intermediary payment services but are present solely as ordering or receiving payment institutions. Nevertheless, as a matter of law, there is nothing to prevent banking entities providing intermediary payment services.

218. ***Criterion 16.1 – (a)*** Article 49 sexies of the AML/CFT Act requires information on the payer that is listed under c.16.1 (a) to accompany a cross-border wire transfer. The definition of transfer of funds at article 49 sexies (1)(c) is broad enough to capture all wire transfers though some transfers are excluded from the scope of the AML/CFT Act by article 49 sexies (6).

219. FIs must verify this information where funds are not transferred from an account and amount to more than EUR 1 000 (so not covering transfers equal to EUR 1 000 in line with the standard). Verification is deemed to have taken place if the payer's identity has been verified previously in connection with the opening of an account as required in article 49 bis of the AML/CFT Act in combination with article 6 of the AML/CFT Regulations.

220. ***16.1 (b)*** There is no requirement in place concerning beneficiary information. According to the authorities, FIs do identify the beneficiary in practice, as this is required by correspondent banks.

221. ***Criterion 16.2*** **–** There are no specific provisions in relation to batch transfers.

222. ***Criterion 16.3*** **–** In all the cases set out in article 49 sexies of the AML/CFT Act, required originator information shall be included in the template of the message. However, a *de minimis* threshold is applied to occasional transactions exceeding EUR 1 000 whereby required information need not be verified. In such cases, the transfer need not include the required beneficiary information.

223. ***Criterion 16.4*** **–** Article 3 of the AML/CFT Regulations specifies that FIs shall find out and verify the identity of their customer whenever there is suspicion of ML/TF, regardless of any derogation, exemption or threshold established in other provisions.

224. ***Criteria 16.5 and 16.6*** **–** As regards domestic transfer of funds of any amount, article 49 sexies (2) states that information accompanying the transfer may be limited to: (i) the account number of the payer; or (ii) a unique identifier, provided in both cases that the FI carrying out the transfer of funds is able to make available the payer's complete information to the payee (the person who is the intended final recipient of transferred funds) or the UIFAND[116], within three business days. There is no requirement for the account number or unique identifier used to permit traceability of the originator or beneficiary of the transaction.

225. ***Criterion 16.7*** **–** Pursuant to article 51 of the AML/CFT Act, FIs are required to maintain originator (and any beneficiary) information collected as part of general data-keeping requirements.

226. ***Criterion 16.8*** **–** Pursuant to article 49 sexies (3) of the AML/CFT Act, FIs are required to reject transfers of funds where the complete information on the payer is missing. However, this does not include information on the beneficiary as there are currently no requirements in place in this respect.

227. ***Criterion 16.9*** **–** The AML/CFT Act does not expressly apply to intermediary FIs. However, the obligation to ensure that required originator information is retained with a transfer can be inferred from the general principles in force under article 49 sexies (2). As explained, above, beneficiary information is excluded from this requirement.

228. ***Criterion 16.10*** - No provision is made in the AML/CFT Act for cases where technical limitations prevent information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer.

229. ***Criterion 16.11*** **–** The criterion is indirectly addressed at (4) of article 49 sexies of the AML/CFT Act which requires funds not including payer information to be rejected or missing information requested. In order to meet this requirement, it must follow that intermediary FIs would first take measures to identify transfers with missing payer information. However, this does not include beneficiary information.

[116] Other authorities also have a power to require immediate production of required originator information.

230. ***Criterion 16.12*** **–** As noted under c.16.11, there is a general prohibition on executing wire transfers if required originator information is not included. However, this does not cover beneficiary information.

231. ***Criterion 16.13*** **–** Consistent with c.16.11, this criterion is implicitly covered by (4) of article 49 sexies of the AML/CFT Act, which requires funds not including payer information to be rejected or missing information requested (in real time). However, there is no requirement as regards information on the beneficiary.

232. ***Criterion 16.14*** **–** Article 3 of the AML/CFT Regulations requires a FI to find out and verify the identity of a customer who is a beneficiary: (i) in the context of a business relationship; and (ii) in respect of an occasional transaction of EUR 1 001 (and not EUR 1 000).

233. ***Criterion 16.15*** **–** See c.16.12 which is applicable also to beneficiary FIs.

234. ***Criterion 16.16 and 16.17*** *(Met)* **–** MVTS providers are required to comply with all of the relevant requirements of the AML/CFT Act.

235. ***Criterion 16.18*** **–** FIs are subject to the requirements of the Law on Freezing Assets with the Aim of Preventing Terrorism. It is to be noted that the general framework put in place for the implementation of UN TFS regime is relevant to compliance with c.16.18. For further information in this respect, the reader is referred to the analysis under R. 6.

Weighting and Conclusion

236. Andorra meets c.16.4, 16.7, 16.16 and 16.17. It mostly meets c.16.5, 16.6, 16.14, and 16.18 and partly meets c.16.1, 16.3, 16.8, 16.9, 16.11, 16.12, 16.13, and 16.15. C.16.2 and 16.10 are considered to be non-applicable. **R.16 is rated partially compliant** taking into account that measures had not been extended to cover beneficiary information at the time of the on-site visit.

Recommendation 17 – Reliance on third parties

237. Andorra was rated LC with the previous R.9. The MER identified that: (i) there were no requirements that the relying party obtain the necessary information concerning, inter alia, elements of the CDD process; (ii) FIs were permitted to rely on third parties for the performance of their diligence obligations concerning the monitoring of transactions; and (iii) the full effectiveness of the implementation of a number of measures could not be established. In particular, there was a lack of measures to verify third party's compliance with legal requirements.

238. ***Criterion 17.1*** **–** Provisions relating to reliance on third parties are set out in article 50 of the AML/CFT Act and article 7 of the AML/CFT Regulations. They allow reliance to be placed in the circumstances set out under c.17.1.

239. ***17.1 (a)*** The aforementioned provisions allow FIs to rely on the performance of obligations set out in article 49(1)(c) and (d) of the AML/CFT Act by a third party pertaining to: (i) verification of the identity of the customer and the beneficial owner; and (ii) obtaining information on the nature and purpose of the business relationship. Reliance on performance of obligations does not affect the requirement under article 3 of the AML/CFT Regulations for the identity of the customer and beneficial owner thereof to be found out and verified before establishing a business relationship or carrying out an occasional transaction, i.e. information must be obtained immediately. However, there is no similar requirement to immediately obtain information on the nature and purpose of a business relationship, since article 49 of the AML/CFT Act is silent on timing.

240. ***17.1 (b)*** Article 7 of the AML/CFT Regulations requires the relying FI to take measures to satisfy itself that documents to identify and verify the identity of the customer and beneficial owner

thereof (which are held by the third party relied upon) are made available in the "shortest possible time". The authorities have explained that "shortest possible time" means "as soon as they can", which is not in line with c.17.2(b) which requires data and documentation to be made available without delay. The authorities have also not explained what measures, e.g. sample testing, could be taken by the relying FI in order to be satisfied that documents will be provided as required (acknowledging that the relying party remains solely responsible before the UIFAND and other authorities for the application of CDD measures).

241. ***17.1 (c)*** Article 7 of the AML/CFT Regulations requires the relying FI to verify that the third party – which may be outside Andorra - is a party under obligation (but not also supervised or monitored for compliance with obligations) and that CDD measures are properly applied (but not also that records of those CDD measures are kept).

242. ***Criterion 17.2*** **–** The effect of Article 50 of the AML/CFT Act is to prohibit a FI relying on a foreign third party in a jurisdiction that does not apply international AML/CFT standards. The authorities have explained that the UIFAND publishes a list of countries considered to have equivalent AML/CFT requirements that is set by the EU in line with a published methodology (which takes account of compliance with specified FATF Recommendations and any statements made by the FATF). The UIFAND is not bound by law to consider ML/TF risk itself in determining in which countries third parties can be based.

243. ***Criterion 17.3*** **–** Article 50(3) of the AML/CFT Act applies different rules to branches and wholly-owned subsidiaries. In particular: (i) a FI may "accept" CDD measures rather than rely on performance thereof (a difference which has not been explained); and (ii) CDD may be accepted from countries that do not apply international AML/CFT standards, so long as group standards are applied in those countries under Article 44 or, where not permitted, additional measures are taken to address risk. This does not appear in line with c.17.3 (a) or (b). However, there is a requirement that any higher country risk is adequately mitigated by the group's AML/CFT policies, in line with c.17.3(c).

Weighting and Conclusion

244. Andorra meets c.17.2 and mostly meets c.17.1 and 17.3. **R.17 is rated largely compliant.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

245. Andorra was rated LC with the previous R.15 and LC with the previous R.22. As regards former R.15, the MER noted that training initiatives were inadequate in comparison with the needs reported by the parties under obligation and that FIs had not adopted specific procedures for hiring staff. As regards former R.22, the MER noted that there was no obligation for FIs to pay particular attention to subsidiaries located in countries that did not, or insufficiently, apply the FATF Recommendations. There was an effectiveness issue due to inadequate monitoring by the authorities of implementation by FIs of their obligations relating to R.22.

246. ***Criterion 18.1*** **–** According to article 18 of the AML/CFT Regulations, FIs must establish internal policies and procedures in a number of areas. Controls are also covered by article 52(1) of the AML/CFT Regulations, which, inter alia, obliges FIs to establish internal audit and control procedures. However, there is no explicit requirement for these policies, procedures or controls to have regard to the size of the business.

247. Moreover, under article 6(4) of Law 8/2013, operative entities are also required to establish, maintain and apply sufficient policies and procedures to ensure compliance with every law to which

the entity is subject. Article 10 also requires: (i) risk management procedures to be established, applied and maintained to allow the identification, evaluation, management and control of risks derived from the entity's activities and the preparation of pertinent risk management reports; and (ii) adoption of effective measures, processes and mechanisms to manage the risks associated with the entity's activities. However, Law 8/2013 (referred to also below) does not cover all FIs (it excludes insurance companies and financial activities of the two foreign post offices).

248. ***18.1 (a)*** - Article 52(1) of the AML/CFT Act requires FIs to: (i) appoint an internal control and communication body in charge of organising and monitoring compliance with AML/CFT rules; and (ii) establish control procedures. In addition, article 16 of the AML/CFT Regulations requires this body to verify compliance with Andorran AML/CFT legislation. Article 16(3) of the AML/CFT Regulations requires FIs to appoint at least one "manager" of this body (though it is not clear that this post must be at management level). This individual need not be the same person fulfilling the role of regulatory compliance officer (a separate obligation that applies to most FIs under article 9 of Law 8/2013).

249. In addition, article 9(1) of Law 8/2013 also requires operative entities to have a regulatory compliance function which, acting with functional independence, carries out the supervision, follow-up and verification of the permanent and effective compliance with: (i) legal and regulatory obligations; (ii) rules of ethics and conduct; and (iii) internal policies.

250. ***18.1 (b)*** Article 19(2) of the AML/CFT Regulations requires FIs to establish and implement written policies and procedures to ensure high ethical standards in recruiting employees, directors, and representatives. However, there is no guidance explaining the substance of the measures to be taken when hiring. In addition, section 3 of INAF TC-163/05, on rules for ethics and behaviour, provides that operative entities must have properly trained staff with the means and qualifications necessary to carry out their tasks effectively.

251. ***18.1 (c)*** Article 49 quinquies of the AML/CFT Act states that FIs must: (i) adopt the necessary measures so that their personnel have sufficient knowledge of the AML/CFT legislation; and (ii) have specific on-going training programmes to help personnel detect transactions that could be related to ML/TF. Article 19 of the AML/CFT Regulations states that, in addition to general training, additional training should be provided to those in positions that are most likely to identify ML.

252. ***18.1 (d)*** Article 17 of the AML/CFT Regulations obliges FIs to establish internal audit procedures to test the system. Whilst there is no requirement for such procedures to be independent, Article 11(1) of Law 8/2013 also obliges operative entities to have a body that, acting independently, carries out an internal audit function to test the system. Such a body is required where this is proportionate to: (i) the nature, scale and complexity of their activity; (ii) the risks to which they are exposed; and (iii) the nature and typology of the products and services offered.

253. ***Criterion 18.2*** – Article 18(6) of the AML/CFT Regulations provides that FIs must communicate internal policies and procedures to their branches and subsidiaries located abroad. However, it is not clear that the scope of such policies and procedures address the measures set out at c.18.2.

254. According to article 6(5) of Law 8/2013, operative entities that head a group of companies shall receive from foreign subsidiaries information that is necessary to: (i) ensure that the group complies with the organisational requirements established in that article; and (ii) carry out the follow-up and supervision of foreign subsidiaries and the management of their risks. Whilst Article 6 does not refer specifically to ML/TF risk management (or measures listed under c.18.1 and c.18.2), organisational requirements are designed to identify and manage all risks faced by operative entities.

255. ***Criterion 18.3*** **–** Article 44 of the AML/CFT Act requires FIs to ensure that majority-owned subsidiaries apply measures in line with c.18.3. Where the legislation of the third country does not permit application of such equivalent measures, FIs will inform the UIFAND, explaining the reasons, and shall take additional measures to effectively handle the risk of ML/TF.

Weighting and Conclusion

256. Andorra meets c.18.3 and mostly meets c.18.1 and c.18.2. **R.18 is rated largely compliant.**

Recommendation 19 – Higher-risk countries

257. Andorra was rated LC with the previous R.21. The MER pointed out that, in practice, criteria were lacking for the identification of countries at risk in a uniform manner. In light of the recent adoption of amendments to legislation, effectiveness was not established.

258. ***Criterion 19.1*** – As explained under c.10.17, Article 49 quater of the AML/CFT Act adds states that FIs must apply enhanced CDD measures, on a risk sensitive basis, in situations which can, by their nature, present a higher risk of ML/TF. In line with article 9(3) of the AML/CFT Regulations, this includes the application of enhanced due diligence to business relationships and transactions with persons from countries posing a high risk of ML/TF, which includes jurisdictions with strategic deficiencies identified by the FATF. Such territories are designated by the UIFAND by means of a TC, which the authorities consider to be binding. The fact that article 9(3) refers not to the non-application or insufficient application of the FATF Recommendations, but to territories posing a high risk can, in principle, be considered as equivalent.

259. As already mentioned under c.10.17, the scope of EDD measures is not defined in the AML/CFT Act nor in the AML/CFT Regulations and it can be concluded that the application of such measures is entirely at the discretion of FIs.

260. ***Criterion 19.2*** - Under article 9(3) of the AML/CFT Regulations, the UIFAND may require FIs, through a TC, to adopt appropriate countermeasures in the circumstances set out in (a) and (b) of this criterion. These can be proportionate to risk and range from stricter identification requirements to implementation of an enhanced reporting mechanism or limitation of business transactions and relationships with certain territories or natural or legal persons.

261. ***Criterion 19.3*** - The UIFAND continues to distribute TCs in which it reproduces the content of the FATF's official communications, requiring FIs to reinforce their vigilance and to take additional measures when entering into business relationships or carrying out transactions with persons from these countries. In addition, a TC also identifies Panama as presenting a high risk and obliges FIs to apply enhanced CDD while opening or maintaining business relationships with persons from this country.

Weighting and Conclusion

262. Andorra meets all of the criteria. **R.19 is rated compliant**.

Recommendation 20 – Reporting of suspicious transaction

263. Andorra was rated partially compliant with the previous R.13 and SR.IV. The main deficiencies were related to: the shortcomings in criminalisation of ML and TF offences restricting the scope of the suspicious transactions reporting; the extent of the obligation to report suspicious transactions including attempted transactions not referring directly to proceeds of crime. Andorra largely

addressed those deficiencies by amending its legislation and was assessed to be at a level of largely compliant with the former R.13 and SR.IV in its 2015 follow-up report.

264. ***Criterion 20.1*** - The reporting requirements are set in the article 46 of the AML/CFT Act obliges FIs to report any transaction or planned transaction relating to funds that they suspect or in relation to which there are reasonable grounds to suspect that are proceeds from a criminal activity that may entail ML or relate to TF. The promptness of the reporting is set into article 47 of the AML/CFT Act (the report has to be transmitted before the execution of the suspicious transaction or, if not possible and duly motivated, immediately after). Although the Law prevails, the wording of article 5 of Decree of 20 February 2013[117] might create certain confusion by limiting the reporting requirement only to suspicious financial transactions (including attempted) related to money or securities. Also, the shortcoming in criminalisation of ML still remain given that tax crime and smuggling (apart from tobacco smuggling) are not criminalised in Andorra and, therefore, not a predicate offence for ML.

265. ***Criterion 20.2*** - Article 46 of the AML/CFT Act requires FIs to report any transaction or planned transaction without mentioning any threshold.

Weighting and Conclusion

266. **Andorra is rated largely compliant with R.20.**

Recommendation 21 – Tipping-off and confidentiality

267. Andorra was rated largely compliant with the previous Recommendation 14. Some effectiveness deficiencies were identified in the MER at that time.

268. ***Criterion 21.1*** - Article 47.5 of the AML/CFT Act protects reporters' liability of any suspicious transactions or supplementary information that they could report, even when it is made without exact knowledge of the type of crime or illegal activity that has been committed. Furthermore, article 48.3 second *alinea* provides that: the declarations of suspicious transactions made to the UIFAND under obligation are not, in any way, incompatible with the obligation of secrecy; the communications of information to the UIFAND exempts the parties under obligation and their personnel from any liability of any kind. Nevertheless, one element of the current requirement is missing in the AML/CFT Act. Article 47.5 of the AML/CFT does not specify that the protection envisaged under c.21.1 should apply only where a report is made in good faith.

269. **Criterion 21.2** - Article 48.1 of the AML/CFT Act prohibits reporting entities from disclosing the fact that a SAR or related information is being filed with the UIFAND.

Weighting and Conclusion

270. Andorra mostly meets c.21.1 and meets c.21.2. **Andorra is rated largely compliant with R.21.**

Recommendation 22 – DNFBPs: Customer due diligence

271. Andorra was rated PC with the previous R.12. The main reasons for this rating were: (i) sellers of high value goods were bound by the AML/CFT Act solely when performing cash transactions for an amount exceeding EUR 30 000; (ii) lawyers, notaries and other legal professions,

[117] Decree of 20 November 2013, amending the Regulations of the Law on international cooperation in criminal matters and the fight against ML and against the TF, approved by Decree of 13 May 2009.

accountants, tax advisors, auditors, economists, and business agents were not subject to requirements to identify and very identity; (iii) R.6 and R.8 did not apply to DNFBPs; and (iv) deficiencies noted under R.5 to R.9, R.11, and R.17 also applied to DNFBPs in the circumstances covered under R.12. Also, the full effectiveness of the implementation of a number of measures could not be established.

272. All categories of DNFBPs are defined at article 45 of the AML/CFT Act that refers to prescribed natural and legal persons who, in their professional or business activities, undertake, control or advise on transactions involving cash or securities movements. The list of persons prescribed is broadly in line with the definition of DNFBP in the standard (but see c.28.2).

273. ***Criterion 22.1*** **–** The AML/CFT Act and the AML/CFT Regulations apply obligations to "parties under obligation" (FIs and DNFBPs). Accordingly, except where stated below, the requirements of R.10 apply equally to DNFBPs and so it can be concluded that shortcomings identified under R.10 are also relevant for compliance with R.22.

274. There are two main areas where there are differences: (i) no threshold is applied to occasional transactions with DNFBPs under Article 3(a) of the AML/CFT Regulations, the effect of which is to require CDD measures to be applied to every occasional transaction; and (ii) requirements in Articles 49 bis (5) dealing with failure to satisfactorily complete CDD apply only to "financial parties" (c.10.19), and not also to DNFBPs.

275. ***22.1 (a)*** Apart from the general CDD requirements that apply also to casinos and other gambling establishments, there is a specific provision pertaining to gambling which is set out in article 74(3) of Act 37/2014 on the regulation of gambling. This places some AML/CFT requirements on transactions above a threshold of EUR 15 000, an amount that is significantly higher than the threshold stipulated by c.22.1(a) and in direct conflict with Article 3 of the AML/CFT Regulations. Moreover, there is no particular requirement in the AML/CFT Act, AML/CFT Regulations or Act 37/2014 that would ensure that casinos are able to link CDD information for a particular customer to the transactions that the customer conducts in the casino, as required by the standards.

276. ***22.1 (b), (c), (d)*** - CDD measures are applied to a wider class of activities than required under the standards. See c.28.2.

277. ***22.1 (e)*** - CDD requirements are applied to economists, business agents and suppliers of services to companies, other legal entities, contractual fiduciary arrangements or any other legal structures of fiduciary arrangement. In respect of trust and company service providers, measures are not applied as widely as required under the standards. See c.28.2.

278. ***Criterion 22.2*** **–** Record keeping requirements of the AML/CFT Act and the AML/CFT Regulations (which refer to "parties under obligation") are equally applicable to DNFBPs and FIs. See R.11 for a complete description of record keeping requirements and deficiencies noted by the analysis.

279. ***Criterion 22.3*** **–** Enhanced due diligence measures for PEPs in the AML/CFT Act and the AML/CFT Regulations (which refer to "parties under obligation") are equally applicable to DNFBPs and FIs. See R.12 for a complete description of PEP-related requirements and deficiencies noted by the analysis.

280. ***Criterion 22.4*** **–** Requirements concerning new technologies in the AML/CFT Act (which refers to "parties under obligation") are equally applicable to DNFBPs and FIs. See R.15 for a complete description of requirements concerning new technologies and deficiencies noted by the analysis.

281. ***Criterion 22.5 –*** Measures in respect of third party reliance in the AML/CFT Act and AML/CFT Regulations (which refer to "parties under obligation") are equally applicable to DNFBPs and FIs. See R.17 for a complete description of provisions concerning reliance on third parties and deficiencies noted by the analysis.

Weighting and Conclusion

282. Andorra mostly meets c.22.2, 22.3 and 22.5 and partly meets c.22.1 and 22.4. **R.22 is rated partially compliant**.

Recommendation 23 – DNFBPs: Other measures

283. Andorra was rated PC with the previous R.16. The MER noted that the threshold applied to sellers of high value goods was higher than that established by R.16. Issues of technical compliance cascading from other recommendations (R.14, R.15, and R.21) were also relevant. In addition, effectiveness of the implementation of the reporting obligation by DNFBPs could not be established as their contribution and commitment at the time in AML/CFT matters was still very limited.

284. ***Criterion 23.1*** - DNFBPs are required to make SARs based on the same provisions of the AML/CFT Act as FIs, except as highlighted below. See R.20 (reporting of suspicious transactions) for a description of these requirements and noted deficiencies.

285. By exception, article 45 of the AML/CFT Act states that notaries, lawyers and members of other independent legal professions, and professional external accountants, tax advisers and auditors are not bound by reporting obligations established in article 46 in the same way as other DNFBPs. They are exempt from the reporting obligation with regard to information they receive from, or obtain on, one of their clients: (a) in the course of ascertaining the legal position for their client; or (b) during the performance of their task of defending or representing their client in judicial proceedings, including providing advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

286. As regards providers of services to legal persons and legal arrangements, the reporting obligation does not cover all activities listed under c.22.1. See c.28.2.

287. ***Criterion 23.2 –*** With one exception, all DNFBPs covered by article 45 of the AML/CFT Act[118] are required to comply with the same internal control requirements set out under c.18.1: under article 52(2) of the AML/CFT Act, non-financial entities are not required to contract an independent external audit each year to verify compliance with the Act. The same deficiencies observed for FIs under c.18.2 in the AML/CFT Regulations apply also to DNFBPs, which are not also subject to additional organisational requirements in other legislation. Unlike FIs, DNFBPs are not required under Article 44 of the AML/CFT Act to ensure that foreign branches and majority owned subsidiaries apply AML/CFT requirements consistent with home country requirements (c.18.3). According to the authorities, few such cases exist in practice, as the majority of DFNBPs have only a domestic footprint. See R.18 (internal controls and foreign branches and subsidiaries) for a complete description of these requirements and noted deficiencies.

288. ***Criterion 23.3 –*** All DNFBPs covered by article 45 of the AML/CFT Act are required to comply with higher-risk countries requirements set out under R.19. See R.19 (higher risk countries) for a description of these requirements.

[118] See scoping point made under c.28.2.

289. ***Criterion 23.4 –*** All DNFBPs covered by article 45 of the AML/CFT Act are required to comply with the tipping-off and confidentiality requirements as set out under R.21, except as noted below. See R.21 (tipping off and confidentiality) for a description of these requirement and noted deficiencies.

290. Article 48(5) of the AML/CFT Act clarifies that the tipping off prohibition does not apply to notaries, lawyers and members of other independent legal professions, and professional external accountants, tax advisers and auditors that are legal or natural persons, where they attempt to dissuade a customer from engaging in illegal activities. This is consistent with footnote 48 of the FATF Methodology.

Weighting and Conclusion

291. Andorra meets c.23.3 and mostly meets 23.4. It partly meets c.23.1 and c.23.2. **R.23 is rated partially compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

292. Andorra was rated PC on the previous R.33. The main deficiencies identified were: (i) the continuing issue of "name-lenders", whereby Andorrans and other residents who are economic rights holders lend their names to others in the pursuit of business or other professional activity; (ii) the non-conversion of bearer shares following the expiry of the time limit for conversions laid out in law; (iii) concern that the competent authorities would not have timely access to adequate, accurate and current information on beneficial ownership and control of legal persons; and (iv) a lack of sufficiently dissuasive sanctions to ensure that requirements, including updating the Companies Register, were met.

293. Companies are legal persons in Andorra. Associations and foundations are also treated as legal persons since articles 1 and 16 of the Law on Associations and article 6 of the Law on Foundations imply that associations generally, including unregistered associations and foundations can transact in their own name. Co-operative form companies (which have legal personality and must register with the Companies Register pursuant to articles 1 and 9 of the Co-operative Companies Act respectively) can also be established in Andorra as legal persons. Andorra has not provided information on the legal measures which apply to cooperatives, although it should be noted that presently there is only one co-operative company.

294. ***Criterion 24.1*** - Information on the different types, forms and basic features of legal persons which can be formed in Andorra, which are private companies (limited liability companies issuing partnership shares), public limited companies (issuing shares), foundations[119] and associations[120], is contained in the Companies Act, Law on Associations and Law on Foundations.

295. Articles 6 bis, 7, 8 and 101 of the Companies Act and articles 10(e) and 30 of the Companies Register Regulation explain the process for creating a company, capturing basic information, recording this information at the Companies Register and allowing access to this information. There were not provisions at the time of the on-site visit in this legislation for capturing and recording beneficial ownership information. However, the Foreign Investment Act and associated Regulations

[119] Only public interest foundations may be formed benefiting generic groups of people, rather than specified natural or legal persons or classes thereof.

[120] Associations may not have as a purpose (explicit or implicit) the procurement of financial profits to be distributed among members.

explain the process to be followed by foreign investors wishing to purchase shares in an Andorran company (except all but one collective investment scheme), which includes the collection of information on foreign beneficial ownership. This process is explained in a form published by the Government.

296. The Law on Associations (articles 5, 9 and 10) and Law on Foundations (articles 3, 5, 6 and 7) and article 29 of the Foundations Regulations contain processes for creating associations and foundations and capturing basic information, but contain no provisions relating to beneficial ownership information where legal entities are the founders. The additional article in the AML/CFT Act also requires associations and foundations to keep records of the identity of beneficiaries, but does not explain the process for obtaining and recording beneficial ownership information where a beneficiary is a legal entity.

297. In addition, there are some basic guides summarising the forms of legal persons found in Andorra, their basic features, and the process for creating them. They are published on a Government website and private sector economic development initiative website.

298. ***Criterion 24.2*** - Andorra's NRA undertaken in 2016 considers the use of Andorran "shell" companies for the purposes of ML. The abuse of companies is not considered in the context of TF. NPOs (associations and foundations) have been assessed in the context of TF risk. Given the financial size of the sector, the ML risk of NPOs was assessed as being negligible by the authorities, and is not mentioned in the NRA report.

299. Collective investment schemes, which have been considered as medium-low risk of ML and TF, were assessed as part of the sectoral analysis of the asset management sector. Schemes were considered in the context of: (i) complexity of portfolios; (ii) liquidity; and (iii) proportion of international investors.

300. There has been some focus in the NRA on two categories of DNFBPs in relation to the establishment of companies: (i) lawyers; and (ii) economists, professional external accountants and business agents (*gestorias*). However, the assessment of the risks associated with legal persons is incomplete because the authorities cannot identify all categories of DNFBPs who may be offering these services. As a result, the NRA does not quantify the extent to which different DNFBPs are used to incorporate and administer legal persons, and it does not consider the ML and TF risks posed by those DNFBPs who act as "suppliers of services" to legal persons.

301. ***Criterion 24.3*** - Companies (article 7) and foundations (article 6) obtain their legal status upon registration with the Companies and Foundations Registries respectively. Associations can be registered with the Register of Associations but it is a declarative status for publicity and qualification to apply for a public subsidy and so not mandatory (article 8). However, under article 16 of the Law on Associations, members of an unregistered association incur personal liability for the actions of the association, providing a strong incentive to register. The Andorran authorities are not aware of any unregistered associations in Andorra.

302. Public deeds must be lodged containing the mandatory minimum information set out in c.24.3 for companies (article 8 of Companies Act), foundations (articles 7 and 10 of the Law on Foundations) and registered associations (article 9 of the Law on Associations).

303. Article 101 of the Companies Act and article 4 of the Foundations Regulations allow access to basic information on these vehicles only by individuals who are legally resident in Andorra (through the register). Whilst lawyers, economists, accountants and *gestorias*, also have online access to the Register through which non-Andorran residents could access basic ownership details, information obtained through this route is not considered by evaluators to be "publicly available" (as required under c.24.3). Article 15 of the Law on Associations indicates that basic information is available

through the Association's Register in the terms stated in articles 35 to 38 of the Associations Regulations.

304. ***Criterion 24.4*** - Under Article 21 of the Companies Act, a company must keep a register of shareholders[121]. However, there is no requirement for this register to record: (i) the number of shares held by each shareholder; or (ii) the categories of shares, though this information must be registered with the Companies Register pursuant to article 24 of the Companies Regulations. Under article 4 of the Companies Act, a company must have a registered office in Andorra and notice of where it is must be delivered to the Companies Register. However, neither the Act nor regulations state where the shareholders' register must be kept. Whilst there is no direct requirement for a company to maintain the basic information listed under c.24.3, it will commit an offence under the Companies Act where it fails to deliver this information in accordance with the law (e.g. see article 103(2)(f) of the Companies Act).

305. Under article 28 of the Law on Associations, an association is required to keep a register of members to which all members have access, but there is no requirement to maintain the basic information listed under c.24.3 or a requirement for the register or members to be held at a specified location in the country. Foundations do not have members. There is no requirement for a foundation to hold the basic information listed under c.24.3.

306. ***Criterion 24.5*** – In the case of companies, any change to the following basic information must be notified to the Company Registry under the Companies Act: (i) name (through public deed) under articles 9 and 66; (ii) directors (through a shareholders' resolution) within 30 days of the director accepting the post (under article 47); and (iii) shareholders (through public deed) under article 20. The authorities have not cited requirements for changes to registered office address or basic regulating powers to be notified to the Companies Register. A public deed is authorised by an Andorran notary public who is obliged to submit the authorised deed to the Companies Register within 15 calendar days from the granting of the above-mentioned public deed (article 20). However, there is no deadline for the change to be recorded in the deed in the first place.

307. In the case of foundations, any change to the following basic information must be notified to the Foundations Register under the Association Act: (i) name (through changes to its constitution by public deed) under article 11; (ii) registered office (through changes to its constitution by public deed under article 11; (iii) constitution (by public deed) under article 11; and (iv) board of trustees (through public deed) under articles 14, 19 and 37. A public deed is authorised by an Andorran public notary and who is obliged to submit the authorised deed to the Register within 3 working days as from the granting of the public deed containing the amendments (article 11). However, there is no deadline for changes to be recorded in a deed in the first place. Changes to the board of trustees will only take effect upon registration (articles 14 and 19) with the Foundations Register.

308. In the case of associations, any change to the following basic information must be notified to the Associations Register under the Associations Act: (i) name (through changes to its articles of association) under article 12; (ii) registered office (through changes to its articles of association) under article 12; (iii) articles of association under article 12; and (iv) board of directors under Articles 12 and 19(5). However, the law is silent on timeframes, and, in the absence of the involvement of an obliged party such as a notary in the communication of changes to the Register, there appears to be no mechanism to ensure that information is accurate.

[121] In addition, a company is required to register a buyer or seller of shares in its register only at the request of a member or members.

309. Registries are repositories of information and accept submissions that are prescribed by statute in good faith. Accordingly, they do not check the accuracy of information provided to them or that it has been updated on a timely basis. Nor do they check that information on shareholders or members held by companies and associations respectively are accurate and updated on a timely basis.

310. ***Criterion 24.6*** - The Andorran authorities have three particular measures in place to allow beneficial ownership of companies to be determined in a timely manner: (i) it is necessary for foreigners investing through Andorran companies to have their investment approved under the Foreign Investment Act (article 10); (ii) it is generally necessary for the purchase of shares in every Andorran company to be recorded in a public deed by a notary (articles 7 and 20 of the Companies Act); and (iii) it is necessary for every Andorran company (with foreign ownership) to open an account with an Andorran bank (or bank in a country with equivalent AML/CFT requirements) at the time of incorporation of the company (article 4 of Foreign Investment Act).

311. All foreign investors wishing to purchase shares in an Andorran company (except all but one collective investment scheme) have to fulfil the requirements provided for in the Foreign Investment Act. A foreign investor may not make an investment of 10% or more in the shares or voting rights of an Andorran company (at the time of, and subsequent to, incorporation) without prior approval from the Ministry of Trade and Commerce (irrespective of the amount of the investment), and, post-acquisition, must disclose every purchase of shares (including any acquisition of shares or voting rights less than 10%) to the same Ministry. The effect of this is that the Ministry should know, at any one point in time, which foreigners have invested in Andorran companies (but not any natural persons exercising control of the company through other means).

312. The notary who must authorise a company's public deeds (which includes information on registered share ownership and any change thereto) would be considered an obliged person under the AML/CFT Act (as he/she is involved in the creation, organisation and management of companies) and required to identify and verify the identity of the beneficial owner of the parties involved in a creation or transfer of shares. See c.10.11 and c.22.1, which could have a negative impact on the accuracy and completeness of the information which is held where a company is to be, or is, owned by a trust.

313. There is no requirement placed upon a foundation to hold beneficial ownership information about its founders, but, as with a company, a public deed establishing a foundation must be authorised by a notary subject to the AML/CFT Act as explained in the preceding paragraph. However, any subsequent contribution of funds to the foundation will not be subject to similar checks. The additional article in the AML/CFT Act also requires foundations to keep records of the identity of all persons that receive funds.

314. There is no requirement for an association to obtain information about the ownership of members of its governing body (in a case where a member is a legal person). Nor is there a requirement for notarisation in respect of the appointment of members of the governing body. The additional article in the AML/CFT Act requires associations to keep records of the identity of all persons that receive funds.

315. ***Criterion 24.7*** - There is no obligation to ensure that information collected under the Foreign Investment Act or by a notary, such as the address of the beneficial owner, is kept up to date. On-going due diligence by banks is considered under c.10.7 (b).

316. Where the beneficial ownership of a company that is a founder of a foundation changes there is no mechanism for capturing that change under the Law on Foundations, but there is under the Companies Act as explained above. As indicated at c.24.6 there is no requirement for an association to collect information about the beneficial owner of a member of its governing body.

317. Whereas associations and foundations are required to record the identity of persons that receive funds under the additional article to the AML/CFT Act, they are not also required to keep this information up to date.

318. ***Criterion 24.8*** - There are no requirements in the Companies Act or the Laws of Associations and Foundations for an individual to be authorised as the accountable person to provide the authorities with information and to give further assistance. However, the formation of a company, and changes to its shareholders, must involve one of four licensed notaries who hold beneficial ownership information under the AML/CFT Act. There is similar involvement of a notary in the formation of a foundation or an association. In the case of companies, notaries will collect information on changes in beneficial ownership from shareholders themselves and so there is no need for companies to cooperate with the authorities in order to determine beneficial ownership. This is generally considered a comparable measure under c.24.8(c) – notwithstanding that the notary is not authorised by the company to cooperate.

319. ***Criterion 24.9*** – Under the AML/CFT Act, a notary acting for companies and foundations is obliged to keep information about its customers for five years from cessation of the business relationship and, under the Notarial Law, a notary must keep documents and records, including the notarised public deeds and record of due diligence, for 25 years after which it must be sent to the Notarial General File (for a further 100 years) where all documentation can be consulted. In the case of companies, a notary must also authorise and submit the public deed terminating the company (article 98). There is no similar provision regarding a deed terminating a foundation or association.

320. Legislation is silent on how long records must be maintained by the Companies, Associations and Foundations Registries but the authorities have advised that there is no set period and records must be kept indefinitely.

321. As regards the obligation of legal persons to maintain information after dissolution, article 7 of Law 30/2007 on the Accounting of Entrepreneurs, all the accounting documents, correspondence, documentation and receipts related to activity must be kept throughout a 6-year period after the date of the last annual account closure. However, it is not clear that these requirements cover beneficial ownership information nor how such a requirement could be applied to a legal person that has been dissolved.

322. ***Criterion 24.10*** - The UIFAND has direct access to the Companies Register, Association Register and Foundations Register to obtain basic information on a company, association and foundation.

323. Under article 53 of the AML/CFT Act, the UIFAND can request (but not compel) a notary or bank to provide information and documents related to basic and beneficial ownership about companies, associations and foundations that are its customers. Article 49(1) (b) then requires the notary or bank to deliver that information (but not also documents) to the UIFAND. This is considered further under c.27.3. The UIFAND also has access to data on beneficial ownership held under the Foreign Investment Act. According to c.31.1, competent authorities are also able to obtain access to all necessary documents and information when investigating and prosecuting ML/TF and associated predicate offences (including access to basic and beneficial ownership information). However, legislation does not permit them to set deadlines for information to be provided, so access may not be timely.

324. ***Criterion 24.11*** - Under article 15(3) of the Companies Act, shares must be issued in registered form and assigned to "their real and effective holder". Andorra outlawed bearer share companies in 1983 giving those bearer share companies in existence 20 years to convert their shares to registered form. At the time of the 4th round MER, 17 companies had still not done so. Since then,

Andorra has taken legal measures to: (i) force those companies to convert their shares; or (ii) prohibit those companies from undertaking any activity and cancel their registration. Andorra has confirmed that: (i) four of these companies converted their shares; (ii) registration of the 12 was cancelled; and (iii) just one - which is subject to judicial proceedings - remains. There is no specific provision in the Companies Act regarding whether bearer share warrants can be issued.

325. ***Criterion 24.12*** - Andorra has prohibited a person from acting as a nominee shareholder since 1981. Notwithstanding this, the 4th round MER established that the practice of Andorrans "lending their names" to companies continued. In response to this, amendments were made in December 2013 to the Companies Act requiring that shares "must be assigned to their real and effective holder". In no case will it be possible to register shares in the name of intermediaries who are different to the real holder (an individual or a legal person) of the same shares; registrations in these cases will be considered null and void (article 15 of the Companies Act).

326. Under article 15(5) of the Companies Act an usufruct may be established over the ownership of shares whereby the identity of the owner of the shares (which does not change) is recorded with a note that a usufruct has been established. According to this provision, the usufructuary has the right to receive the dividends distributed by the company. All other rights are retained by the owner, unless otherwise provided by the articles of association or by-laws. A notary is also required to identify and verify the parties to the usufruct.

327. Under article 50(6) of the Companies Act, if a director acts on behalf of a third party and is following that party's instructions, the third party (*de facto* director) is liable under the same conditions as the company's *de jure* director(s). This in intended to protect bona fide third parties and should not be understood as granting any legal validity to the use of nominee directors.

328. ***Criterion 24.13*** – Article 103 of the Companies Act sets out infractions that may be committed by companies, which include not converting acts or agreements that the law establishes as compulsory into public deeds, e.g. a transfer of share ownership. There are also infractions that may be committed by the company's director(s). However, not all relevant requirements in the law are backed by a sanction, e.g. failure to keep a share register or register the buyer of shares. The Laws on Associations and Foundations do not provide for sanctions, but associations and foundations are bound by the sanctioning provisions contained in the AML/CFT Act in relation to record-keeping under the additional article.

329. Failure by an obliged person to comply with CDD and record-keeping obligations is a "very serious" infringement to which sanctions can be applied. See R.35. For obliged parties there are proportionate and dissuasive administrative sanctions for failing to comply with a request by the UIFAND (article 58 of the AML/CFT Act) or the INAF (article 15(f) of Law 10/2013) for information. These sanctions include fines, withdrawal of authorisation and prohibition of individuals. Failure to comply with a request for information by an investigative judge, public administration or public servant/officer constitutes a criminal offence under articles 397 and 508 of the CC (contempt of court), and can be punished with a penalty of detention or fine.

330. ***Criterion 24.14*** – Powers available to the UIFAND and LEAs may be used to provide international cooperation in relation to information specified under (b) and (c). The UIFAND's ability to request information is explained at c.27.3 and the shortcomings identified are relevant here. See also R.37 and R.40. Andorra has not advised whether a foreign competent authority can directly access the Registries for basic information on a legal person.

331. The Andorran authorities have advised that the average time to respond to a request from foreign counterparts is between 20 and 30 days which in the assessors' view is not rapid for facilitating access to basic information about a company.

332. ***Criterion 24.15*** - The UIFAND monitors the quality of basic and beneficial ownership information received from other countries on a case by case basis. However, there is no mechanism for any formal assessment of the quality of assistance the Andorran authorities as a whole receive from other countries.

Weightings and conclusion

333. Andorra meets c.24.12 and mostly meets c.24.1, 24.6, 24.8, 24.11, 24.14 and 24.15. It partly meets c.24.2 to 24.5, 24.7, 24.9, 24.10 and 24.13. In rating R.24, particular weight has been given to: (i) c.24.6 (beneficial ownership), 24.11 (bearer shares) and 24.12 (nominee shareholders and directors) where there are no or minor shortcomings in the mechanisms put in place; and (ii) c.24.14 (international cooperation) where there are only minor shortcomings. Whereas c.24.10 is rated as partly compliant, it is noted that the authorities do have a power to obtain information. **R.24 is rated largely compliant.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

334. The previous R.34 was rated "not applicable" for Andorra. Andorra does not recognise trusts and is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition. Therefore it is not possible to create or establish a trust under Andorran law although there is no law prohibiting an Andorran resident from acting as trustee or administrator of a foreign law trust.

335. If an Andorran resident or legal entity is acting in a professional capacity as trustee of a foreign law trust or in a similar capacity for other legal arrangements they would fall within the scope of the AML/CFT Act as an obliged person. There are no legal measures which apply to Andorran residents or legal entities who are acting in a non-professional capacity as trustee.

336. ***Criterion 25.1 (a) and (b)*** – As explained above, it is not possible to create trusts under Andorran law.

337. ***25.1 (c)*** - A person acting in a professional or business capacity as a trustee of a foreign law trust would be an obliged person under the AML/CFT Act and subject to its requirements on CDD and record-keeping. See c.10.11 (where some deficiencies have been identified in the legal provisions regarding identification of the settlor, protector (if any) and beneficiaries which could have a negative impact on the accuracy and completeness of the information which is held), c.11.1, c.22.1 and c.22.2.

338. ***Criterion 25.2***– If a person is acting in Andorra as a professional trustee of a foreign law trust, that person would be an obliged person under the AML/CFT Act and would therefore be required under Article 49(1)(e) of the AML/CFT Act to keep information on the trust (and parties to it) up to date. See c.10.7 (and c.22.1) and deficiencies highlighted thereunder. This requirement does not also extend to holding basic information on regulated agents of, and service providers to, the trust.

339. ***Criterion 25.3*** – Although there are requirements under article 49 of the AML/CFT Act and under article 4 of the AML/CFT Regulations for a FI or a DNFBP dealing with a foreign law trust to identify its ownership and control structure, including who has powers to represent the customer (which in respect of a trust will be the trustee), no obligation is placed on the trustee to declare their status to a FI or other DNFBP if they are acting in that capacity professionally or non-professionally.

340. ***Criterion 25.4*** - Under article 48(2) of the AML/CFT Act, there is a general requirement placed upon directors, managers and employees of an obliged person (including a trustee of a foreign law trust) to maintain client secrecy. A breach of this duty is an offence except without legal cause. Similar provisions may be found in other laws, for example article 13(2) of the Law 48/2014

on the profession of lawyers and the Andorran Bar Association states that professional secrecy can be lifted in those cases established by law. There is no provision in law allowing a trustee to provide information on a trust to FIs or DNFBPs, so the duty of secrecy remains. The effect of this may be to prevent trustees from providing information where it is not possible to so by mutual agreement.

341. ***Criterion 25.5*** - Under article 53 of the AML/CFT Act the UIFAND can request (but not compel) an obliged party acting as a professional trustee or providing other financial services to a foreign law trust to provide information and documents about that trust. Article 49(1) (b) then requires the trustee to deliver that information to the UIFAND. This is considered further under c.27.3. According to c.31.1, competent authorities are also able to obtain access to all necessary documents and information when investigating and prosecuting ML/TF and associated predicate offences (including professional and non-professional trustees). However, legislation does not permit them to set deadlines for information to be provided, so access may not be timely.

342. In addition, a trustee (and, where the trustee is a corporate trustee, its managers, directors or employees) must provide tax authorities with information on the settlor and beneficiaries (including where non-resident) pursuant to article 68(6) of Law 21/2014. Powers are also available to the INAF under article 4(1)(b)of the Law Regulating the financial system's disciplinary regime, of 27 November 1997 – as amended (Disciplinary Law) allowing it to request and receive from operative entities of the financial system any information that it deems necessary (though it is not directly responsible for AML/CFT oversight).

343. ***Criterion 25.6*** – Powers available to the UIFAND and LEAs may be used to provide international cooperation in relation to information specified under (a) to (c). The UIFAND's ability to request information is explained at c.27.3 and the shortcomings identified are relevant here. See also R.37 and R.40. Other than the tax authorities, it is not evident that any Andorran authorities would hold information about foreign law trusts administered in Andorra. Information held by tax authorities could be accessed through international assistance in tax matters (Law 3/2009) or through international assistance in criminal matters.

344. ***Criterion 25.7*** – A person acting as a professional trustee of a foreign law trust will be subject to sufficiently proportionate and dissuasive sanctions for failing to comply with CDD and record-keeping requirements in the AML/CFT Act. See c.28.4 and R.35. There are no measures in place for a person resident in Andorran who is acting as trustee in a non-professional capacity (re c.25.3).

345. ***Criterion 25.8*** – For obliged parties providing services to a foreign law trust there are proportionate and dissuasive administrative sanctions for failing to comply with a request by the UIFAND (article 58 of the AML/CFT Act) or the INAF for information (article 15(f) of Law 10/2013). Failure to comply with a request for information by an investigative judge, public administration or public servant/officer constitutes a criminal offence under articles 397 and 508 of the CC (contempt of court), and can be punished with a penalty of detention or fine.

346. Non-compliance by a trustee with tax obligations (described under c.25.5) constitutes an infringement pursuant to article 127(2) (d) of Law 21/2014 and must be sanctioned with a fine for each infringement.

Weightings and conclusion

347. Andorra meets c.25.8 and mostly meets c.25.1 and 25.6. It partly meets c.25.2 to 25.5 and 25.7. **R.25 is rated partially compliant**.

Recommendation 26 – Regulation and supervision of financial institutions

348. Andorra was rated PC with the previous R.23. The 4th round MER identified that supervision was almost entirely based upon the review of external audit reports and, in relation to the insurance sector, highlighted that there were no legislative or regulatory measures in place regarding fitness and integrity. It also identified that, although two foreign post offices offered financial services in Andorra, they were not authorised or licensed to do so by the Andorran authorities. The MER also formed the view that Andorra could not demonstrate the effectiveness of its supervisory framework because only a very small number of onsite inspections had been carried out.

349. ***Criterion 26.1*** – Under article 53 of the AML/CFT Act, the UIFAND is the authority with responsibility for promoting and co-ordinating measures to prevent ML, TF and proliferation of weapons of mass destruction. In addition: (i) the INAF is responsible for authorising and the prudential supervision of FIs, except for the insurance sector and activities conducted by the two foreign post offices; and (ii) the Government and Ministry of Finance are responsible for authorising and the prudential supervision of the insurance sector. Procedures for co-operation between the UIFAND and the INAF are set out in a MoU signed on 30 November 2012.

350. Article 41 of the AML/CFT Act defines financial parties which are under an obligation to comply with the AML/CFT Act. These conform to the FATF's definition of a FI with the exception of: (i) an exemption for reinsurance, a sector that does not exist in Andorra; and (ii) the exclusion of some prescribed activities that are not provided to third parties. Whilst an exemption for own account activities is consistent with the FATF requirements, an exempted entity could still be conducting, as a business, investment or non-bank credit activities for its shareholders or group if it is in receipt of a fee or some form of remuneration or benefit for acting. Consequently, it would be considered a FI within the FATF definition but not subject to supervision under c.26.1.

351. ***Criterion 26.2*** – Article 5 of Law 7/2013 prohibits the professional provision of the following activities to third parties without prior authorisation from the INAF: (i) Core Principle banking (including money or currency changing); (ii) Core Principle investment services; and (iii) non-Core Principle non-bank credit activities[122]. Both administrative and criminal sanctions can be applied for unlicensed activity. However, as criminal liability only applies to natural persons no such sanction could be applied to a legal entity undertaking a financial activity which requires the INAF's authorisation[123].

352. Under article 8 of Law 7/2013, only bank entities authorised by the INAF can provide payment transactions or issue and manage means of payment. However MVTS are offered in Andorra by one of the two foreign post offices (making use also of a global MVTS provider)[124] and postal account services are offered by the second, which are not licensed or in any way authorised or registered in Andorra to provide financial services. Instead, the postal sector is regulated by the 1930 Treaty between Andorra and the Governments of France and Spain which allows post offices established in those two countries to operate branches in Andorra. The authorities have said that it

[122] Articles 8, 20, 21, 38, and 49 of the Law 7/2013 define the banking, investment and non-banking credit activities which require authorisation.

[123] Complementary consequences contemplated in article 71 of the CC could be applied to such legal person (that includes, among others, a pecuniary sanction to the legal person or even the dissolution and liquidation of that legal person).

[124] The activity of issuing postal money orders is not required to be licenced (since article 8 of Law 7/2013 is said not to apply to paper-based postal money orders).

is not clear if the 1930 agreement or subsequent ratification covers the post offices' provision of financial services in Andorra.

353. Under article 8 of the Insurance Law, prior authorisation from the Government is required to undertake private insurance. It is an administrative offence to undertake business without prior authorisation (article 20) to which: (i) nominal fines of up to PTS 500 000 (EUR 3 005) can be imposed upon a company; and (ii) nominal fines of up to PTS 100 000 (EUR 601) and suspensions and prohibitions imposed upon individuals. Unlicensed activity is also a criminal offence (see above).

354. The authorities state that Andorra does not approve the establishment or continued operation of shell banks. However, there is no provision in Law 7/2013 requiring a director (either a corporate or individual) or manager of a bank to be resident in Andorra to ensure that there is effective management of the bank (and so a "physical presence" (as defined by the FATF) within Andorra). Despite this, the Andorran authorities have advised that all executive directors and members of general management reside in Andorra as a result of the INAF's authorisation process.

355. ***Criterion 26.3*** – Under articles 14, 15, 33, 34, 44, 45, 55 and 56 of Law 7/2013, the board of directors and general management of an "operative entity" must comprise individuals who are "of recognised business and professional repute" which is defined in article 2(3) of that law as a person having no relevant criminal record as well as being of good personal and professional reputation, holding relevant professional experience and being solvent.

356. Under article 12(e) of the Law on the regime of authorisation for the creation of new bodies operating within the financial system (Law 35/2010), information on the identity of the first directors must accompany an application for authorisation. Directors and managers must complete a personal questionnaire through which they supply personal and professional information, including, if any, on criminal background. A completed questionnaire also provides the INAF with the individual's authority to undertake background checks. Should the INAF's checks reveal adverse findings against the business and professional reputation of a director or senior manager, the application for authorisation could be refused by the INAF.

357. Under article 12(c) of Law 35/2010, the application for authorisation must also provide information on the background, professional activity and net worth of individuals who will own more than 5% of the entity. Where the immediate holder of 5% or more of the shares in the entity is itself a legal entity, information is required on its board of directors and beneficial owner(s). There is, however, no express "business or professional repute" criterion applying to such individuals occupying shareholder roles set out: (i) in this law or Law 7/2013; (ii) in a published policy; or (iii) in published documents. Whilst the INAF has explained that this type of information is obtained and taken into account in the authorisation process, in the absence of a clear regulatory framework, it is not clear that this would always have the effect of preventing criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest.

358. Under article 20(2) (a) (i) and (ii) of Law 8/2013 operative entities must apply for prior authorisation of the INAF when, inter alia, there are subsequent changes of: (i) significant shareholding, which is considered to be at, or greater than, 10%; and (ii) directors and senior management[125]. In the case of (ii), the applicant must provide a "certificate of criminal record". Under article 27 of the same law, the INAF can reject an application for prior authorisation where it does not comply with the laws in force or may negatively affect, in a significant way, the "technical, financial or professional assurance of the entity or of its group". It is not clear that this would always

[125] Senior management is defined in article 2 of Law 8/2013 as the operative entity's administrators or its general management who are persons holding the position of general manager or deputy general manager and who form part of the operative entity's management committee.

allow an application to be rejected in the circumstances set out at c.26.3. Pursuant to article 16(h) of the Disciplinary Law, failure to notify the INAF of changes of shareholders, directors and managers, is considered to be a "serious" infringement, to which sanctions apply.

359. There is an overarching provision within article 20(2)(a)(xi) of Law 8/2013 to inform the INAF of any significant action or change that may impact upon the entity's authorisation - which could arguably include a change in business and professional reputation of an *existing* shareholder, director or manager. Moreover, Communications EB 01/2014 and EB 02/2017 require any significant change to information previously provided to the INAF about persons that are part of general management to be reported to the INAF without prior request, including any change to business or professional reputation. Under article 16(h) of the Disciplinary Law, an offence is committed where organisational requirements and operating conditions are not complied with. These include: (i) failing to have the necessary integrity; and (ii) arguably, failing to notify a change in reputation.

360. Offences under article 16 of the Disciplinary Law can be sanctioned by the temporary suspension of individuals holding administrative or general management positions. In addition, article 7(2)(c) of Law 8/2015 allows the INAF to require the resignation or substitution of one or more members of the administrative body or senior executives of a bank if it is determined that these persons are not qualified to comply with their obligations pursuant to required suitability requisites. Whilst action may be taken against a FI, e.g. revocation of licence, the INAF does not have a direct power to: (i) remove a particular shareholder or to freeze a particular shareholder's rights; or (ii) permanently remove a director or senior manager of a FI (other than a bank) from their post. The former is considered also under c.26.4.

361. Article 9 of Law 8/2013 also requires the appointment of a regulatory compliance officer. However, this does not appear to be a senior management appointment and therefore it falls outside the INAF's prior authorisation requirements. In light of this, the INAF issued a TC in January 2017 requiring banks (but not other FIs) to make such a role a senior management appointment and to seek the prior approval of the INAF of person's fulfilling this role. This requirement is likely to be applied also to subsidiaries of banks (which account for a substantial percentage of investment and insurance activities).

362. Under article 8 bis of Law 12/2015 amending the Insurance Law, a similar business and professional repute and experience requirement applies to beneficial owner(s), directors and managers of insurance companies. Under article 8 bis (4) of Law 12/2015, any criminal records, disqualifications and bankruptcy proceedings must be disclosed by individuals, including those holding 5% or more of the share capital of the applicant or established entity as well as its directors and senior managers, for the Government to assess. Under article 8 bis there are requirements to inform the Ministry of very similar changes to those in article 20 of Law 8/2013. If an insurance company fails to do so, or the Government discovers that requirements are not met, it may impose sanctions under article 21, which can include: (i) revocation of authorisation; or (ii) suspension or removal of a director for a period of three years. Whilst action may be taken against an insurance company, e.g. revocation of licence, there are no direct provisions in the Insurance Law permitting the Government to: (i) remove a particular shareholder or to freeze a particular shareholder's rights; or (ii) permanently remove a director or manager, on the grounds that they are not of good business repute.

363. As noted under c.26.2, the two foreign post offices are not licenced to provide financial services.

364. ***Criterion 26.4*** - Andorra has not been independently assessed for compliance against the Core Principles. Whilst the Andorran authorities have advised that supervision by both the INAF and

the UIFAND takes into account the Basel Core Principles identified by the FATF, it appears that: (i) the INAF is not able to take appropriate action to modify, reverse or otherwise address a change in control that has taken place without the necessary notification to, or approval from, it (see c.26.3) (essential criterion 5 of principle 6); and (ii) consolidated group supervision (combination of the INAF and the UIFAND) is quite limited (principle 12).

365. The INAF has been an ordinary member and signatory to the IOSCO MMoU since September 2013 when Law 10/2013 was aligned with IOSCO standards. There are no relevant provisions in the Insurance Law regarding consolidated supervision by the Ministry of Finance; nor are many other elements of relevant IAIS Core Principles applied. However consolidated supervision by the INAF will apply where banks authorised under Law 7/2013 also undertake life insurance business.

366. Financial services provided by the two foreign post offices are supervised for compliance with the AML/CFT Act by the UIFAND. They are required under article 52 of the AML/CFT Act to commission an annual independent external audit of compliance with the AML/CFT Act which must be submitted to the UIFAND. As explained under c.26.5, the UIFAND uses this audit to risk assess a FI, but no information has been provided on the methodology the UIFAND applies to take account of ML and TF risks in the postal sector.

367. ***Criterion 26.5 (a)*** *and* ***(c)*** – Each year, article 52 of the AML/CFT Act requires FIs to submit a report to the UIFAND from an external auditor on the FI's level of compliance with the AML/CFT Act. Since 2012, the scope of such audits is established in a TC (updated every year; last issued in 2016). These audits provide information on: (i) the FI's control environment and organisational structure; (ii) its internal communication; (iii) staff recruitment; (iv) training; (v) client due diligence; (vi) monitoring and reporting; (vii) branches and affiliates, including their policies and procedures; (viii) account types; and (ix) numbers of internal and externalised SARs. The report also includes the results from verification testing of a random sample of client files. The auditor is required to give an opinion on the degree of compliance and effectiveness of the FI's controls and include with it a copy of the FI's policies and procedures. The steps to be followed by the external auditor take account of risk. The UIFAND has indicated that the policies and procedures which accompany the reports are regularly reviewed.

368. The UIFAND reviews each external audit report and risk assesses the FI on an annual basis. This forms the basis of its annual supervisory plan, along with results of earlier on-site inspections and information provided by the operational unit of the UIFAND. However, the frequency and intensity of on-site supervisory inspections is not truly risk-based.

369. The INAF has implemented a risk-based supervisory framework which addresses risks to which banks are exposed. Under this framework, the risk of ML and TF is considered under reputational risk and risk of non-compliance with legal regulations and internal rules. Accordingly, the frequency and intensity of supervision, which is not focused on AML/CFT compliance, takes into account other risks.

370. ***26.5 (b)*** - Andorra completed its first NRA in December 2016. A number of action plans have been developed but information on how these will influence the UIFAND's supervisory approach has not been provided. Prior to this, there has been no country level ML/TF risk assessment to take into account when determining the frequency or intensity of on and off-site AML/CFT supervision by the UIFAND.

371. ***Criterion 26.6 -*** The UIFAND assesses the ML/TF risk profile of each FI annually upon review of the aforementioned report on compliance from an external auditor**.** In addition, there is a mechanism for the UIFAND to be made aware of major events or developments through a MoU between the UIFAND and the INAF. No information has been provided on what steps would be taken

by the UIFAND to re-assess risk should information be received indicating a major development in the management or operation of a FI or group.

Weighting and conclusion

372. Andorra mostly meets c.26.1, 26.2 and 26.6, and partly meets 26.3 to 26.5. **R.26 is rated partially compliant.**

Recommendation 27 – Powers of supervisors

373. The 4th round MER rated Andorra PC with the former R.29. It concluded that the UIFAND's failure to undertake onsite inspections in 2009 and 2010 raised questions over the effectiveness of the system of supervision, application of powers of compulsion and sanctions.

374. ***Criterion 27.1*** - The UIFAND is not given specific powers to supervise or to monitor and ensure compliance by FIs with the AML/CFT Act. Instead, it is given AML/CFT functions under article 53(2) of the AML/CFT Act which include requesting information and documents from FIs from which to verify compliance with the AML/CFT Act. Under article 57 ter of the AML/CFT Act, resistance to, or obstruction of, by action or omission, the UIFAND's supervisory functions is a "very serious" infringement to which administrative sanctions imposed by Government would apply. It is also a "serious" infringement to fail to: (i) comply with the obligation to carry out an external audit and submit the resulting report to the UIFAND; or (ii) comply with a TC issued by the UIFAND. Such provisions therefore re-enforce the application of its supervisory functions. Article 49(1) (b) of the AML/CFT Act also requires FIs to deliver to the UIFAND all the information requested in the exercise of its "powers" (but not also documents).

375. ***Criterion 27.2*** - Under article 53(2) of the AML/CFT Act, the UIFAND has a function to carry out on-site supervisory inspections to FIs to verify compliance with the AML/CFT Act and the AML/CFT Regulations. The UIFAND also has duties under article 20 of the AML/CFT Regulations to meet with directors and managers of the FI, and with those specifically responsible for compliance, at their premises, and to request all documentation and information it requires to determine that there is compliance with the AML/CFT legal framework.

376. There are no explicit legal provisions establishing that the UIFAND can: (i) undertake onsite inspections at short or no notice; or (ii) copy and/or remove documentation from a FI's premises, but the Andorran authorities have indicated that this does not impede undertaking inspections at no or short notice or of copying/removing documentation.

377. The UIFAND also has powers under article 59 ter of the AML/CFT Act to appoint an investigator as part of an investigation into potential non-compliance with the AML/CFT Act.

378. ***Criterion 27.3*** – As explained under c.27.1, the UIFAND is not given a clear and unambiguous power to compel production of information and documents. Whilst a failure to comply with a request made by the UIFAND under article 53 is a "very serious" infringement to which sanctions imposed by the Government can apply, investigatory and sanctioning proceedings (including an investigation) would first have to be initiated in order for such a sanction to be imposed. Accordingly, the offence would not be immediately sanctionable. This could undermine the UIFAND's ability to supervise effectively and to respond in a timely manner to requests for assistance from foreign counterparts seeking information from a FI.

379. ***Criterion 27.4*** - Under articles 53(2) (h) and 60 ter of the AML/CFT Act, the UIFAND is given a power to impose sanctions for "minor" infringements of the Act but it must refer cases of potentially "serious" and "very serious" infringements, together with a proposed sanction, to the Government of

Andorra which is the competent authority empowered under Article 60 of the AML/CFT Act to impose more significant penalties. Article 57 of the AML/CFT Act sets out what type of infringements would be categorised as "very serious", "serious" or "minor". Further information is provided at c.35.1.

380. For "minor" offences, the UIFAND has the power to issue a written warning and impose a fine. Under article 60 ter (1) of the AML/CFT Act, it is also able to propose the withdrawal or modification of any activity authorisation to the Government which, whilst formally responsible for taking such a decision, is required to follow a binding report on the matter which is provided to it by the relevant licensing authority, either the INAF or separate part of Government, as appropriate.

Weighting and conclusion

381. Andorra meets c.27.1 and 27.2. It partly meets c.27.3 and 27.4. **R.27 is rated largely compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

382. Andorra was rated PC with the previous R.24. The 4th round MER concluded that supervision of DNFBPs with the AML/CFT requirements was inadequate, that no assessment had been made of the risks linked to this sector and that the effectiveness of the controls and sanctions which could be applied to DNFBPs had not been established.

Casinos

383. ***Criterion 28.1*** – ***(a)*** Under article 7 of the Gambling Law, an individual or legal entity seeking to establish a gambling operation in Andorra must apply for a licence from the *Consell Regulador Andorra del Joc*. There is an express prohibition on providing a gambling operation without a licence, infringement of which could incur a fine of up to EUR 10 million.

384. ***28.1 (b)*** - Certain conditions which are set out under article 11 of the Gambling Law must be met upon application and on a continuing basis (by virtue of article 15). These conditions include that: (i) the applicant is a limited company formed under Andorran law; and (ii) its board of directors (and anyone else having executive power or holding a power of attorney or who directly, or indirectly, manages or controls the company) must have commercial and professional integrity and have no conviction for offences in Andorra or abroad which include fraud, ML, TF, falsity and misuse of public funds. In addition, under article 11(e) of the Gambling Law, individuals taking up a salaried role within the gambling operation who have executive powers or hold a power of attorney must be personally licensed under article 55 to take up that role. They must be persons of professional integrity and the method for applying is set out in regulations (article 58 refers).

385. In line with article 12 of the Gambling Law, information accompanying applications by casino applicants must include identification of the company attorneys and shareholders, including shareholders who have direct or indirect control and confirmation that they have no criminal record. However, it is not clear whether the existence of a criminal record can be taken into account at the time of application and on a continuing basis and there are no provisions within the Gambling Law defining: (i) beneficial ownership; (ii) what would be considered a significant or controlling interest; or (iii) what is meant by commercial and professional integrity (explaining whether it covers an individual's personal and business reputation and association with a criminal).

386. ***28.1 (c)*** Under article 45(e) of the AML/CFT Act, operators of gambling and holders of licences for gambling must comply with the requirements of the AML/CFT Act and consequently fall

under the supervision of the UIFAND. At the present time there are no licensed casinos operating in Andorra.

DNFBPs other than casinos

387. ***Criterion 28.2*** - The UIFAND is the authority responsible for supervising the activities of natural and legal persons who, in the course of their professional or business activities generally undertake, control or advise on transactions involving cash or securities movements which could be used for ML/TF and which are listed in article 45 of the AML/CFT Act. Accordingly, evaluators are concerned that article 45 could be interpreted to apply only where a natural or legal person is acting in transactions involving cash or securities, and, for example, would not apply when: (i) providing a service to a company, such as registered office; or (ii) providing an audit service, which does not involve cash or securities. However, this narrow interpretation does not appear to have applied in practice.

388. The list of activities under article 45 of the AML/CFT Act meets the FATF's definition of DNFBPs[126] except that it does not cover: (i) arranging for another person to act as trustee; and (ii) acting as, or arranging for another person to act as, a nominee shareholder.

389. ***Criterion 28.3*** - The UIFAND's supervisory role for compliance with the AML/CFT Act is set out under article 53. DNFBPs are subject to on-site supervision but off-site supervisory mechanisms are limited as there is no requirement for DNFBPs to engage an external AML/CFT audit. Mechanisms consist of analyses of responses to surveys of the sector conducted in 2013 and 2016, the latter as part of the NRA, which were designed to identify significant changes within a DNFBP's activity which would impact upon its risk profile. As explained under c.28.4, there is no register of DNFBPs. Consequently, it is not always possible for the UIFAND to identify when DNFBPs have been established (or operations terminated) and should be subject to its supervision.

390. ***Criterion 28.4 (a)*** - The authority responsible for monitoring compliance with the AML/CFT legal framework is the UIFAND. The legal framework for monitoring compliance by the DNFBP sector under the AML/CFT Act is the same as for FIs except, importantly, that DNFBPs are not required to contract an independent external auditor to verify compliance with the AML/CFT Act, the reports of which for FIs are submitted to the UIFAND and which appear to be an integral part of its supervisory approach. The legal framework for FIs, including weaknesses, has been examined under R.27.

391. ***28.4 (b)*** There is no single competent authority exercising measures to prevent criminals and their associates holding (or being the beneficial owner of) a significant or controlling interest or holding a management function in a DNFBP.

392. In relation to real estate agents, they are regulated under the Real Estate Agents Law 2000 under which certain conditions must be met for an individual or legal person to become a real estate agent. Inter alia, an individual must have no criminal record and be registered with the Professional Association of Real Estate Agents. The conditions upon a legal person seeking to become a real estate agent include the provision that its administrators, directors and managers meet the aforementioned conditions for individuals. The Professional Association of Real Estate Agents is responsible for applying these criteria and provides the UIFAND with a list of active professionals. However, there are no measures to prevent a criminal holding a significant or controlling interest in a real estate agent that is a legal person.

[126] In addition, article 45 applies to: (i) all traders in high value goods, rather than only dealers in precious metals and stones; and (ii) professional external accountants, tax advisers and auditors rather than only accountants.

393. There are no specific provisions on entry for dealers in precious metals and stones that are different to any other non-financial company or commercial activity. Accordingly, necessary measures are not taken to prevent criminals or their associates holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function.

394. In relation to the legal profession generally, there are no market entry measures for law firms. However, there are measures to prevent criminals from being professionally accredited under Law 48/2014 whereby lawyers must be authorised to act by the Government and must meet certain conditions, including having no conviction for "wilful major crimes" and a positive report (or silence) from the Public Prosecutor's Office which analyses all applications. This only applies to lawyers qualified to practice under Andorran law and not to lawyers qualified under a foreign law practising in Andorra. The Andorran authorities indicate that there are no known cases of lawyers qualified under a foreign law practising in Andorra. The Bar Association provides the UIFAND with a list of active professionals.

395. Notaries are authorised by the Government and must meet criteria set in the Notarial Law 1996, including having no conviction for "wilful major crimes".

396. Other DNFBPs are subject to the Law 6/2008 on the exercise of liberal professions. Under this law they must obtain a licence from Government, but other details have not been provided.

397. ***28.4 (c)*** The UIFAND has powers to impose administrative sanctions relating to "minor" offences under the AML/CFT Act. Only the Government can impose sanctions for "serious" and "very serious" infringements of the AML/CFT legislation. The same sanctioning powers and limitations that apply to FIs are applicable to DNFBPs and these are explained under c.27.4 and c.35.1.

398. As explained under c.27.4, the UIFAND is able to propose the withdrawal or modification of an activity authorisation. The extent to which such a proposal could be made in respect of: (i) DNFBPs that are licenced (real estate agents); or (ii) individuals who are professionally accredited (lawyers and notaries that are sole practitioners) is unclear.

All DNFBPs

399. ***Criterion 28.5*** – The UIFAND devises an annual supervisory plan and expects to conduct onsite visits to the different DNFBP sectors. Whereas the UIFAND risk assesses all FIs annually (see c.26.5) using information provided in external audit reports, no similar approach is adopted for the DNFBP sector. Instead, it undertook a survey in 2013 of AML/CFT compliance by the sector, the results of which have formed the basis of an "inspection protocol" and the design of an onsite inspection plan for subsequent years. In line with this protocol, more lawyers have been inspected to see how the sector applies AML/CFT requirements when forming companies, as the UIFAND had observed through its role vetting foreign investment in Andorra that a large number of lawyers were creating companies for foreign investment in Andorra.

400. However, supervision appears to be carried out on a limited risk sensitive basis and it is not clear how the protocol takes account of the diversity and number of DNFBPs, or adequacy of internal controls, policies and procedures of DNFBPs. As indicated under c.24.2 the authorities' understanding of the ML and TF risks within the DNFBP sector is hampered by the problem in identifying all reporting entities that should be subject to its supervision.

Weighting and conclusion

401. Andorra mostly meets c.28.2 and partly meets c.28.1 and 28.3. It does not meet c.28.4 or 28.5. **R.28 is rated partially compliant.**

Recommendation 29 - Financial intelligence units

402. Andorra was rated Largely Compliant with the former FATF Recommendation 26. Concerns raised in the MER related to the lack of a standardised reporting form for all the obliged entities; reservations regarding certain aspects of the UIFAND's administrative autonomy; and, insufficient protection of the data held by the UIFAND.

403. ***Criterion 29.1*** - Article 53 of the AML/CFT Act (as amended in 2015) establishes the UIFAND as the FIU for Andorra within the meaning of R.29.

404. ***Criterion 29.2*** *(Met)* - Under Article 53(2) (e) of the AML/CFT Act, the UIFAND is designated as the central agency for the receipt of disclosures filed by the reporting entities, including SARs (as required by R.20 and R.23).

405. In addition to SARs, and as per Article 64 of the AML/CFT Act, the UIFAND is also the recipient of the information related to all cash transaction reporting made to the Customs Department for cross-border transportation of cash. Authorities also advised that a TC (02/2015) established binding rules with regard to acceptance and withdrawal of cash.

406. ***Criterion 29.3*** – ***(a)*** Article 53(2) (b) of the AML/CFT Act empowers the UIFAND to request any information or documents from the reporting entities when exercising its functions. This article shall be read in conjunction with the Article 49(1) (b) which forces obliged entities to provide the UIFAND with all the information it requests when carrying out its duties. In addition, Article 12.5 of the AML/CFT Regulations also stipulates that the UIFAND has a right to request additional information which the obliged entity may possess.

407. ***29.3 (b)*** Article 53(2)(d) and (j) gives the UIFAND a power to access any information held by judicial authorities, the Police Department, the Customs Department, the Andorran National Institute of Finances or any Administrative body, if such information is needed to properly perform its functions. Authorities advised that the UIFAND had direct and indirect access to numerous databases and registers. These include the direct accesses to: the cross border transportation of cash database; the companies' register, the vehicle licensing register, the register of Andorran citizens and the immigration register. Furthermore, on the basis of the MoU signed between the UIFAND and the Police Department in 2015, the UIFAND has direct access to the Police Department's databases.

408. Upon written request, the UIFAND can be granted an access to the following databases: tax administration registers and information on real estate ownership[127]. The UIFAND may also request and obtain copies of the criminal records from the judicial authorities.

409. ***Criterion 29.4*** - The UIFAND performs operational analysis on the basis of information received through the SARs, other information requested from the obliged entities, and on the basis of information accessible directly or indirectly (cf. 29.3). There is no specific requirement in law that obliges the UIFAND to undertake strategic analysis. Nonetheless, the UIFAND carries out such analysis and mostly through the ML/TF typologies and trends studies. These analyses are shared with the obliged entities through TCs. In addition, the UIFAND is entitled to propose to the Government AML/CFT related drafts (legislative or regulatory) and to provide advice in these matters[128].

[127] Information on property ownership is not centralised and is held at local administration level and by notaries.

[128] Article 53 (2) (m)

410. ***Criterion 29.5*** – The UIFAND can send information to the judicial authorities, the Police Department, the Customs Department[129], the Courts[130], as well as the INAF and other public administration bodies[131]. Article 47(6) of the AML/CFT Act states that *'in the event of finding indicia or the existence of money laundering or terrorism financing, UIFAND reports it to the Court of the First Instance, delivering a copy to the Public Prosecutor's Office'*. Article 22 of the AML/CFT Regulations puts as mandatory the cooperation by the UIFAND, should such cooperation be requested by the judiciary.

411. Whilst, the UIFAND Procedures Manual is still in the drafting phase, authorities advised that when disseminations are made to the Public Prosecutor's Office the UIFAND channels the information in a form of letter and under the custody of police officers. Otherwise, no secure and protected channels appear to exist for this communication[132].

412. ***Criterion 29.6*** - Article 54 quinquies of the AML/CFT Act binds the UIFAND and its administrative staff to the professional secrecy duties. Article 54 ter.(1)(c) of the same Act charges the Head of the UIFAND to *watch out for the security of the documentation and of the appurtenances of UIFAND and for the observance of the procedures and the compliance with the regulations by the members of UIFAND and its administrative personnel*.

413. Furthermore, Article 22(4) of the AML/CFT Regulations establishes that the information and documents in possession, or sent by the UIFAND when exercising its duties are strictly confidential. Any authority or officer who has access to such information and documents due to his/her professional duties needs to keep it as a secret. Any breach of this professional secrecy by UIFAND staff members would be considered as a criminal offence under articles 190 and 191 of the CC. As a subsidiary consideration - access to the Egmont Secure Website was made through the computer of the Head of the UIFAND, which seems to use a regular Internet connection (access to mails, regular Internet surfing, etc.). Ideally, the Egmont Secure Web should be on a separate computer with its own internet connection without anything else on it and with a procedure in place to make sure that incoming messages are regularly checked and that a backup of archives is regularly made.

414. ***29.6 (a)*** The UIFAND reported using safe boxes for the storage and the protection of information. However, no written and specific rules governing such internal procedures have been provided to the evaluation team.

415. ***29.6 (b)*** As stated above, breaching professional secrecy would be considered as a criminal offence under articles 190 and 191 of the CC. Nevertheless, authorities were not able to provide any information demonstrating that the staff of the UIFAND has clear instructions governing security, confidentiality and the handling of information, and is subject to security clearance.

416. ***29.6 (c)*** Authorities advised that the access to the UIFAND facilities and databases was restricted. This particular issue was, in a general manner, mentioned through Article 21(1) of the AML/CFT Regulations which designates *'the highest authority of the UIF (within the meaning of Article 54 of the Regu) […] watches over the security of the documentation and of the premises in general, and also the observance of procedures and compliance with the rules and regulations by the members and personnel assigned to the UIFAND*.

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[129] Article 53(2) (d) of the AML/CFT Act.

[130] Article 53(2) (k) of the AML/CFT Act.

[131] Article 53(2) (j) of the AML/CFT Act and article 23 of its Regulation.

[132] An example of such communication could be seen in the e.g. Article 8 of the MoU between the UIFAND and the INAF which states: "*in the event of urgency, such requests or exchanges may be made by telephone, fax or e-mail, submitting afterwards the respective written communication*".

417. ***Criterion 29.7 – (a)*** In line with Article 41(b) of the AML/CFT Act, the UIFAND acts as an "*administrative authority with operational autonomy, which acts independently from the rest of the General State Administration, in full compliance with this Law and the legal system*". The UIFAND also has numerous regulations regarding the nomination of its staff in order to ensure its independency[133]: the Head of the UIFAND is appointed jointly by the Minister of Home Affairs and Justice and Minister of Finance and for 6 years period (indefinitely renewable). The reasons/grounds for termination of the mandate of the Head of the UIFAND are strictly set in Article 54 quater, while the system of incompatibilities has been regulated by Article 54 sixties. Also, the authorities advised that the Head of the UIFAND takes the final decisions with regard to further steps to be taken with all the cases analysed by the UIFAND.

418. ***29.7 (b)*** The UIFAND has adequate powers which enable it to negotiate agreements or collaborate with other national authorities (Articles 22 and 23 of the AML/CFT Regulations) or with its foreign counterparts (Articles 53 (2) (g) and 56 of the AML/CFT Act and Article 25 of the AML/CFT Regulations). So far, the UIFAND has signed two MoUs - with the INAF and with the Police Department - and a significant number of MoU with foreign FIUs, with the aim to promote information exchange.

419. ***29.7 (c)*** The UIFAND's core functions are defined in Article 53(2) of the AML/CFT Act and are distinct from other national authority's functions.

420. ***29.7 (d)*** Finally, the UIFAND has its own organisational structure and minimum staffing determined by Article 54 of the AML/CFT Act. However, the role of the FIU under the Foreign Investment Law has an impact on its resources.

421. ***Criterion 29.8*** (*Met*) - The UIFAND has been a member of the Egmont Group since 2002.

Weighting and Conclusion

422. Andorra meets all criteria, except c.29.7 which is mostly met and c.29.6 which is partly met. Andorra adopted amendments on its AML/CFT Act improving the administrative autonomy of the UIFAND. However, no explicit and specific internal rules are provided to govern security, confidentiality and the handling of information within the UIFAND. **Andorra is rated largely compliant with R.29.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

423. In the 3rd MER, Andorra was rated Compliant for requirements that now fall under Recommendation 30. The investigation and prosecution authorities appeared to have all the necessary means, if not in statute, at least in practice. The country was recommended to consider amending the legislation to explicitly allow authorities investigating ML cases to defer the arrest of suspects and/or the seizure of funds, or not to make such arrests and seizures, if it can help identifying persons involved in these activities, or in collecting evidence. Another deficiency identified was the lack of human resources, given the complexity of the ML investigation, the volume of work and the need for expertise.

424. The legislation has been amended and, currently, it offers the possibility to postpone the detention or arrest of criminals in cases of investigation of ML or predicate offences (Article 27 (3) of the CPC) and the seizure of assets (Article 116(4) of the CPC).

[133] Those measures were implemented by Law 2/2015 which amended the AML/CFT Act by, *inter alia,* amending article 54 and adopting article 54 bis to54 sixties

425. ***Criterion 30.1 -*** ML, associated predicate offences and terrorist financing are investigated by specialised units within the Judicial and Criminal Investigation Area of Police. There are two dedicated anti-terrorism teams established within the Police Department to proactively investigate, gather operational intelligence and exchange it with the equivalent foreign counterparts. Police unit in charge of ML matters is *"Unitat d'Investigació Criminal Especialitzada 2" (UICE2*), headed by a high rank police officer ("Official") is consisted of Group of Crimes of ML, Group of Crimes Against the Socioeconomic Orders and the Group of Technology Crimes and the International Cooperation[134]. The first two groups are in charge of investigating ML and other economic and financial crimes. The Public Prosecutor's Office represents the state in pursuing the indictment before the court. In Andorra, the prosecution is also competent for the enforcement/execution of the judgments delivered. It is composed of six prosecutors, one out of them being appointed as the General Prosecutor. *Batllia* is the specialised investigative sections of the Courts. After March 2015, and with the amendments to the Qualified Law of Justice, a new specialised investigative section was created. Therefore, two specialised judges are currently in charge to deal exclusively with economic crimes, including ML.

426. ***Criterion 30.2 -*** The authorities indicated that, systematically, the investigation of all predicate offences of ML gives rise to a parallel financial investigation to identify, trace and preventively seize all goods and values that can result from a crime. Financial investigation is led by the specialised groups in financial crimes. The Police Department and prosecutors can initiate ML/TF investigations, but once financial information is needed, the file has to be overtaken by the first instance court (*Batllia*), because access to financial information requires a court order, according to Article 87 (4) of the CPC[135]. For foreign predicate offences, the competent authorities pursue investigations for ML, if it is suspected that the assets and values generated have had as a destination Andorra. Since the predicate offences are mainly committed abroad, almost all laundering cases require international police and judicial co-operation. The financial investigation and seizure procedures are carried out by the Judge of First Instance (Article 116 CPC).

427. ***Criterion 30.3*** **-** The Judge of the First Instance is the competent authority to order, during the preliminary or the investigation phase of the proceedings, the seizure and freezing of funds for which there is sufficient evidence to believe that they are proceeds, directly or indirectly, of a crime (Article 116 of the CPC). The ARO and the "Unitat d'Investigació Criminal Especialitzada 2" were created in 2013 as a part of police structures. They are the competent authorities to facilitate the tracing and identification of proceeds of crime and other crime related property or funds which may become the object of freezing, seizure or confiscation.

428. ***Criterion 30.4*** - Police and prosecutors can initiate ML/TF investigations, but as soon as they need financial information, the case has to be presented to the investigative judge who will directly conduct the investigation, given that access to banking information or immovable property data can only be effectuated upon judicial approval. The investigative judge is not a LEA *per se*, but has the responsibility for pursuing financial investigation.

429. ***Criterion 30.5*** **-** There are no separate authorities designated to investigate ML/TF offences arising from, or related to corruption offences in Andorra. The Police Department has powers to

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[134] From 2010 until 2015, the Unit has had 6 police officers for ML investigation, adding 3 more Police officers in 2015 for specific economic crimes, such a fraudulent credit card use, bank checks frauds, etc. (MEQ Effectiveness p.126)

[135] Article 87 (4) of the CPC - "In the event in which it is necessary to obtain information ***from any financial entity or any natural person or legal person subject to professional secrecy,*** the Judge of the First Instance should so decree by reasoned order."

investigate these crimes and, upon judiciary order, it may proceed to the identification, tracking and seizure of assets.

Weighting and Conclusion

430. **Andorra is rated compliant with R.30.**

Recommendation 31 - Powers of law enforcement and investigative authorities

431. In the 3rd MER, Andorra was rated Compliant with former R.28.

432. ***Criterion 31.1*** **-** The competent authorities are able to obtain access to all necessary documents and information when investigating and prosecuting ML/TF and associated predicate offences. This includes: criminal records and intelligence, AML/CFT disclosures (SARs, information from the Customs Department, cash transaction reports, etc.), financial information (e.g. bank accounts and records of transactions), classified information (maintained for national security purposes – which can be of relevance for TF investigations), etc. The Police Department may retain all the relevant pieces and objects, weapons and instruments which have been used or which were intended to be used to commit the offence, and also all belongings that appear to be proceeds of crime or indicative evidence (Article 26 (1) b) of the CPC). The investigative judge has the power to collect all the appropriate evidence (Article 87 of the CPC).

433. Non-compliance with LEAs' requests is subject to penalties (Article 397 of the CC).

434. ***31.1 (a)*** - Prior authorisation of the Court (*Batllia*) is needed to access records held by FIs, DNFBPs and other natural or legal persons. Access to records held by FIs, DNFBPs and other natural or legal persons is covered under Article 87(4) of the CPC, which states that *access to information held by any FIs or by any natural or legal person under professional secrecy requires an order issued by the Judge of First Instance, based on a motivated resolution*. In other words, legislation does not allow identifying bank accounts and real estate without a court approval. Information held by legal/natural persons not bound by the professional secrecy can be obtained without the authorisation of the court.

435. ***31.1 (b)*** **-** The search of persons and premises can be done by the Police Department, if it does not affect or violate fundamental rights. Searching of premises implies the prior signed consent of the person who occupies the place. The authorities are obliged to notify the person in advance of his/her right to refuse such search. In the event of refusal or absence of the interested person, the Police Department would need the written authorisation of the Judge of the First Instance. On an exceptional basis and for reasons of urgency, the search may be made with the prior verbal authorisation of the Judge of the First Instance (Article 26(1) of the CPC). Also, the CPC allows the police to enter a domicile or some other place and to search it when a criminal is hidden there or is taking refuge there, or when the same is caught red-handed in the commission of a crime.

436. ***31.1 (c)*** - The Police Department is able to directly take witness statements (Article 26.1 (a) of the CPC)***.***

437. ***31.1 (d)*** **-** According to Article 26 (1).b) of the CPC, the police agents, whenever necessary, have to retain all the pieces and objects related to the infringement, and particularly the weapons and instruments which have been used or which were intended to be used to perpetrate it, and also all that which appears to have been **proceeds** from the infringement or which may be **indicative evidence**.

438. ***Criterion 31.2*** - Competent authorities conducting investigations are able to use a wide range of investigative techniques for the investigation of ML, associated predicate offences and terrorist financing, including undercover operations, intercepting communications, accessing computer systems, controlled delivery.

439. ***31.2 (a)*** - The participation of an undercover agent can be authorised in crimes related to drugs, firearms, counterfeit currency, pimping, terrorism (including TF), trafficking of children, child prostitution, child pornography, trafficking in human organs, ML, corruption crimes and influence peddling (Article 122 ter of the CPC).

440. ***31.2 (b)*** - In all cases of major crimes (which include ML and TF), the police may intercept communications (telephone, telegraph, postal or others), with prior judicial authorisation (Article 26.1 (d) of the CPC), which may be issued in any phase of the investigation if it is considered useful for the search for truth. The authorisation should be immediately notified to the Public Prosecutor's Office. The duration of the measure shall not exceed two months, but may be renewed twice, by reasoned order and under the same conditions.

441. ***31.2 (c)*** - Accessing computer systems is permitted by Article 26(1) letter b) of the CPC.

442. ***31.2 (d)*** - Controlled delivery for the investigation of ML and associated predicate offences, (including TF), is allowed under Article 122 bis of the CPC. The investigative Judge of the First Instance may authorise, at the request of the Director of the Police Department, the circulation or delivery of items listed under Article 122 bis.

443. Since Andorra applies a combined approach for ML predicate offences, it seems that it is necessary to establish the nature of a predicate offence in order to use special investigative techniques, which may raise some concern in stand-alone ML cases (since foreign predicate offence is the main ML typology in Andorra). Although dual criminality requirement, *ex lege*, may be an impediment in using special investigative techniques in extraterritoriality investigations, the case law confirms that so far it has not prevented implementation of such measures.

444. ***Criterion 31.3*** - ***a)*** LEAs gain access to financial information *held by any financial entity* only through a judicial motivated order. The mechanism in place to identify whether natural or legal persons hold or control accounts does not guarantee the execution of the requests in a *timely* manner, given that the law does not specify the time limit and the investigative judge does not have the legal possibility to impose sanctions for not respecting the deadline established by him/her, as it was described under IO7. The authorities indicated that, normally, the mechanism allows, in a matter of hours/days, the LEAs to identify if a natural or legal person had or holds accounts in Andorra but in practice it happens that information is submitted in 1 month or more.

445. When LEAs want to check if someone is a client of any FI or other obliged entity, they are empowered to ask them if the referred person is, or was, amongst their clients and to request details of their transactions. Considering that production orders with general application are not prohibited in Andorra, LEAs can submit a request for such information to all FIs and DNFBPs (including notaries), complemented by information from the Companies Register. The UIFAND can obtain such information without a court order and may exchange it with the Police Department, on the basis of a MoU signed on 25 February 2015.

446. Authorities have advised that notaries are obliged to identify the beneficial owner of all companies that are registered (Article 15(3) of the Companies Act), while all relevant acts of a company must be provided to the Companies Register. Consequently, it could be concluded that the beneficial owner of a complex legal structure can be identified by: (i) submitting requests to Andorran notaries; and (ii) to FIs, where financial services are provided to such companies in Andorra.

447. ***31.3 (b)*** - There is no legal obligation for LEAs or judiciary to *ex officio* inform the owner during the process of identifying his assets. Nevertheless, the parties have the right to be notified about the investigation, if they queries about it, to intervene in the preliminary proceedings and to obtain a copy of the record of the actions, unless it has been ordered to maintain the secrecy of the actions (Article 46 (1) of the CPC). The judge may order the secrecy of all or part of the actions, but only for a maximum term of *6 months*. Considering that financial assets and immovable property can be identified only during the investigation pursued by the judge (as a judge order is mandatory in these cases – reference is made under c.31.1(a)), it can be concluded that there is the possibility for the owner to be notified about the process before his assets are identified and seized. However, Article 46(2) of the CPC enables the investigators to identify assets without prior notice during the six months period, if the secrecy order is imposed.

448. ***Criterion 31.4*** **-** The legal framework does not contain a specific provision which would clearly stipulate that LEAs can ask *all the relevant information held* by the UIFAND. Nevertheless, the Andorran authorities indicated that the competent authorities conducting investigations of ML, associated predicate offences and terrorist financing are able to ask for all relevant information held by the UIFAND and this is a common practice. The legal basis is Article 22(1) of the AML/CFT Regulations, which stipulates that the UIFAND cooperates with the judicial authorities, at the request of these authorities, both in criminal investigations and in the execution of rogatory commissions related to acts of ML or financing of terrorism. Also, according to Article 53(2).d) of the AML/CFT Act, the UIFAND may (…) *send to the judicial authorities, the Department of Police, the Customs Service or any body of the Administration, any information that is essential for the exercise of its functions*. A Cooperation agreement between the UIFAND and the Police Department was signed on 25 February 2015, setting the cooperation among the signatories in such investigations and with the confidentiality principle. It allows them to exchange information which would foster coordination between these bodies.

Weighting and Conclusion

449. The mechanisms in place to identify whether natural or legal persons hold or control accounts does not guarantee a *timely* identification process, given that FIs have discretion in this regard and LEAs do not have a possibility to impose effective sanctions for not respecting the deadlines for the responses. Article 46(2) of the CC provides a *maximum* term of 6 months for the secrecy of investigation and, therefore, generates the possibility for the owner to be notified about the investigatory actions - including identification and seizure of assets - once this period expires. **Andorra is rated partially compliant with R.31.**

Recommendation 32 – Cash Couriers

450. Andorra was rated Non-Compliant with the previous SR.IX. In the 4th MER, Andorra had still not implemented measures for the detection of cross-border transportation of cash and bearer securities.

451. ***Criterion 32.1*** - Andorra has implemented a declaration system for incoming and outgoing cross-border transportation of cash. These dispositions were implemented in the AML/CFT Act by the Law 20/2013 of 10 October, transposing Regulation (EC) No. 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community, pursuant to the Monetary Agreement with the EU. Any natural person entering or leaving the country carrying EUR 10,000 or more in cash (or its equivalent in foreign currency) has

to declare that sum to the Customs Department[136]. BNIs are covered by the Andorran definition of cash[137]. The Law 20/2013 of 10 October, transposing the European Regulation (which applies only to natural persons), does not cover the physical transportation of cash or BNIs through container cargo or the shipment of cash or BNIs through mail.

452. ***Criterion 32.2*** - The above mentioned declaration system applies to all persons making a physical cross-border transportation of cash or BNI amounting or exceeding the value of EUR 10,000. It is therefore a threshold declaration system (32.2.b.). The declaration shall contain all elements required by Article 62(2) of the AML/CFT Act[138] and be trustful since inaccuracies can lead to sanctions. Decree of 20 November 2013, approving the regulations concerning the declaration of cross border movement of cash set up a form to file the declaration to the Customs Department[139].

453. ***Criterion 32.3*** - Andorra has chosen a declaration system (c.32.1).

454. ***Criterion 32.4*** - Article 63(1) of the AML/CFT Act grants the officials of the Customs Department the power to carry out controls on natural persons, their luggage and means of transport to check compliance with the obligation to declare. According to article 62(1) the obligation to declare is not fulfilled until the information provided is correct and complete. Thus, the Customs Department may request any additional information deemed appropriate (including via a standardised declaration form) for the purposes of compliance with the obligation to declare during those inspections.

455. ***Criterion 32.5*** - Non-compliance with the obligation to declare, be it due to a false declaration or a failure to declare, constitutes an infringement punished with a fine ranging from EUR 600 to maximum 25% of the amount of cash in excess of EUR 10,000 that is carried across the border (article 66(1) of the AML/CFT Act). These statutory sanctions appear to be rather low and not sufficiently dissuasive.

456. ***Criterion 32.6*** - Information obtained through the declaration system and the exercise of inspection competences is made available by the Customs Department to the UIFAND and the Police Department (Article 64 of the AML/CFT Act). In addition, notwithstanding the obligation to declare if cash is suspected of being related to ML or TF, the Customs Department must report it to the UIFAND and the Police Department (Article 64 (2) of the AML/CFT Act). A joint computer database for these purposes has been set up, which is shared by the Customs Department with the UIFAND and the Police Department. This database contains all the declarations of cross-border movements of cash, as well as information regarding false and incomplete declarations and details of cases in which a failure to declare has been detected

457. ***Criterion 32.7*** - As mentioned above (32.6) the information related to the obligation to declare as well as the information on cash being suspected to be related to ML/TF is shared by the Customs Department to the UIFAND and the Police Department. In addition, a specific Unit within the Police Department is in charge of Borders and Immigration issues[140] which cooperates with the Customs Department and the UIFAND[141].

458. ***Criterion 32.8*** - **(a)** In instances where there is a suspicion of ML/TF, article 64(2) of the AML/CFT Act states that the Customs Department must report this to the UIFAND and the Police

[136] Article 62(1) of the AML/CFT Act.
[137] Article 61 of the AML/CFT Act
[138] (i) the declarant, including full name, date and place of birth and nationality; (ii) the owner of the cash; (iii) the intended recipient of the cash; (iv) the amount and nature of the cash; (v) the origin and intended use of the cash; (vi) the transport route; (vii) the means of transport.
[139] The form can be found at: http://www.duana.ad/formularis
[140] http://www.policia.ad/estructura.html
[141] This cooperation is notably enacted in the MoU between the UIFAND and the Police Department.

Department. Nevertheless, under the current legal framework, officials of the Customs Department are not allowed to retain cash in order to conduct an investigation to look for evidences of potential links with ML/TF. Andorran authorities advised that Article 26(1) of the CPC gives sufficient grounds to apply this measure - due to the specificity of the system and the fact that customs and police are physically in the same premises in cross border points.

459. **32.8 (b)** - In instances where a false declaration is made and discovered, officials of the Customs Department have no direct powers to stop or restrain the currency or BNIs involved in the infringement. Officials can only seize 25% of the cash exceeding EUR 10,000, with a minimum of EUR 600 as a guarantee for the payment of any penalties (fine) eventually resulting from the sanctioning proceedings.

460. ***Criterion 32.9*** - Declarations exceeding the threshold of EUR 10,000, false declarations and suspicions of ML/TF are forwarded to the UIFAND and the Police Department.[142] The UIFAND may exchange the information obtained in this area with any equivalent foreign body under the same conditions as any other information obtained within the scope of its powers (Art. 65 of the AML/CFT Act). Also, where the cash is related to the proceeds of fraud or any other illegal activity adversely affecting the financial interests of the EU, this information must also be provided to the European Commission.

461. ***Criterion 32.10*** - The database on declarations of cross-border movements of cash is subject to the provisions of the Qualified Law 15/2003 of 18 December on the Protection of Personal Data and, therefore, subject to appropriate measures in place to ensure confidentiality of the data contained in it[143]. Also, there is no obstacle limiting either trade payments between Andorra and other countries, nor freedom of capital movements.

462. ***Criterion 32.11*** - Persons transporting cash or BNIs related with ML/TF or predicate offences of ML are subject to criminal sanctions provisions of the CC related to ML (under articles 409 and 410 of the CC) and/or TF (under article 366bis of the CC). Also, as mentioned above (32.8) any transportation of cash or BNIs suspected to be related to ML/TF would be reported to the Police Department and could be retained by the later. Then, confiscation measures described under R.4 would apply.

Weighting and Conclusion

463. Since the last MER, Andorra has implemented a declaration system for incoming and outgoing cross-border transportation of cash and BNIs. Nevertheless, there are major gaps within the existing legal framework, especially in the context of Andorra. The Customs Department is not able to stop or restrain currency and BNI (as required by c.32.8) and the existing sanctions for a false declaration or disclosure are not proportionate and dissuasive (c.32.5). **Andorra is partially compliant with R.32**.

Recommendation 33 – Statistics

464. Andorra was rated Largely Compliant with the previous R.32.

465. ***Criterion 33.1*** – **(a)** The UIFAND is required by the article 53-2.n) of the AML/CFT act to prepare and publish annual reports and statistics to assess the effectiveness of the prevention and

[142] Declarations shall contain, among others, details of the amount of currency or BNIs, the identification data of the bearer(s),

[143] Considering the general level of data protection in Andorra (source: http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2009/wp166_en.pdf).

fight against ML, TF and PF. Such information can be verified in the actual annual reports published by the UIFAND[144].

466. ***33.1 (b), (c) and (d)*** - With regard to the statistics on investigations, prosecutions and convictions as well as on property frozen, seized and confiscated, it is the General Council of the Justice who is responsible for gathering and managing the corresponding judicial statistics. The statistics collected and managed by the General Council have been used in the framework of the NRA. Also, the Public Prosecutor's Office publishes on a yearly basis a report analysing, notably from a statistical point of view, its activities during the last year regarding investigations, prosecutions and convictions[145]. The statistics on MLA and other international requests is managed by the Ministries of Home Affairs and Justice and Foreign Affairs. Nevertheless, the statistics maintained by Andorra on ML/TF investigations, prosecutions and convictions, as well as on property seized and confiscated, lack comprehensiveness/completeness which makes it difficult to properly assess the effectiveness and efficiency of its AML/CFT system.

Weighting and Conclusion

467. **Andorra is largely compliant with R.33.**

Recommendation 34 – Guidance and feedback

468. Andorra was rated LC with the previous R.25. It was found that FIs were provided with insufficient guidance regarding TF and that the UIFAND could do more to provide ML typologies. Professional associations also seemed to react purely passively to AML/CFT issues and there was too much reliance on the UIFAND.

469. ***Criterion 34.1*** – Article 20(1) of the AML/CFT Regulations provides that the UIFAND shall issue recommendations which permit FIs and DNFBPs to improve "the fulfilment of their obligations". These recommendations must cover, at least, a description of the most common techniques and methods of ML/TF, and whatever additional measures may be carried out to improve efficacy in the fulfilment of obligations.

470. Article 20(3) of the AML/CFT Regulations, together with article 53(2)(a) of the AML/CFT Act, explains that the UIFAND duties also include issuing and informing via binding TCs[146] for the purpose of directing and promoting activities for the prevention of ML/TF. It appears that it does so in its capacity as FIU and AML/CFT supervisor. Where appropriate, the content of these TCs must be published on the web page of the UIFAND to make them public and assure the widest distribution possible.

471. Article 49 quinquies of the AML/CFT Act adds that the UIFAND, either through training programmes or through TCs, informs FIs and DNFBPs about current practices of perpetrators of ML/TF and about indicators that lead to the detection of suspicious practices.

472. TCs issued since 2012 have covered areas such as: (i) banking relationships with overseas money exchange offices, relationships with Panamanian legal persons and use of cash (all of which require the application of enhanced CDD measures); (ii) prohibition of certain cash transfers

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[144] 2015: http://www.uifand.ad/images/stories/Docs/2015_Memoria_Cat.pdf;
2014: http://www.uifand.ad/images/stories/Docs/2014_Memoria_Ang.pdf

[145] http://www.justicia.ad/en/memoria.html

[146] Article 53(2) (a) of the AML/CFT Act confirms that such TCs must be applied and article 57 quater (14) makes it a "serious offence" to fail to comply. Thus they are considered to be "other enforceable means".

between bank accounts; and (iii) the use of NPOs for TF. The UIFAND has also adopted administrative instructions for making SARs, concerning the financial information to be reported to the UIFAND, and use of a compulsory SAR template (last updated in April 2016). It has also recently published a resolution and guidance on TFS. In addition, the UIFAND's website also has a specific section related to training, where general typologies and high risk indicators are published for ML and TF. This annual report is published on the UIFAND's website.

473. One to one feedback regarding SARs is generally provided by the UIFAND, although not always in a written way.

474. Nevertheless, a number of customer ML risk factors that might be expected to apply in Andorra have not been addressed by the authorities through guidance, e.g. provision of private-banking services, prevalence of non-residents customers, use of legal persons to hold personal assets, abuse of cash-intensive businesses, and unusual or excessively complex ownership structures given the nature of the company's business. Guidance is not provided to FIs regarding the adequate (or reasonable) measures to be taken to establish the source of wealth or source of funds of a customer and beneficial owner thereof that is a PEP. It is therefore not clear how FIs will understand what measures should be taken in order to comply with this legal obligation.

475. Further, the UIFAND does not provide aggregated feedback (as supervisor) on findings from onsite visits and external reviews completed by auditors in order to promote the consistent application of best practices across the financial sector. Nor are all supervisory sanctions publicised.

476. The UIFAND has also provided training in 2013 and 2014 to FIs and DNFBPs and in 2016 to lawyers (jointly with the Andorran Bar Association).

477. The INAF has established mandatory requirements in relation to corporate governance for banks. It has also clearly set out its expectations that all entities should meet obligations in respect of AEOI by putting in place appropriate technical and human resources and internal control systems. It does not publish aggregated feedback but can give such feedback during meetings with professional associations.

Weighting and Conclusion

478. **R.34 is rated partially compliant**.

Recommendation 35 – Sanctions

479. Andorra was rated PC with the previous R.17. The 4th round MER determined that the range of sanctions available was not proportionate and included no powers for the monitoring authorities to withdraw, restrict or suspend an authorisation or licence. Furthermore, in years leading up to the last MER, no sanctions had been imposed, and the lack of onsite inspections in 2009 and 2010, together with the inadequacy of resources available to the supervisory authorities, caused doubts to be expressed about the effectiveness of the sanctioning system.

480. ***Criterion 35.1*** – Article 57 ter to quinquies of the AML/CFT Act set out the offences which classify as "minor", "serious" and "very serious" infringements of the AML/CFT Act. A very serious infringement includes: (i) failure to comply with the identification and verification requirements for customers and their beneficial owners; (ii) failure to comply with SAR obligations; (iii) breaches of articles 69 and 72 of the AML/CFT Act which relate to the implementation of TFS; (iv) failure to establish adequate and sufficient internal controls where such failure incurs a high risk of ML or TF; and (v) failure to comply with a request from the UIFAND or obstruction of its supervision. "Serious" infringements include a failure to monitor transactions and business relationships and breaches of

record-keeping obligations. The Andorran authorities have explained that infringements such as these can imply that internal controls are defective which is considered a "very serious" offence. A "minor" infringement is classified as any breach of the Law that is not considered "serious" or "very serious" and is described by the Andorran authorities as a "residual clause" to accommodate sanctioning of minor infringements.

481. Sanctions can be attached to FIs and DNFBPs which are either natural persons or legal entities. The application of a sanction can be appealed to the courts. The range of sanctions available is set out in the following table.

Table 1: Applicable sanctions for FIs and DNFBPs

Type of infringements		Range of pecuniary fine -EUR- (mandatory)	Restriction on transactions	Withdrawal or modification of the activity authorisation	Suspension of the professionals	Other
Very serious	**Legal persons**	90 001 to 1 000 000	Temporary or permanent	Yes	See c.35.2	-
	Natural persons	25 001 to 300 000	Temporary or permanent	Yes	From 6 months to permanent	-
Serious	**Legal persons**	15 001 to 90 000	Temporary	-	See c.35.2	-
	Natural persons	3 001 to 25 000	Temporary	-	From 1 to 6 months	-
Minor	**Legal persons**	600 to 15 000	-	-	See c.35.2	Written warning
	Natural persons	300 to 3 000	-	-	No	Written warning

482. Under article 58 ter of the AML/CFT Act, the maximum financial penalty that can be applied can be higher where an offender has benefited from the infringement. In cases were the financial benefit can be ascertained, the upper limit of the fine will be increased to up to twice the benefit obtained, provided that the fine so calculated is higher than the upper limit.

483. There appears to be no general mechanism for a competent authority to issue a public statement as an administrative sanction. However, according to article 22 of the Disciplinary Law, sanctions involving the revocation of licences and the liquidation of the entity or the restriction of the entity's operational capacity shall be published in the Official Journal of Andorra.

484. As set out above and explained under c.27.4, the UIFAND is able to propose the withdrawal or modification of an activity authorisation. When it does so, in line with article 60 ter (1) of the AML/CFT Act, the Government shall take the decision, but it shall do so on the basis of a binding report provided by: (i) the INAF - operative entities; (ii) separate part of Government - insurance companies and DNFBPs.

485. Article 57 of the AML/CFT Act states that administrative sanctions apply to infringements of that Act by FIs and DNFBPs. It does not expressly provide that sanctions will apply also to requirements set out in the AML/CFT Regulations. The authorities have explained that this is

because the purpose of the AML/CFT Regulations is to develop legislation and so an infringement thereof is an infringement of the AML/CFT Act and would be subject to its sanctioning regime. Nevertheless, evaluators consider that there may be some benefit in expressly setting this out in legislation, given that a number of important preventive measures are covered in the AML/CFT Regulations. The FATF's note in the Methodology on the legal basis of requirements also indicates that, where sanctions for non-compliance are in another document, there should be a clear link between a requirement and the available sanction.

486. Article 58 quinquies limits the period of time in which sanctions can be applied to three years after a prescribed date, except if action is taken to disguise or conceal offences, when the period is ten years. The "prescription period" starts: (i) on the date of termination of an activity or last act with which the offence is committed for offences arising from continuous activity; (ii) in the case of a breach of CDD requirements, on the date that the business relationship ends; and (iii) in the case of a record-keeping obligation, at the end of the record-keeping period. Whilst it is accepted that this will not cause any difficulty in many cases, e.g. where an historical breach has been repeated or where a business relationship is still in place, this prescription period could potentially limit or curtail the ability to sanction an obliged party for failing to comply with the AML/CFT Act, e.g. an isolated CDD breach that occurs close to the time that a business relationship ends. Article 60 quater also sets a deadline for deciding and notifying a decision to offenders, which is two years from the notification of the sanctioning proceedings. This deadline may be extended by six months. The authorities consider that this is a sufficient period of time in which to take a decision.

487. The range of sanctions for serious and very serious infringements that could be applied to the two foreign post offices is more limited as they are not required to be authorised in Andorra for the provision of financial services.

488. Under article 59 quater of the AML/CFT Act, if it becomes apparent that the facts may constitute a criminal offence, such as facilitating ML, the UIFAND must report this to the Public Prosecutor's Office and, should that office decide to bring a criminal prosecution, administrative proceedings are then suspended.

NPOs

489. Under article 45 of the AML/CFT Act associations, foundations and other NPOs are obliged parties for the purposes of meeting the requirements set out in the first additional provision to the AML/CFT Act. This provision requires the management of an NPO to ensure it is not misused for funding terrorism and "to this end will keep records of the identity of all persons that receive funds" and the register of members for five years. Accordingly, it would appear that an NPO can only be sanctioned for a record-keeping failure (and not also other requirements set under c.8.4).

490. ***Criterion 35.2*** - Powers to sanction extend to individuals holding senior management positions within FIs and DNFBPs if the infringements were due to their negligence or wilful acts. The maximum fine that can be applied can be higher through a similar mechanism to that which applies to FIs and DNFBPs. For "serious" or "very serious" infringements, an individual can be suspended and for "very serious" infringements permanently prohibited from working in the regulated sector.

Table 2: Applicable sanctions for directors and senior managers

	Pecuniary fine	Suspension	Other sanctions
Very serious infringements	From EUR 25 000 to EUR 300 000	From 6 months to permanent	-
Serious	From EUR 3 000	From 1 to 6 months	-

infringements	to EUR 25 000		
Minor infringements	From EUR 300 to EUR 3 000	-	Written Warning

Weighting and Conclusion

491. Andorra meets c35.2 and mostly meets c.35.1. **Recommendation 35 is rated largely compliant.**

Recommendation 36 – International instruments

492. In the previous round MER Andorra was rated partially compliant concerning R.35 and non-compliant for SR.I. The reasons underlying the rating were the fact that the ratification of the Palermo Convention was approved by the General Council but not yet deposited with the UN at the time of the on-site visit. In addition, there were some deficiencies in the implementation of certain provisions of the Conventions. Although the relevant standards set out in the previous corresponding recommendations are mostly reflected in the current R.36, the new recommendation is now extended to include the ratification and implementation of the UNCAC.

493. ***Criterion 36.1*** - Andorra has signed and ratified the following international instruments:

Table 3: International instruments signed and ratified by Andorra

Title	Signature Date	Ratification Date
Vienna Convention	23 July 1999	23 October 1999
Palermo Convention	22 September 2011	21 October 2011
Terrorist Financing Convention	12 June 2008	21 November 2008

494. However, Andorra has not signed the UNCAC, although the evaluators have been told that the authorities were considering signing and ratifying this legal instrument.

495. ***Criterion 36.2*** - In the previous round MER, Andorra was recommended to improve the implementation of the provisions of Palermo and Vienna Conventions as well as the implementation of the provisions of the Convention for the Suppression of the Financing of Terrorism. The shortcomings specified in the previous round have been mostly addressed by the authorities - the deficiencies in incrimination of ML and TF have been amended by the CC, while the recommendations made by the assessment team regarding the lack of legal basis for the confiscation of money as criminal proceeds from autonomous ML offences have also been implemented. Most of the deficiencies determined by the evaluators with regard to the provision of MLA especially on the matters concerning the restrictive incrimination of ML have also been remedied by the amendments stated above. Due to lack of information, the evaluators were not in position to assess the implementation of Articles 9, 10, 11, 15 and 17 of the Vienna Convention in the 4th round MER, however, given the information provided under the R37 to R40, the evaluation team found that it was sufficient to demonstrate the implementation of Articles 9 and 10 in part.

496. Nevertheless, implementation of a number of provisions of the Conventions is still unclear to the evaluators, as no or not enough information has been received (i.e. Articles 15, 17, 19 of the Vienna Convention, Articles 27 to 34 of the Palermo Convention). Although a number of obligations set out by the UNCAC have been implemented into the Andorran legislation, the Convention has, nevertheless, not been signed.

Weighting and Conclusion

497. In the light of the above, it seems that Andorra has made immense steps to bring its legislation in line with its commitments to the international treaties. However a number of shortcomings remain. It should be noted that some of the deficiencies listed in the different parts of this evaluation (namely R.3, R.4, R.5, and R.37 to 40) can have a bearing on the full implementation of the named Conventions. **Andorra is partially compliant with R.36.**

Recommendation 37 - Mutual legal assistance

498. In the previous report Andorra was rated largely compliant to the recommendation 36 and SR.V. It was found, however, that the issues with regard to the establishment of the ML and TF in Andorra could impair the possibility of rendering MLA, especially in the light of the dual criminality requirement set out in the Andorran legislation.

499. Deficiencies regarding the offences of ML and TF have been largely addressed by the Andorran authorities since the 4th round MER. The dual criminality requirement for provision of MLA is provided in the legislation.

500. ***Criterion 37.1*** - It should be noted that Andorra has appropriate legal grounds to provide MLA in criminal matters on the basis of multilateral agreements. Other than the relevant treaties which, inter alia, concern ML/TF (e.g. *Vienna Convention, Palermo Convention, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime from 1990)*, Andorra also ratified the European Convention on MA, which entered into force on 25 July 2005.

501. MLA is, in general, regulated by the Articles 1-40 of the AML/CFT Act of Andorra, which provides for a wide range of MLA means available to the authorities, including all the investigatory and precautionary measures.

502. Andorra has also signed a number of bilateral treaties concerning MLA and cooperation. Moreover, MLA can also be carried out on *ad hoc* basis grounded on the principle of reciprocity, without an agreement with the foreign State.

503. ***Criterion 37.2*** - In practice the vast majority of requests are sent as per requirements of either the European Convention on MA or other Conventions (*Palermo, Vienna and Strasbourg* Conventions). The authorities indicated that the Ministry of Home Affairs and Justice was the central authority for assistance in criminal matters under these Conventions. They also advised that direct communication was applicable. When there is not any applicable international Convention, Article 9 of the AML/CFT Act expressly states that 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. The requests are then sent to the President of the Bailiffs Court, with a copy to the Attorney General's Office. Although such use of diplomatic channels is residual, the lack of direct communication in these cases could pose undue delays.

504. Although the domestic legislation does not establish a legal mechanism for the prioritisation of requests, the AML/CFT Act establishes that 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 Organization (Interpol). The judicial authorities return the rogatory commissions, regardless if they have been executed or not, through the diplomatic channels and without prejudice. It might have also been transferred through the Interpol or handed over in person to the authorities of the claimant state. In the Declaration deposited on 26 April 2005 to the European Convention on MA, Andorra also declared that in case of urgency, information referred to in Article 21 could be addressed simultaneously to

the Ministry of Home Affairs and Justice and to the Public Prosecutor accompanied by all the necessary information on the procedure. However, even though the Andorran authorities have measures to deal with cases of urgency, the evaluators are of the view that the absence of proper prioritisation may hinder the process of timely execution of requests.

505. Most authorities have electronic case-management systems, which are usually documents involving for some detailed information about each incoming and outgoing case, which facilitate the monitoring of the documentation flow with other states. This digital system allows for electronic registering and monitoring of progress of international legal assistance-related cases. The data available includes, amongst other, the following: date of the request, status of the request, requested information, contact point, facts, related-crimes, deadlines, information about seizure/freezing orders or appeals, requesting/requested jurisdiction, etc. However, the system should be improved in order to generate detailed statistics.

506. ***Criterion 37.3*** - Execution of MLA is subject to a number of conditions, which were also addressed in the previous MER. While most of those principles are internationally accepted standards and are mostly addressed in international treaties, one of the conditions[147] includes the general criminal law principle "*de minimis non curat praetor*", which is not unreasonable *per se*, and usually concerns misdemeanours such as violations of traffic regulations, which do not pose effectiveness issues. Moreover, domestic legislation provides for a list of information that has to be included in the international rogatory commission. Otherwise, if a rogatory commission does not contain the requirements mentioned above, and depending on the nature of the shortcomings, the bailiff may ask the authority of the claimant country to complete it, or he/she may refuse the execution of the rogatory commission and return the actions to the claimant party.

507. While most of the above conditions cannot be viewed as unnecessarily restrictive, it shall be noted that the Andorran legislation requires dual criminality for executing MLA requests, even including non-coercive actions (further assessed in 37.6-37.7).

508. ***Criterion 37.4 - (a)*** The MONEYVAL 4th round assessment report on Andorra stated that the AML/CFT Act does not recognise the fiscal exception as a ground for refusal and that, therefore, it is no matter that the international rogatory letter also involve fiscal matters. Taking into account the dual criminality requirement set out by the Andorran legislation, as well as the reservation made to Article 2(a) of the European Convention on MA reserving the right to refuse a request for mutual assistance if the offences upon which a letter rogatory is based are not punished by the Andorran law as criminal offences, MLA requests concerning exclusively matters of tax evasion could not be executed at the time of the on-site visit. This may impede the implementation of the requirements set out by the relevant criterion. Other than these, there is nothing in the Andorran legal system to suggest that Andorra may refuse a request for MLA on the sole ground that the offence is also considered to involve fiscal matters (the Constitutional Court confirmed the exchange of information ordered by the competent judiciary authority in a tax related ML case (case 2013-9 and 13-RE)). The conditions to execute MLA requests are expressly stated in the AML/CFT Act, and fiscal matters are not listed as a ground for refusal to provide MLA.

509. ***37.4 (b)*** - According to Article 32 of the AML/CFT Act, rogatory commissions that refer to bank accounts and the interception of personal means of communication such as telephone or typewriters 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. According to the authorities, obliged

[147] The criterion stating that the facts giving rise to the action should be of sufficient importance as to justify the intervention of the institutions of the Andorran justice system)

entities cannot refuse to exchange information on the grounds of professional secrecy. It cannot be invoked vis-à-vis the UIFAND, the INAF or the investigative judges of the Courts.

510. ***Criterion 37.5*** - The CPC provides for the possibility to declare, totally or partially, the secrecy of the investigation related to a major crime for a maximum period of 1 month. Article 46 of the CPC establishes the possibility to declare, totally or partially, the secret of the criminal proceedings for a maximum term of 6 months. Staff working on the implementation of MLA (judicial authorities and civil servants) is generally bound by a duty of discretion and confidentiality (Article 28 f) of Act 9/2004 of 27 May 2004 on the judicial service administration).

511. ***Criterion 37.6*** - Article 4 (d) of the MLA/CFT Act requires that all the offences on which the rogatory commissions are based must be criminally punishable as offences under the Andorran law. Moreover, the country has reserved the right with regard to the Article 2 of the European Convention on MA to refuse a request for mutual assistance if the criminal offences, upon which a rogatory letter is based upon, are not punished by the Andorran CC. That is to say, Andorra has made dual criminality requirement to execute any type of MLA request, regardless if the request involves coercive actions or not.

512. ***Criterion 37.7*** - There is nothing in the Andorran legislation to suggest that the dual criminality requirement cannot be satisfied if the Andorran legislation and the legislation of the requesting State do not place the offence within the same category of offences, or denominate the offence by the same terminology. Therefore, this criterion is met.

513. ***Criterion 37.8*** **-** All the required investigative techniques that are available under domestic law are also available for the purpose of MLA. The AML/CFT Act also establishes additional provisions related to some particular measures.

Weighting and Conclusion

514. Andorra has legal basis for proper execution of MLA. The investigative techniques and means available under the domestic law are also used for the provision of MLA. Even without a proper formal prioritisation system enshrined in the domestic legislation, Andorra still has means to execute requests in a timely manner in cases of urgency and to establish prioritisation in practise. Nevertheless, the application of the dual criminality requirement may hinder the execution of MLA due to the lack of criminal provisions on tax crimes or criminal liability for legal persons. **Andorra is rated largely compliant for R.37.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

515. R.38 was rated largely compliant in the 4th round MER, considering that the evaluators had doubts as to the legal basis for confiscation requests for laundered assets or assets of equivalent value. The possibility that the shortcomings regarding the ML offence could affect the legal feasibility of confiscation in the light of the dual criminality requirement was also considered as a limitation to proper implementation of the recommendation. Even though the legislative amendments largely addressed and remedied the shortcomings related to ML offence, some concerns are still valid.

516. ***Criterion 38.1*** - In the 4th round MER, the deficiencies related to the compliance with R.38 were connected to the shortcomings found under R.3 on legal basis for confiscation requests in autonomous ML cases. In addition, in the context of MLA, doubts were raised regarding the legal basis for confiscation of assets of an equivalent value in view of the differences in wording between Article 38 of the AML/CFT Act and article 70 of the CC. Andorra applies freezing, seizing and confiscation in the context of MLA requests to the extent established in the foreign legislation or as

provided under the Andorran legislation (Articles 70 of the CC and 116 of the CPC). These articles cover laundered property, proceeds of crime, instrumentalities used in or intended for use in any crime and property of corresponding value. Article 38 of the AML/CFT Act was modified by the Law 9/2005 of the CC, in its Second Final Provision[148].

517. Nevertheless, the 4th MER (paragraph 836), noted that the legal assistance measures are confined to confiscation of assets deriving from 'major offences'. This was considered as a loophole that prevents Andorra from complying with a foreign request concerning the proceeds of non-major predicate offences. It is therefore of assessors concern if the reference to ML offence is sufficient to rectify this deficiency and whether the *major offences* are all predicate offences of ML (as per article 409 of the CC). The penalties that may be imposed for minor crimes include the *imprisonment up to two years* whereas the threshold to be considered as a predicate offence of ML is 6 months.

518. ***Criterion 38.2*** - NCBC is not inconsistent with fundamental principles of the domestic law. The CC provides the possibility for NCBC, as prescribed by the CPC, for instruments used or which, in the case of a punishable attempt, were to be used to commit the infringement, of the proceeds obtained, benefits which have derived from them, and of their possible subsequent transformation directly or indirectly, to a third persons. Andorra has the authority to provide assistance in accordance with the relevant criterion in line with the AML/CFT Act.

519. ***Criterion 38.3*** – ***(a)*** Even though the previous reports indicated that there had been a number of successful requests including co-ordination of seizure and confiscation actions with other countries, yet there are no arrangements with other countries targeting exclusively asset recovery issues. On the other hand, Andorra has an arrangement with EUROJUST and has been a part of the joint investigative team through which a cross border seizure operation was coordinated.

520. ***38.3 (b)*** Andorra has mechanisms for managing, and when necessary disposing of, property confiscated. The management of property may fall under the obligation of different agencies. According to the CPC (Article 116 (3)) the Judicial Asset Management Bureau takes necessary measures to ensure that the confiscated goods, and its proceeds and accessions are kept/maintained under proper conditions and, if needed, a trustee can be appointed. Monitoring and identification of funds can be assigned to the ARO.

521. ***Criterion 38.4*** - Andorran authorities advised that the country is able to share confiscated assets with other countries on the basis of international conventions or arrangements with other countries. Article 39 of the AML/CFT act states that in absence of international conventions or agreements, the confiscation will always be to benefit of the state of Andorra. Moreover, it should also be reiterated that Andorra is not a party to the UNCAC or CETS 198, and thus is not bound by the particular provisions of the said Conventions with regard to sharing of assets.

522. Nevertheless, the authorities have demonstrated that in practice sharing of confiscated assets with other countries is in fact possible, where there is an agreement with another State. Still, such an agreement has only been signed with US (https://www.state.gov/documents/organization/236383.pdf). Even though the authorities demonstrated a successful case of sharing assets, where the confiscated amount was transferred to the victim in the US, nonetheless, the lack of relevant agreements with different states significantly hinders the process.

[148] By this amendment, the reference to Article 147 of the CC was deleted and reference to ML was made. Even though in 2008 the Government of Andorra published a Consolidated Act in the Official Gazette, Article 38 remained, by a matter of technical mistake, as in its old version. Nevertheless, the Law 9/2005 of the CC which does not have this technical mistake is considered as a relevant one.

Weighting and Conclusion

523. Andorra is capable of taking prompt actions towards the execution of requests by foreign countries to identify, freeze, seize, or confiscate assets in line with the Recommendation 38. Some forms of NCBC are also provided for under the domestic law. Even though Andorra is able to execute a broad range of MLA requests with regard to freezing and confiscation, sharing of confiscated assets is possible when there is an international agreement in place. **Andorra is rated largely compliant for R.38.**

Recommendation 39 – Extradition

524. In the 4th round MER, extradition was rated largely compliant, however, the fact that Andorra used diplomatic channels for the provision of extradition requests was considered to be a shortcoming. The evaluators found that additional measures might be necessary to speed up the processing of requests in view of the diplomatic authorities' workload. The use of diplomatic channels for such requests has still not been changed. It should be noted that the new R.39 also places greater emphasis on procedural matters and on the existence of simplified mechanisms for extradition.

525. ***Criterion 39.1*** – (***a)*** Andorra is able to execute extradition requests in line with international treaties and domestic legislation. The country ratified the European Convention on Extradition (1957). Additionally, the domestic legislation permits extradition only when the offences are punishable by the laws of the requesting State and of the law of the requested State[149]. These requirements are both in line with the aforementioned Convention. ML and TF are both extraditable offences since the minimum sanction for these offences is one year of imprisonment.

526. ***39.1 (b)*** - The Qualified Law on Extradition establishes clear cut mechanisms for execution of extradition requests and envisages the extradition procedure in great detail.

527. Each competent authority dealing with extraditions has its own case-management system. Usually these are electronic documents involving for some detailed information about each incoming and outgoing case, which facilitate the monitoring of the documentation flow with other states. This digital system allows for electronic registering and monitoring of progress of extraditions. The data available includes, amongst other, the following: date of the request, status of the request, requested information, id the case is urgent, contact point, facts, related-crimes, deadlines, jurisdiction, etc.

528. Although the final decision/execution of the extradition requires a request via diplomatic channels, as in case of MLA; according to article 9 of the Extradition Law, the arrest of the requested person for the purpose of the extradition can be made even before the arrival of the request via diplomatic channels if the request has arrived by other direct channels (e.g. Interpol). There are no formal prioritization mechanisms; nevertheless, where the requesting party indicates a matter of urgency, the case will be given a priority.

529. ***39.1 (c)*** - Andorra does not place unreasonable or unduly restrictive conditions on the execution of requests. The Qualified Law on Extradition provides restrictive provisions which limit the execution of extradition on a number of grounds, such as: i) possession of Andorran nationality, ii) where there are serious reasons to believe that extradition demand was caused by a violation of

[149] *Punishable* in this context include punishment of imprisonment or with a security measure which, applied in its highest degree, is equal to or higher than one year of imprisonment; or when a sentence to imprisonment has been pronounced or a security measure has been imposed in the territory of the requesting State, with a duration of at least four months.

common law; iii) when extradition is requested as a result of military violations that do not constitute violations of common law, iv) when the law of the requesting State punishes the act for which the extradition is requested with death penalty and does not provide necessary guarantees that death penalty will not be issued. All these restrictions are based on internationally accepted criteria and mostly derive directly from the European Convention on Extradition.

530. ***Criterion 39.2*** – ***(a)*** Andorran legislation does not permit extradition of persons with Andorran nationality. The country has made a declaration on that matter to the European Convention on Extradition, stating that the term "national" means *any person having the Andorran nationality at the time of the commission of the facts in accordance with the provisions of the Qualified Law on Extradition on Andorran nationality.*

531. ***39.2 (b)*** Andorran judicial authorities may commence criminal proceedings against any person responsible for criminal infraction if the person/suspect cannot be extradited because of Andorran nationality. However, the institution of criminal proceedings due to impossibility to extradite is of a discretionary nature and is not applied in all cases. Moreover, the AML/CFT Act also provides that in the absence of a specific international treaty, foreign sentences passed by the criminal courts are not enforceable in Andorra under any circumstances. Petitions for the enforcement of criminal provisions of this type of sentences are not admitted as well. The exception to this are the cases involving the confiscation of the instruments or products located in Andorra while the offences from which they derived were committed abroad. A question arises, therefore, how the authorities are able to ensure serving of a sentence by a person of Andorran nationality (residing in Andorra) convicted by a final judgment of a competent court of another State, with which Andorra does not have a signed treaty on execution of judgments.

532. ***Criterion 39.3*** - Although dual criminality is an indissoluble requirement for execution of extradition requests, there is nothing in the Andorran legislation to suggest that crimes must necessarily fall within the same category of offence or have the same terminology. The fact that both countries criminalise the conduct underlying the offence is sufficient to consider the dual criminality requirement as satisfied.

533. ***Criterion 39.4*** – Article 9 of the Andorran Qualified Law on Extradition provides that the detention of the requested person for the purpose of the extradition can be made even before the arrival of the request via diplomatic channels if the request has arrived by other direct channels (e.g. Interpol). Moreover, although the requests usually have to pass through diplomatic channels, which may pose undue and unnecessary delays for timely execution of extradition, in the case of urgency, prior to the request for extradition and upon consultation with the Public Prosecutor's Office, the competent authority of the requesting state may require the provisional arrest of the wanted person. In addition, Article 27 of the AML/CFT Act provides a way to expedite the extradition procedure in urgent cases, i.e. sending directly a copy of the extradition request to the Public Prosecutor's Office together with the useful elements for the proceedings that are to be brought. Moreover, based on Article 16 of the Qualified Law on Extradition, where a person consenting to extradition waives formal extradition proceedings, extradition is executed via a simplified procedure.

Weighting and Conclusion

534. Andorra has relevant legislative grounds for proper execution of extradition. There are no unduly restrictive conditions for the execution of requests to hinder or limit the execution of extradition requests. Andorran legislation does not permit extradition of persons with Andorran nationality. While this is not an unreasonable restriction, the Andorran legislation prohibits enforcement of foreign sentences in the absence of specific agreements/international treaties signed/ratified by Andorra, which may cause concerns, especially given that Andorra is not a party

to a number of international treaties that envisage enforcement of foreign criminal judgments. There are simplified procedures specified in the domestic legislation and, although the requests usually have to pass through diplomatic channels, copies of extradition requests may be sent directly to the competent authorities in matters of urgency. **Andorra is rated largely compliant for R.39.**

Recommendation 40 – Other forms of international cooperation

535. In the 4th round MER, Andorra was rated LC for the Recommendation 40. The underlying factors for overall conformity were, *inter alia,* the inability to cooperate as fully as possible at an international level due to the lack of machinery to detect cross-border transportation of currency or BNIs, also, the legislative framework in place did not seem to cover correctly the exchange of information and international co-operation with foreign supervisory authorities in matters of insurance (non-banking entities).

536. ***Criterion 40.1*** - Andorran legislation envisages grounds for provision of a wide range of international assistance among competent authorities in relation to ML, associated predicate offences and terrorist financing. The legal assistance is usually provided upon request; however exchange of information is also possible spontaneously.

UIFAND

537. The AML/CFT Act (Article 55) enables international cooperation of the UIFAND with its foreign counterparts. The co-operation is available even in the absence of a MoU. The UIFAND can exchange information on transactions, or projects for transactions related to ML and on predicate crime (which usually features cross border elements). The cooperation also includes exchange of extracts from the register of previous convictions. The UIFAND provides such information upon request of the foreign counterparts under condition that certain criteria are met. Any request for information made by the UIFAND to other equivalent foreign authorities, and vice versa, must be accompanied by a brief exposition of the relevant facts. The application must indicate how the information requested will be used.

538. In addition, according to article 56 of the AML/CFT Act, the UIFAND may refuse to disclose information that could jeopardise an on-going criminal investigation in Andorra or, in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of Andorran natural or legal person or would otherwise breach the fundamental principles of Andorran law.

539. Authorities advised that an average response time was 20 days in 2013, 25 days in 2014 and 33 days in 2015.

The INAF

540. As the prudential financial supervisor, in the exercise of international cooperation attributed by Law 10/2013, the INAF is able to cooperate, establish relations and/or collaboration agreements with international official bodies and with foreign authorities competent in matters of: (i) regulation of the financial system; (ii) authorisation and registration; or (iii) supervision and/or control of persons under supervision - in order to ensure enforcement of legislation of the financial system, legislation regulating securities, derivatives and other financial instrument markets, or other relevant legislation. The INAF is entitled to carry out a wide range of co-operation, provide assistance and exchange information, in accordance with the relevant legislation, and is part of a comprehensive network of bilateral and multilateral agreements to facilitate international cooperation with a wide range of foreign counterparts. The INAF is signatory of the IOSCO MMoU since 2013.

International cooperation of the Customs Department

541. The Customs Department supplies information to the WCO's CEN database, which encloses anonymous information on the activities of the various customs services which can be analysed on an international scale. Moreover, Andorra co-operates with international counterparts in the EU on customs-related matters based on the Customs Union Agreement of 28 June 1990. Andorra has also signed agreements in customs-related matters, which provide for the communication and exchange of information obtained through customs operations.

Law Enforcement authorities

542. The law-enforcement authorities most commonly cooperate with foreign LEAs through Interpol channels. The international cooperation is exchanged via Interpol I-24/7, is considered as a rapid and secure communication system. AML/CFT Act, in its Article 40 also refer to some special forms of police cooperation. Agreements of cooperation have been signed with Spanish and French police authorities.

543. ***Criterion 40.2 (a)*** - The competent authorities of Andorra have the legal basis to provide international cooperation.

544. The AML/CFT Act (Articles 55-56) and the AML/CFT Regulations (Article 25) regulate international cooperation by the UIFAND.

545. Andorra is also a party to a number of international treaties, bilateral and multilateral agreements and other instruments that regulate international cooperation between competent authorities in different fields (see criterion 40.1).

546. ***40.2 (b)*** - The use of the most efficient ways of co-operation by the authorities can be impaired by the engagement of diplomatic channels for the purpose of execution of MLA requests, since that can add at least a couple of additional days. Otherwise, the authorities tend to use effective means to co-operate.

547. ***40.2 (c)*** - The competent authorities use clear and secure gateways, mechanism or channels for the transmission and execution of requests.

548. Although there are no limitations in the law, the UIFAND exchanges information through the Egmont Secure Web.

549. LEAs use secure channels such as the Interpol network.

550. ***40.2 (d)*** - Andorra does not have a clear process for the prioritisation of requests. However, the authorities advised that the country had never received any negative feedback from any foreign counterpart regarding undue delay in the responses. Although the authorities have measures to deal with cases of urgency, the evaluators are of the view that the absence of proper prioritisation may hinder the process of timely execution of requests.

551. ***40.2 (e)*** - Access to judicial information can be safeguarded if the judge issues a resolution dictating a *sub judice* secret (by virtue of Article 46 of the CPC). The information of the UIFAND is always maintained confidential and can only be disseminated to the competent authorities defined in the law (i.e. Courts/Prosecutors). Information received from foreign bodies can only be disseminated with prior authorization.

552. ***Criterion 40.3*** - Competent authorities have comprehensive agreements to facilitate co-operation with foreign counterparts. However, the international cooperation is not limited to being provided under bilateral or multilateral treaties only. The UIFAND has signed several MoUs with other FIUs, and Andorra has signed multilateral treaties that envisage provisions regarding appropriate exchange of information.

553. ***Criterion 40.4*** - Being a member of the Egmont Group, the UIFAND provides feedback when required in accordance with Clause 19 of the Egmont Principles for Information Exchange. Also, the legislation provided does not include any limitations that would hinder the provision of feedback on the use and usefulness of information obtained through cooperation by the competent authorities.

554. ***Criterion 40.5 – (a)*** As indicated above, the Law 3/2009 provides legal basis for the exchange of information for tax purposes. Under this law Andorra has signed and ratified 24 Tax information exchange agreements by March 2017. In addition, the OECD and the Council of Europe Convention on Mutual Administrative Assistance in Tax Matters entered into force in December 2016 (currently 111 jurisdictions participate in the Convention) endorsing the OECD Declaration on Automatic Exchange of Information and adopting all the required legal instruments to implement the new standard by 1 January 2017. Law 19/2016, of AEOI entered into force the 1st January 2017 and allows Andorra to undertake AEOI to all EU Member States and other jurisdictions on the grounds of the OECD Standard. Moreover Andorra has also signed and ratified 5 Agreements for the Avoidance of Double Taxation and has signed 2 more that are pending to be ratified.

555. All the exchange of information agreements concluded by Andorra provide for exchange of information in both civil and criminal tax matters.

556. ***40.5 (b)*** - The authorities advised that the UIFAND and the courts were not limited to share any information with foreign counterparts due to confidentiality or secrecy reasons. Provision of information is not to be refused based on professional secrecy.

557. ***40.5 (d)*** - Andorran legal system ensures cooperation with foreign counterparts, without posing any restrictive conditions regarding the nature or status of such counterparts.

558. ***Criterion 40.6*** - According to the information provided, the UIFAND requests information for intelligence use only, and it is not disseminated to any third party without the prior authorisation of the country providing the information. The information delivered by the INAF can only be used by the receiving authority or body for the specific purpose for which the information has been communicated to, while the authority concerned must be able to guarantee that it will be put to no other use. The INAF can only use the confidential information obtained by virtue of Article 4 of Law 10/2013 in the exercise of its functions or in relation to administrative or judicial procedures related to them or to criminal procedures. The Police Department co-operates under the conditions set out in the INTERPOL's regulations. Use of information of the Customs Department is coordinated under the WCO's regulations. Moreover, as enshrined in the 4th round MER, some MoUs also contain provisions on the confidential nature of information, which is subject to the general requirement of professional confidentiality and cannot be used for purposes other than those set out in a request, except where the law provides otherwise (see e.g. paragraph 878 of the 4th round report). The authorities advised that in accordance with the general principle of international judicial cooperation, the information provided by foreign counterparts to Andorran authorities should only be used for the purpose it was requested for and by the particular process in which it was requested. This general principle is established in some international instruments that Andorra has signed and ratified.

559. ***Criterion 40.7*** - Article 22 of the AML/CFT Act provides that the information and documents in possession or sent by the UIFAND in the exercise of its duties are strictly confidential. Any authority or officer who has access to such information and documents due their position or duty is obligated to keep it confidential. The members of the INAF are bound by the duty to preserve secrecy in the exercise of their functions and professional activities even after their cessation or dismissal, in accordance with the INAF Act. A breach of such duty constitutes a crime envisaged by the provisions of the CC. The members of the Customs Department are obliged to professional secrecy in accordance with Article 4 of the Customs Code. The Police Department are bound by the Qualified

Law of the Police to keep secret all the information gathered in the exercise of their functions. The infringement of the duty of confidentiality is considered as a serious infringement by Article 97 of the said Law. Furthermore, Article 46 of the CPC establishes the possibility for the judge to declare (ex parte and at the proposal of the Public Prosecutor or of any of the parties to the case) the secrecy of all or part of the proceedings. This measure can be applied for a maximum period of 6 months.

560. ***Criterion 40.8*** - The Andorran legal system does not include any limitations for the competent authorities to be able to conduct inquiries on behalf of their foreign counterparts, and to exchange with them all information that would be obtainable if such inquiries were carried out domestically.

561. ***Criterion 40.9*** - Article 55 of the AML/CFT Act enables the UIFAND to cooperate with its international counterparts without requiring any MoU to be signed with them. Furthermore, article 56 of the same act enables the UIFAND to both answer request as well as disclosing information spontaneously related to ML or international crimes to equivalent foreign bodies. Finally, article 25 allows the UIFAND to independently sign MoUs with equivalent foreign organizations. Nevertheless, given that tax related offences and smuggling (except tobacco) are not criminalised in Andorra, the UIFAND cannot share information regarding exclusively to tax related cases or to cases exclusively related to smuggling of goods (except tobacco). There are no limitations in the Andorran legal system to suggest that the UIFAND may refuse a request for assistance on the sole ground that the offence is also considered to involve fiscal matters.

562. ***Criterion 40.10*** - There is no legal limitation for the UIFAND to provide feedback to their foreign counterparts about the usefulness of the information obtained both spontaneously or on request. Andorra provided feedback previously on a case by case basis. Such measures are also stipulated by the Egmont principles for information exchange, applying to the UIFAND as an Egmont Group member.

563. ***Criterion 40.11*** - The UIFAND can exchange all the information that it can access to or obtain (please also refer to c.29.3). The only limitation set by Andorran AML/CFT legal framework is set into the Article 56(3) of the AML/CFT Act authorizing the UIFAND to refuse to disclose information that could compromise an ongoing criminal investigation in their country. Such limitation is recognized by the Egmont principles for information exchange.

564. ***Criterion 40.12 –*** Article 53(2) (g) of the AML/CFT Act gives the UIFAND the following function: cooperation with equivalent foreign bodies. Furthermore, article 55 of the AML/CFT Act empowers the UIFAND to cooperate with foreign authorities with analogous functions regardless of their respective nature or status, including any AML/CFT supervisory body. If the foreign AML/CFT supervisory body is also the prudential supervisory body, then information could be exchanged by the UIFAND through the INAF. In those cases where the foreign AML/CFT supervisory body is the FIU, then information can be exchanged directly.

565. Legal provisions for international cooperation are provided for in articles 4(4) and 20 of the Law 10/2013. This law empowers the INAF to cooperate and establish cooperation agreements with other international official bodies and with other relevant foreign authorities. The focus of these provisions is prudential supervision rather than exchange of information for AML/CFT purpose. Nonetheless, the authorities have advised that MoUs between the INAF and other foreign competent supervisory authorities contain express provisions on the exchange of information for AML/CFT.

566. In 2013, the INAF joined IOSCO and signed its MMoU concerning Consultation and Cooperation and the Exchange of Information. This formalised reciprocal cooperation, assistance and exchange of information with the regulatory and supervisory authorities of markets around the world for the purposes of regulating and supervising securities markets at an international level.

567. The INAF is not empowered to exchange information with regards to the insurance sector, as the Ministry of Finance still regulates and supervisors that sector. Nonetheless, some of the bilateral or multilateral agreements for international cooperation signed by the INAF contemplate insurance activities; therefore, in application of article 4 of Law 10/2013, the Ministry of Finance could ask the INAF for cooperation and the INAF, on behalf of the Ministry, could approach the foreign counterpart of the Ministry if the INAF had a bilateral or multilateral agreement with that counterparty. Otherwise, the Ministry does not have a basis for providing cooperation.

568. ***Criterion 40.13*** **–** Article 53(2) of the AML/CFT Act empowers the UIFAND to obtain all kind of information from reporting entities to perform its functions, which includes supervisory duties. This information can be shared with any foreign counterpart (which includes foreign supervisory bodies) as provided by Article 55 of the AML/CFT Act.

569. A prominent feature of the Law 10/2013 is the INAF's authority to obtain information, including personal data, on any individual or legal entity in the exercise of its functions, stipulated in article 4. The legislative provisions stated above do not contain any limitations as to the type of information the INAF would be able to exchange with foreign counterparts, though their prudential scope has been considered under c.40.12.

570. The Ministry of Finance does not have a basis for providing cooperation.

571. ***Criterion 40.14*** **–** Article 55 of the AML/CFT Act sets out that the UIFAND co-operates with equivalent bodies for any purposes related to AML/CFT matters. The Law provides no limitations regarding the type of information that can be exchanged.

572. As noted under c.40.12, legal provisions in articles 4 and 20 of the Law 10/2013 empower the INAF to cooperate and establish cooperation agreements with other international official bodies and with other foreign authorities. This includes the exchange of information on regulatory, prudential and AML/CFT matters, including personal data, and co-operation in the context of investigations or inspections, provided that the requirements established in article 20 of Law 10/2013 are met.

573. The Ministry of Finance does not have a basis for providing cooperation.

574. ***Criterion 40.15*** **–** The UIFAND, in its capacity as the AML/CFT supervisor, is able to conduct inquiries on behalf of foreign counterparts and share the outcomes with the requesting authority. It is able to authorise, or facilitate, foreign counterparts conducting inquiries themselves in the country.

575. The INAF can conduct inquiries of supervised entities and provide information requested by financial supervisors pursuant to article 4 of the Law 10/2013, where functions and competences of the INAF are specified, and article 20 of Law 10/2013, where the terms of international cooperation are reflected. In particular, article 20(5) allows the INAF personnel's to be accompanied by personnel from the requesting authority when carrying out an onsite inspection or investigation, where this is provided for in a MoU between the two authorities.

576. Ministry of Finance does not have a basis for providing cooperation.

577. ***Criterion 40.16*** **–** General confidentiality provisions as established under article 22 of the AML/CFT Regulations apply to the UIFAND, though these do not explicitly address the matters listed under c.40.16.

578. Pursuant to article 20(1) (f) of Law 10/2013, when confidential information requested has been obtained by the INAF from other national or foreign authorities or bodies, this confidential information cannot be supplied by the INAF to a requesting authority or body without the prior written consent of the national or foreign authority or body which has delivered it to the INAF in the

first place (without prejudice to the release of this information being imposed by current legal provisions). When necessary, the INAF can only exchange this information in accordance with the limitations established by the national or foreign authority or body from which the INAF obtained the information initially.

579. In addition, article 19(4) of Law 10/2013 (duty of secrecy) states that, in a case that the information to be delivered has been obtained from other authorities in the context of cooperation between these authorities and the INAF, in no case can the information be delivered without the INAF having requested the prior consent of these authorities, without prejudice to the release of this information being imposed by current legal provisions.

580. The Ministry of Finance does not have a basis for providing cooperation.

Exchange of information between law enforcement authorities

581. ***Criterion 40.17*** **-** LEAs may exchange domestically available information with foreign counterparts (intelligence information) - both spontaneous or upon request and regular exchange through judiciary. The exchange is executed mainly through the Interpol's national central bureau. However, with regard to identification and tracing of the proceeds and instrumentalities of crime[150], this information can be provided but the legislation does not allow the Police Department or the Public Prosecutor's Office to identify bank accounts and/or real estate property without a prior approval by the competent court (Article 87 (4), (5) of the CPC). Once the information on bank accounts is requested, the decision of the judicial authority of the requesting state must be attached to the rogatory letter. Then the request is executed by the competent court, *without prejudice to the preservation of banking secret* (Article 32, 33 of the AML/CFT Act)[151] which means that the information should be used by the requesting party for the purpose it was requested for on the basis of the speciality principle applicable in international cooperation. Therefore, LEAs cannot provide banking information to foreign counterpart without approval of the court, neither the information regarding bank accounts and immovable property can be provided by the ARO.

582. ***Criterion 40.18*** - Police officers can use their power, including any investigative technique available in accordance with the law, in the context of investigations conducted in collaboration with the foreign counterparts (Article 32 of the AML/CFT Act for interception of personal means of communication, Article 40 of the AML/CFT Act in ref. to Article 122 ter and 122 quater of the CPC for controlled deliveries and undercover agents), and with the prior approval of the court. Coordination meetings with foreign judicial authorities have been taking place, some of them organised by EUROJUST.

583. ***Criterion 40.19*** - LEAs are able to conduct joint investigations with foreign counterparts, as there is no provision that would restrict it. The authorities indicated that bilateral agreements existed with some countries. The Police Department has cooperation agreements with the Spanish

[150] Given that predicate offences are mainly committed abroad, the most powerful information to be shared for international cooperation must be financial one.

[151] The secrecy obligation concerning information about the obliged entities' customers may not be argued as grounds to refuse information to the UIFAND. In the event a refusal or an incident occur in the performance of the UIFAND's investigations or in exercising of its competencies, the UIFAND submits the case to the magistrate, who will issue an immediately enforceable ruling, following a hearing with the Public Prosecutor's Office and the interested parties within 48 hours (Article 48 (4) of the AML/CFT Act).

and French authorities, signed on 2 September 2015 and 19 February 2014, respectively. The agreement with France already contemplated the development of joint investigation groups.

584. ***Criterion 40.20*** - The Andorran authorities advised that the exchange of information between non-counterparts was permitted. For instance, the MoU signed between the INAF and the UIFAND allows exchange of information between the INAF and a foreign supervisor on behalf of the UIFAND, whenever this is clearly permitted by the foreign authority (Article 4 and 20 of Law 10/2013). As detailed under 40.12 some of the bilateral or multilateral agreements for international cooperation signed by the INAF contemplate insurance activities; therefore, in application of article 4 of Law 10/2013, the Ministry of Finance could ask the INAF for cooperation and the INAF, on behalf of the Ministry of Finance, could approach the foreign counterpart of the Ministry of Finance if the INAF had a bilateral or multilateral agreement with that counterparty. Also, the UIFAND has received information from foreign authorities when acting on behalf of the INAF and/or AREB.

Weighting and Conclusion

585. Andorra does not have a clear process for the prioritisation of requests. Certain limitations exist in information exchange between FIUs given that tax crime and smuggling of goods (apart from tobacco) are not criminalised. There are limitations in the Ministry of Finance legal basis for providing cooperation. LEAs and ARO cannot provide banking and immovable property information to foreign counterpart prior to the submission of a formal request. **Andorra is rated largely compliant with R.40.**

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
1. Assessing risks & applying a risk-based approach	**LC**	• The NRA does not include information on the residence of beneficial owners of banks' customers. Data on wire transfers was not uniformly collected. • The authorities do not appear to have proactively reached out to overseas AML/CFT agencies for their insights on the ML and TF threats and vulnerabilities. • No risk assessment to support basis for exemptions in article 49 ter of AML/CFT Act, which may be applied in situations where there is not a proven low risk of ML/TF. • AML/CFT Act has not yet been amended to accommodate NRA findings. • Supervision does not assess implementation of all obligations set out in c.1.10 and 1.11. • No explicit requirements for all FIs and DNFBPs to: (i) identify, assess and understand their ML/TF risks; or (ii) have policies, controls and procedures to mitigate the risks identified.
2. National cooperation and coordination	**PC**	• There is no clear policy and strategy to prevent and fight ML/TF. • PC1 has no clear responsibility allocated for developing national AML/CFT policies. • PC1 is not formally established and its members have not been officially designated by the competent ministries.
3. Money laundering offence	**PC**	• Tax crime and smuggling of goods (apart from tobacco) are not criminalised and thus not predicate offences for ML. • No criminal liability for legal persons.
4. Confiscation and provisional measures	**C**	
5. Terrorist financing offence	**LC**	• Funding of travelling abroad for terrorist purposes is not specifically criminalised, and (in the absence of cases) it is not clear whether the TF offence is sufficient to cover such conducts. • No criminal liability for legal persons. • Limitations exist in the definition of funds and other assets.
6. Targeted financial sanctions related to terrorism & TF	**LC**	• Limitations exist in the definition of funds and other assets.
7. Targeted financial sanctions related to proliferation	**C**	
8. Non-profit organisations	**PC**	• The mapping exercise of the NPO sector (conducted within the framework of the NRA) appears to be limited in scope. • Neither specific outreach (outside of the NRA workshops), nor specific educational programs have been carried out to raise and deepen awareness among NPOs about the potential vulnerabilities to TF abuse and TF risks. • No specific work with NPOs to develop and refine best practices to address TF risk and vulnerabilities has been undertaken. • No specific measures have been taken to encourage NPOs to use regulated financial channel. • No steps taken to promote effective supervision and monitoring of NPOs at risk of TF abuse.

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		• There is no mandatory monitoring of associations; monitoring of foundations does not encompass risk-based measures applied and is not directly related to compliance with the requirements of R.8. • There is no effective co-operation, co-ordination and information-sharing among appropriate authorities or organisations that hold relevant information on NPO.
9. Financial institution secrecy laws	**LC**	• No explicit provisions allowing information to be exchanged between FIs.
10. Customer due diligence	**LC**	• No requirement to verify that any person acting on behalf of a customer who is an individual is authorised, or to verify the identity of that person. • Requirement to review existing records refers only to transactions. • No specific requirement to apply CDD measures to beneficiary of insurance policy, to consider beneficiary of life insurance policy as relevant risk factor or to manage ML/TF risk in case of life assurance policy where verification of identity is delayed. • No requirement to adopt risk management procedures concerning conditions under which customer may use business relationship prior to verification of identity. • Requirements to undertake CDD still apply when there is a risk of tipping-off.
11. Record keeping	**LC**	• Insurance companies and two foreign post offices are not required to keep records obtained through CDD measures, account files, business correspondence and results of analysis undertaken. Other FIs are required to keep "operational records".
12. Politically exposed persons	**PC**	• Senior management is not required to approve continuing relationships with foreign PEPs. • The definition for PEP does not include important political party officials. • No requirement to apply ECDD to domestic PEPs or persons holding prominent function in international organisation. • No requirement to determine whether beneficiaries (and beneficial owners) of life assurance policies are PEPs.
13. Correspondent banking	**LC**	• No requirement to determine if a respondent institution has been subject to a ML/TF investigation or regulatory action. • FIs are not required to clearly understand respective responsibilities. • The definition of "shell bank" does not fully align with the definition in the FATF glossary.
14. Money or value transfer services	**LC**	• One MVTS provider is not required to be licensed or registered to provide financial services in Andorra. • MVTS operators that use agents are not required to include agents in their AML/CFT programmes and monitor them for compliance with these programmes.
15. New technologies	**PC**	• No general requirement to assess ML/TF risks that arise in relation to development of new products and new business practices including delivery mechanisms. • No requirement to conduct risk assessments prior to launch of new products, practices and technologies, nor to take appropriate measures to manage and mitigate risks identified in relation to

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		their development.
16. Wire transfers	**PC**	• No requirements covering beneficiary information.
17. Reliance on third parties	**LC**	• No requirement to immediately obtain information on nature and purpose of business relationship. • Documents to identify and verify identity must be made available in the "shortest possible time" rather than "without delay". • No requirement to check that third party is supervised or monitored for compliance with obligations. • No requirement for third parties to be supervised at group level by a competent authority.
18. Internal controls and foreign branches and subsidiaries	**LC**	• Policies, procedures and controls need not have regard to the size of a business. • It is not clear that group policies and procedures address the management of ML/TF risk at group level.
19. Higher-risk countries	**C**	
20. Reporting of suspicious transaction	**LC**	• Shortcoming in criminalisation of ML offence - tax crime and smuggling of goods (apart from tobacco) are not criminalised.
21. Tipping-off and confidentiality	**LC**	• Article 47(5) of the AML/CFT Act does not specify that the protection envisaged under c.21.1 should apply only where a report is made in good faith.
22. DNFBPs: Customer due diligence	**PC**	• See R.10, to R.12, R.15 and R.17. • Requirement dealing with failure to satisfactorily complete CDD does not apply to DNFBPs.
23. DNFBPs: Other measures	**PC**	• See R.18, R.20 and R.21. • DNFBPs not required to implement group-wide programmes against ML/TF. • DNFBPs are not required to ensure that branches and subsidiaries apply AML/CFT requirements.
24. Transparency and beneficial ownership of legal persons	**LC**	• Restriction placed on direct public access to basic information held at Companies Registry and no requirement for registers of members to be maintained within country. • No mechanism to check accuracy of basic information or that updated on a timely basis, or requirement for change in ownership to be recorded in public deed on a timely basis. • Not clear that record-keeping requirements cover beneficial ownership information or survive dissolution. • Not all requirements in Companies Act backed by a sanction. • Legislation does not permit LEAs to set deadlines for information to provided, so access may not be timely.
25. Transparency and beneficial ownership of legal arrangements	**PC**	• No obligation placed on trustee (or equivalent person in similar legal arrangement) to declare status when forming a business relationship or carrying out an occasional transaction. • Trustees prevented by duty of secrecy from providing information on beneficial ownership and assets to FIs and DNFBPs. • Sanctions cannot be applied to a non-professional trustee. • Legislation does not permit LEAs to set deadlines for information to provided, so access may not be timely.
26. Regulation and supervision of	**PC**	• Supervisors do not have a direct power to: (i) remove a particular

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
financial institutions		shareholder or to freeze a particular shareholder's rights; or (ii) permanently remove a director or senior manager from their post (except in the case of a bank). • Two foreign post offices are not licenced to provide financial services. • Essential criterion 5 of principle 6 of BCP is not met and consolidated group AML/CFT supervision of operative entities is quite limited. • Not all relevant IAIS Principles are applied. • The frequency and intensity of on-site supervisory inspections is not truly risk-based. • Information not provided on how NRA will influence the UIFAND supervisory approach. Prior to NRA, no overall country risk assessment.
27. Powers of supervisors	**LC**	• The UIFAND does not have a clear and unambiguous power to compel the production of information and documents. • See R.35.
28. Regulation and supervision of DNFBPs	**PC**	• Limited off-site supervisory mechanism. • There is no register of DNFBPs so it is not possible for the UIFAND to identify when DNFBPs have been established (or operations terminated) and should be subject to its supervision. • There are gaps in the application of measures to prevent criminals from holding significant or controlling interests, or holding management functions in DNFBPs. • Supervision carried out on a limited risk sensitive basis. • Not clear how supervision protocol takes account of diversity and number of DNFBPs, or adequacy of internal controls, policies and procedures.
29. Financial intelligence units	**LC**	• No explicit and specific internal rules are provided to govern security, confidentiality and the handling of information within the UIFAND.
30. Responsibilities of law enforcement and investigative authorities	**C**	
31. Powers of law enforcement and investigative authorities	**PC**	• Article 46 of the CPC obliges judges to notify the perpetrator about the on-going criminal investigation against him, if that person queries about it. This may affect the process to identify assets. • The mechanisms in place to identify whether natural or legal persons hold or control accounts does not guarantee a *timely* identification process, given LEAs do not have the legal possibility to effectively impose deadlines for the responses. • The possibility to identify if a *legal* person holds or controls accounts is seriously affected by the lack of criminal liability for legal persons.
32. Cash couriers	**PC**	• The existing sanctions for a false declaration or disclosure are not proportionate and dissuasive. • The Customs Department is not able to stop or restrain currency and BNI (as required by c.32.8).
33. Statistics	**LC**	• Lack of comprehensive aggregated statistics on ML investigations, and the amount of property seized and confiscated.

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
34. Guidance and feedback	**PC**	• Number of ML risk factors not addressed by authorities through guidance. • Lack of "aggregated feedback" on findings from on-site supervisory visits and external reviews by auditors.
35. Sanctions	**LC**	• More limited range of sanctions could be applied to two foreign post offices.
36. International instruments	**PC**	• Andorra has not signed the UNCAC. • A number of shortcomings remain with regard to the implementation of the Vienna and Palermo Conventions.
37. Mutual legal assistance	**LC**	• There is no clear process for prioritisation of requests • The lack of criminalisation of tax crime and smuggling of goods (apart from tobacco) could impair the possibility of rendering MLA, especially in the light of the dual criminality requirement.
38. Mutual legal assistance: freezing and confiscation	**LC**	• Sharing of confiscated assets is only possible, where there is an international obligation in place. Until now, Andorra has signed only one agreement on asset sharing.
39. Extradition	**LC**	• The legislation prohibits enforcement of foreign sentences in the absence of specific agreements/international treaties signed/ratified by Andorra. • The execution of the extradition requires a request via diplomatic channels.
40. Other forms of international cooperation	**LC**	• There is no clear process for prioritisation of requests. • Certain limitations exist in information exchange between FIUs given that tax crime and smuggling of goods (apart from tobacco) are not criminalised. • There are limitations in the insurance supervisor's legal basis for providing cooperation. • LEAs and ARO cannot provide banking and immovable property information to foreign counterpart prior to the submission of a formal request.

GLOSSARY OF ACRONYMS

ABA	Andorran Banking Association (*Associació de Bancs Andorrans*)
AML	Anti-money laundering
AML/CFT Act	Law on international cooperation in criminal matters and the fight against money laundering and the financing of terrorism 29 December 2000, as amended
AML/CFT Regulations	Regulation made under the AML/CFT Act, as amended
Andorra	Principality of Andorra
AEOI	Automatic exchange of information
AREB	*Agència Estatal de Resolució d'Entitats Bancàries*
ARO	Asset Recovery Office
Batllia	*Batllia d'Andorra*
BNI	Bearer negotiable instrument
CARIN	Camden Asset Recovery Interagency Network
CC	Law 9/2005 of 21 February of the Penal Code, as amended
CDD	Customer due diligence
CETS 198 (also known as Warsaw Convention)	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism
CFT	Countering the financing of terrorism
Companies Act	Law 20/2007 of 18 October on public limited companies and limited liability companies, as amended
CPC	Code of Criminal Procedure of 10 December 1998, as amended
CPF	Countering PF
CSP	Corporate service provider
Customs Department	*Duana d'Andorra*
Disciplinary Law	Law Regulating the financial system's disciplinary regime, of 27 November 1997 – as amended
DNFBP	Designated non-financial business and profession
Professional Association of Andorran Real Estate Agents	*Col.legi Professional d'Agents i Gestors Immobiliaris d'Andorra*
EU	European Union
EUR	euro
European Convention on MA	European Convention on Mutual Assistance in Criminal Matters
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial Intelligence Unit
FinCEN	US Financial Crimes Enforcement Network
Foreign Investment Act	Law 10/2012 of 21 June on foreign investment in the Principality of Andorra
Foundations Regulations	Regulation of the Foundations Registry and Protectorate of 1 April 2009
Gambling Law	Act 37/2014 of 11 December on the regulation of gambling
GDP	Gross domestic product
IAIS	International Association of Insurance Supervisors
IberRed	*La Red Iberoamericana de Cooperación Jurídica Internacional*
The INAF	*Institut Nacional Andorrà de Finances*
Insurance Law	Law of the Actions of Insurance Companies of 11 May 1989, as amended
Interpol	International Criminal Police Organisation

IO.	Immediate outcome
IOSCO	International Organisation of Securities Commissions
IT	Information technology
JAMB	Judicial Asset Management Bureau
Law 10/2013	Law 10/2013 of 23 May on the Andorran National Institute of Finance
Law 35/2010	Law 35/2010 of 3 June on the regime of authorisation for the creation of new bodies operating within the Andorran financial system, as amended
Law 7/2013	Law 7/2013 of 9 May on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra
Law 8/2013	Law 8/2013 on the organisational requirements and terms of operation of operating entities of the financial system, protection of investors, market abuse and financial guarantee agreements
Law on Associations	Law of associations 29 December 2000
Law on Foundations	Law 11/2008 of 12 June on foundations
LEA	Law enforcement authority
MER	Mutual evaluation report
ML	Money laundering
MLA	Mutual legal assistance
MMoU	Multilateral memorandum of understanding
MoU	Memorandum of understanding
MVTS	Money or value transfer service
MEQ	Mutual evaluation questionnaire
NCBC	Non-conviction based confiscation
NPO	Non-profit organisation
NRA	National risk assessment
OECD	Organisation for Economic Co-operation and Development
Palermo Convention	UN Convention Against Transnational Organised Crime
PC1	Permanent committee on the Prevention of ML/TF
PC2	Permanent committee for the prevention and fight against terrorism and its financing and the proliferation of weapons of mass destruction and its financing
PEP	Politically exposed person
PF	Financing of proliferation of weapons of mass destruction
Police Department	*Unitat d'Investigació Criminal Especialitzada 2*
Public Prosecutor's Office	*Fiscalia General d'Andorra*
R.	Recommendation
SAR	Suspicious activity report (including a suspicious transaction report)
SR.	Special Recommendation
Strasbourg Convention	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
Technical Annex	Technical compliance Annex
TC	Technical communiqué
TF	Financing of terrorism
TF Convention	International Convention for Suppression of the Financing of Terrorism
TFS	Targeted financial sanctions
The UIFAND	*Unitat d'Intel·ligència Financera d'Andorra*
UN	United Nations
UNCAC (also known as Merida Convention)	UN Convention against Corruption
UNSC	UN Security Council
UNSCR	UN Security Council Resolution

US	United States
USD	US dollars
Vienna Convention	UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
WCO	World Customs Organization

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Anti-money laundering and counter-terrorist financing measures

Andorra

Fifth Round Mutual Evaluation Report

This report provides a summary of the AML/CFT measures in place in Andorra as at the date of the on-site visit (6 to 18 March 2017). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Andorra's AML/CFT system, and provides recommendations on how the system could be strengthened.