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

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Report on Fourth Assessment Visit – *Summary*

Anti-Money Laundering and Combating the Financing of Terrorism

ANDORRA

8 March 2012

The Principality of Andorra is a member of MONEYVAL. This evaluation was conducted by MONEYVAL and the report on the 4th Assessment Visit on Andorra was adopted at its 38th Plenary meeting (Strasbourg, 5 - 9 March 2012).

LIST OF ACRONYMS USED

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

SUMMARY

General information

This report summarises the principal AML/CFT measures that were in place in Andorra at the time of the 4th on-site evaluation visit (20 to 26 March 2011) or immediately thereafter. It describes and analyses these measures and makes recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th round of assessments is a follow-up round, in which core and key FATF Recommendations have been re-assessed, as well as those for which Andorra received non-compliant (NC) or partially compliant (PC) ratings in the 3rd round report. This report is therefore not a full assessment of implementation of the 40+9 FATF Recommendations, but is intended to update readers on major issues in Andorra's AML/CFT system.

Key findings

- This is the 4th mutual evaluation report on Andorra by MONEYVAL. Since the last assessment the Andorran Government has adopted an AML/CFT action plan (in 2007), which resulted in a series of tangible measures as from 2008. Among the main new developments mention can be made in particular of: (1) amendment of the AML/CFT legislation and regulations (in particular the Act on international criminal co-operation and the fight against the laundering of money or securities deriving from international delinquency - the LCPI - and its implementing regulation - the RLCPI), resulting in undeniable improvements to the AML/CFT preventive system; (2) changes to criminal law concerning the offences of laundering and terrorism financing; (3) adoption of new legislation governing the Andorran financial system; (4) adoption of new legislation governing legal persons and foundations; (5) an active commitment at the international level through the ratification of the relevant international conventions in AML/CFT matters and of bilateral agreements on the exchange of tax information; (6) reinforced tasks and responsibilities for the Andorran FIU so as to consolidate its pivotal role within the Andorran AML/CFT system; (7) the establishment of a Standing Committee on Money Laundering and Terrorism Financing.

- The changes made to Andorra's legislation and regulations, and more generally the AML/CFT system, are largely based on the provisions of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and seek to implement the recommendations made in the previous evaluation round and to improve implementation of the FATF Requirements.

- The authorities, with whom the issue was raised, consider that the AML/CFT risks identified, on the basis of an analysis of the results of judicial proceedings, primarily concern use of the financial system to launder the proceeds of offences perpetrated abroad and that the risk arising from domestic crime is low. The most frequent predicate offence of laundering is still drug trafficking, followed by fraud and corruption. The terrorist financing risk is considered to be low, although the authorities are aware of the exposure arising from the geographical location of Andorra and the proximity of regional terrorist movements, combined with the potential attractiveness of the Andorran financial services centre. A global, in-depth analysis of money laundering and terrorism financing risks at national level should be carried out so as to identify the existing risks and weaknesses and sectors potentially at risk and to be in a position to take the appropriate steps.

- The new offences of money laundering and terrorism financing are partially compliant with the FATF standards. The system permitting the freezing, seizure or confiscation of the proceeds of crime is solidly based in law, with some minor deficiencies, and the growing number and scale of confiscations indicates a growing awareness of the financial aspects. Despite the increase in the number of laundering convictions, there are still some problems of effectiveness, as shown by the

significant difference between the numbers of prosecutions and convictions. No prosecution has been brought for terrorism financing.

- To date Andorra has not adopted a full statutory basis for freezing assets linked to terrorism in accordance with the United Nations Security Council resolutions.

- A number of positive developments have been noted regarding the legislative framework and the action taken by the Andorran FIU, including as regards its new terrorism financing role, its broader responsibilities and the efforts made to be more active vis-à-vis the private sector. However, it has insufficient human and technical resources at its disposal, which seriously affects the performance of its tasks.

- Overall, the AML/CFT prevention system has been reinforced, in particular regarding requirements for: customer due diligence, politically exposed persons, correspondent banking relationships, measures relating to new technology, professional confidentiality, record keeping, the obligation to report suspicions concerning terrorism financing, wire transfers, internal control and shell banks. The new legislation introduces rules allowing a risk-based approach and concerning reliance on third parties and business generators. Nonetheless, there are still a number of deficiencies and the implementation of supervision of the effective application of the AML/CFT machinery by financial institutions and designated non-financial businesses and professions (DNFBPs) raises real concerns, even if no sanctions have been imposed.

- The international co-operation system and practice appear sound and effective, although there are some deficiencies regarding the exchange of information and co-operation with foreign supervisory authorities in matters of insurance (non-banking entities) and DNFBPs. Andorra is able to offer a broad range of judicial assistance measures and the authorities' attitude is flexible and constructive.

Legal system and related institutional measures

1. Although Andorra has modified the money laundering offence (Act No. 15/2008 of 3 October 2008), the new article 409 of the Criminal Code only partly meets the criteria laid down in international conventions. While the laundering offence is fairly broad, it does not cover simply concealing, disguising, possessing or using criminal assets. Although these deficiencies are relatively insignificant, the fact that the predicate offences are unduly limited to serious offences punishable by at least six months' imprisonment (with certain specific exceptions) means that laundering the proceeds of certain categories of designated offences is not in itself an offence, which has a direct impact on the effectiveness of the system, as does the immunity of self-laundering, above all in the transfrontier context. Overall, there were 79 laundering prosecutions between 2006 and 2010, whereas there have only been final convictions in 10 cases, with two acquittals. Four cases involved foreign judgments that were enforced in Andorra, while in six cases the investigation and prosecution were initiated by the Andorran prosecution authorities.

2. Andorra ratified the International Convention for the Suppression of the Financing of Terrorism (CFT) on 12 June 2008 and also ratified the nine conventions listed in the annex to the convention. The terrorism financing offence established by the new articles 366*bis* and *ter* of the Criminal Code represents a significant progress. However, it suffers from a number of technical deficiencies. Firstly, Andorran law introduced an additional restriction by requiring that terrorist acts should be intended to subvert the constitutional system or pose a serious threat to public order and security by means of intimidation and terror. The concept of a terrorist act under Article 2(1) a) of the United Nations Convention is not as restrictive. As a result, the mere fact of financing (and nothing more) an act constituting an offence under one of the treaties appended to the CFT (Article 2.1 a of the CFT) is not covered. In addition, the definition of terrorist acts in Article 362 of the Criminal Code does not include the notion of intimidating a population, or compelling a government or an international organisation to do or to abstain from doing any act. The immunity

of self-financing is also a potential impediment to comprehensive and effective efforts to combat terrorism financing. The combined measures under articles 71 and 366 ter of the Criminal Code with regard to terrorism have the same effects as those that go hand in hand with the criminal liability of legal persons in terms of consequences and penalties, but cannot be deemed to represent the formal introduction of this principle. Some investigations have been launched into suspected terrorism financing as a result of suspicious transaction reports or following international notifications, which shows that the authorities are not inactive in this field, but they did not lead to prosecutions.

3. The seizure and confiscation system covers a broad range of measures. In the event of a conviction, provision is made for the confiscation of all instruments, proceeds, direct or indirect advantages and the equivalent value of proceeds. However, there is a problem associated with the confiscation of laundered money in the event of a prosecution for autonomous laundering, since Article 70 of the Criminal Code does not authorise the confiscation of the subject matter of the offence (unlike Article 366ter in connection with terrorism financing). It is also regrettable that confiscation of an equivalent value applies to neither the instruments nor the subject matter of the offence, which could have negative repercussions on the effectiveness of the confiscation system. The FIU has successfully used its powers to order freezing on numerous occasions. Since 2008 the competent authorities have carried out fairly significant seizures/confiscations in laundering cases, although this should be tempered by the fact that in four cases out of nine this concerned the execution of foreign confiscation decisions.

4. Andorra has not set up a specific system and procedures allowing the freezing of the funds or other assets of terrorists, those who finance terrorism and terrorist organisations targeted by the Sanctions Committee under S/RES/1267(1999) or by other authorities (S/RES/1373(2001)). There are no regulations on the immediate and automatic freezing of such suspected funds, at the initiative of those holding them, or appropriate administrative preventive measures. The procedure applied in the country is essentially based on the criminal system, starting with temporary freezing by the FIU, followed by the intervention of the prosecution authorities or the investigating judge, which can only result in either the discontinuation of proceedings for lack of evidence or, ideally, a criminal prosecution (which is unlikely). Yet, according to the resolutions, suspected assets should remain frozen until there has been a “delisting” decision. There are still no effective publicly-known procedures for examining requests for delisting by the persons concerned or for authorising access to funds or assets that have been frozen so as to meet basic expenses or pay certain types of fees, expenses or service charges. The effectiveness of guidance to financial institutions and other persons or entities that may be holding funds or other assets has not been established.

5. Following the passing of the LCPI, the responsibilities of the Financial Intelligence Unit, now the FIU (formerly the UPB), were redefined in the light of the new provisions of the LCPI and its implementing regulation. The FIU is an “independent body whose aim is to promote and co-ordinate measures for the prevention of money laundering and terrorism” and whose budget is funded by the State. The 15 examination, decision-making and proposal functions which are clearly assigned to the FIU include “collecting, gathering and analysing reports from parties under obligation, as well as all written and verbal communications received, to evaluate the facts”. The FIU is now authorised to issue technical communiqués that are mandatory, recommendations enabling the parties under obligation to better fulfil their obligations and the necessary information about the procedures to be followed when making a suspicious transaction report. Improvements have also been noted in the contents of the FIU's annual reports, which now include more detailed information on activities, statistics, typologies and trends. The report sets out a number of reservations concerning the activities of the FIU, in particular its work to analyse suspicious transaction reports and the methodology applied, and raises the need for the FIU to increase its guidance role and to undertake awareness-raising activities in respect of parties under obligation, in particular regarding the reporting requirement. The need to review the entire status of the FIU is also reiterated, in particular as regards certain aspects of its administrative autonomy, notably the

arrangements for the appointment and dismissal of the FIU Director and the appointment/secondment of its staff. A positive finding is that, on average, a majority of the cases opened by the FIU result in notification to the law-enforcement agencies and are accompanied by preparatory or investigation measures, which is a step forward compared with the situation at the time of the 3rd round evaluation.

6. Despite the 3rd round recommendations, the Principality of Andorra has still not put in place any measures to detect the physical cross-border transportation of currency in connection with money laundering or terrorism financing, as required by Special Recommendation IX. This raises real concerns regarding the ability of the authorities to detect and prevent the unlawful physical cross-border transportation of currency and bearer negotiable instruments, and their ability to co-operate at an international level with their foreign counterparts. The customs authorities' involvement in AML/CFT matters is consequently still very limited.

Preventive Measures - Financial Institutions

7. The principal sources of AML/CFT obligations are the Act on international criminal co-operation and the fight against the laundering of money (LCPI) of 11 December 2008 and the Regulations for the LCPI of 13 May 2009. These two pieces of legislation, which reformed the previous legislation in a number of respects, were the subject of amendments that entered into force after the on-site visit, more precisely on 25 May 2011 for the RLCPI and 18 June 2011 for the LCPI.[1] The other additional legislation mostly corresponds to technical communiqués from the FIU, the issuance of which is expressly permitted by the LCPI or the RLCPI and which are binding.

8. The amendments to the LCPI and the RLCPI and the clarifications given by the technical communiqués have made it possible to remedy a number of shortcomings identified in the 3rd round evaluation report. This applies to the exemption from professional confidentiality in cases of terrorism financing, to a number of customer due diligence measures (in particular regarding the obligation to adopt ongoing due diligence and the risk-based approach to classification), to the issue of politically exposed persons, to cross-border corresponding banking relationships, to reliance on third parties carrying out due diligence measures, to the obligation to pay particular attention to transactions with high-risk countries, to application to branches and subsidiaries, to the requirement that financial institutions must not enter into or pursue relations with shell banks and to the obligations relating to wire transfers.

9. The LCPI and the RLCPI have now introduced a risk-based approach regarding the application of customer due diligence measures. There is a real need to conduct a global study of the money laundering and terrorist financing risks specific to Andorra so as to ensure that the risk-based approach adopted is truly consistent with the risks identified.

10. Anonymous accounts and passbooks are prohibited. There is no express prohibition on keeping accounts in fictitious names, although the LCPI requirements should guarantee that financial institutions do not keep such accounts.

11. The customer due diligence requirements incumbent on Andorran financial institutions have been significantly supplemented and reinforced by the LCPI and its implementing regulation, and many of them have also been based on EU Directive 2005/60/EC. However, the simplified due diligence measures go well beyond those envisaged by the FATF in R.5. The following obligations were

[1] In accordance with the procedural and methodological rules, the evaluation team took into account the laws, regulations and other AML/CFT measures that were in force and effective at the time of the visit to Andorra and the period immediately following it (not more than two months), which solely covered the provisions of the RLCPI. The information on amendments to the LCPI as revised in June 2011 was mentioned in the report but could not be taken into account in the ratings.

introduced or defined more clearly by the amendments made to the RLCPI after the visit and were too recent to be considered fully effective:

- the regulations concerning the use of numbered accounts;
- the regulations requiring financial institutions to apply due diligence measures to customers regardless of any exceptions or thresholds where there is a suspicion of money laundering or terrorist financing or where there are doubts about the veracity or adequacy of previously obtained customer identification data;
- the regulations requiring financial institutions to obtain corroboration of the information obtained (notably concerning the business activity) from reliable, independent sources;
- the broadening of the identification measures provided for by the law and regulations to customers who are trusts or legal arrangements;
- the requirement to obtain information concerning the names of senior management (for legal persons) or administrators (for trusts) and the provisions governing their powers to commit the legal person or legal arrangement.

12. The definition of a beneficial owner is incomplete and should in particular cover natural persons who constitute the brains behind a legal person and the settlor and beneficiaries of a trust.

13. The LCPI and the RLCPI now contain specific obligations relating to politically exposed persons. The LCPI defines politically exposed persons as "individuals who carry out or have carried out prominent public functions, as well as their immediate family members and persons known to be close associates", and its provisions are supplemented by the RLCPI definitions of the terms "prominent public functions", "immediate family members" and "persons known to be close associates". The due diligence measures relating to politically exposed persons say nothing about their possible application to beneficial owners.[2]

14. The LCPI introduces specific measures implementing the requirements of R.7, but with some technical deficiencies regarding financial institutions' obligations to ascertain that the AML/CFT controls implemented by the respondent financial institution are adequate and effective and that the respondent institution is able to provide relevant customer identification data on request. To date, no Andorran financial institution has the role of banking correspondent for a foreign institution.

15. The risk of money laundering through the use of new technology is still insufficiently monitored.

16. The LCPI introduces new rules concerning reliance on third parties and business generators, which are largely compliant with the requirements of R.9. However, they should be reviewed so that delegation of transactions monitoring to a third party is not authorised and to ensure that financial institutions are required to obtain immediately the necessary information concerning elements of the customer due diligence process.

17. The secrecy laws applicable to financial institutions do not seem to inhibit implementation of the FATF Recommendations.

18. The new provisions on retention of documents and information fully cover the requirements of Recommendation 10. However, the authorities should introduce measures to ensure, through targeted controls, that parties under obligation are effectively complying with the obligations to retain and update documents and information.

[2] See the amendments to Act 4/2011 (Article 49 quater 1 c).

19. The Andorran legislation has clarified financial institutions' obligations regarding the monitoring of transactions and business relationships with legal persons and financial institutions in countries which do not or insufficiently apply the FATF Recommendations. This could be reinforced through instructions to parties under obligation concerning the detection of unusual or suspect transactions, which seems to be based almost entirely on the software used by financial intermediaries. In addition, for numbered accounts, the information and documents relating to these accounts were retained by financial institutions in hard copy form or in another database with restricted access for security reasons. This can in principle make it more difficult to perform a full analysis of transactions carried out on these accounts and to compare them with other transactions so as to detect those that are suspect. Similarly, there is a need to clarify the criteria to be used in identifying countries necessitating monitoring of business relationships.

20. The amendments made to the reporting requirement, as compared with the previous requirement, have not extended the scope of suspicious transactions reporting to the proceeds of crime. In this connection, it should be recalled that the offence of money laundering is not fully compliant with the requirements of Recommendation 1 and Special Recommendation II, which has implications in terms of compliance with the requirements of Recommendation 13 and Special Recommendation IV. In addition, there are still uncertainties as to whether all situations of attempted transactions would be covered. In terms of effectiveness of the suspicious transaction reporting system, the statistics provided show a downward tendency in the number of reports received over the last three years, while the number in any case generally remains at a low level. Insurance companies, portfolio management companies and DNFBPs contribute little or not at all. Regarding the financing of terrorism, the parties under obligation seem in practice to have construed the obligation solely as requiring the reporting of transactions by listed persons, whereas the effectiveness of monitoring of listed persons is not guaranteed. Additional measures should be taken to ensure that all parties under obligation adequately comprehend the reporting requirement and implement it in an effective manner.

21. The provisions of the LCPI are such as to protect the professions concerned from any criminal or civil liability for breach of a confidentiality requirement and include a prohibition on warning those concerned that a STR or information relating to them is being reported. Deficiencies were nonetheless noted in practice, undermining the effectiveness of these provisions' implementation.

22. Andorra should give consideration to the feasibility and utility of a system whereby financial institutions would report all cash transactions above a certain amount.

23. Andorra also amended the rules on internal control and foreign branches. Additional efforts should be made to ensure that financial institutions establish appropriate internal procedures and implement the obligations introduced in the legislation in respect of the requirements of R.15, in particular concerning procedures for hiring staff and further training. To supplement the existing arrangements, the Andorran authorities should ask financial institutions to pay particular attention to their branches and subsidiaries located in countries that do not or insufficiently apply the FATF Recommendations. In its capacity as AML/CFT supervisory authority, the FIU should also adopt a proactive policy so as to establish direct co-operation and the exchange of information with the AML/CFT supervisory authorities in countries where Andorran financial institutions' branches and subsidiaries are located.

24. With regard to shell banks the legal provisions applicable are such that the requirements of FATF R.18 are fully observed.

25. The report notes with great concern the developments in respect of supervision of the effective application of the AML/CFT machinery. Andorra's system of supervision continues to suffer from a number of deficiencies already raised in the previous evaluation round, although some progress has been made in the standard-setting field. The on-site inspections carried out by the FIU in 2008 cover a high proportion of subjected entities in the financial sector. However, not a single on-site

inspection has taken place since the AML/CFT law was amended, i.e. 2009 and 2010, and during that period, supervision was exerted exclusively by means of consultation of external audit results carried out in respect of subjected entities, as well as through meetings organised with the financial institutions' compliance officers to discuss issues raised in those audit reports.

26. As a consequence, important issues remain to be dealt with both from a general standpoint (inadequate supervision of insurance companies; foreign post offices offering banking and financial services without due authorisation) and from an operational standpoint (supervision is exercised virtually exclusively through reliance on external audit reports and meetings), in respect of which the Andorran authorities should amend the existing legislation and supervision policies and methodologies. Although the FIU has the necessary powers to control financial institutions, including through on-site inspections, and to implement sanctions, for lack of sufficient, appropriate resources assigned for this purpose these powers have not been fully utilised. It is essential that Andorra take all the necessary steps to ensure the effectiveness of the supervision measures and that sanctions for breaches of the AML/CFT requirements are effectively applied throughout the financial sector.

27. The range of sanctions applicable in AML/CFT matters should also be reviewed to ensure that they are proportionate to the seriousness of the acts being sanctioned and include the power of oversight authorities to withdraw, restrict or suspend the prior authorisation (or licence) held by a financial institution.

28. In Andorra there are no parties under obligation whose main or sole activity consists in providing a funds transfer service, but this function can be performed by banks as an ancillary activity to banking services. This type of service is proposed by the Spanish and French post offices, which are active in Andorra without having been licensed or registered by the Andorran authorities and which are subject to no form of prudential supervision, apart from that exercised by their country of origin. No competent authority has been designated and no specific structure for licensing or registering money or value transfer operators exists at present. The Andorran authorities should review these aspects, as already recommended, so as to settle the issue of the offer of funds transfer services by foreign post offices without any form of authorisation, which was already raised in the previous evaluation round.

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

29. The AML/CFT legislation expressly applies to all designated non financial businesses and professions listed in the FATF Methodology Glossary, apart from dealers in precious metals and dealers in precious stones when they carry out a transaction for which payment is made in cash, for an amount equal to or exceeding the applicable threshold. The AML/CFT legislation also explicitly mentions as reporting entities those authorised to deal in objects relating to the cultural heritage or of cultural value or to act as intermediaries in this field.

30. The measures to combat money laundering and terrorism financing laid down in the LCPI apply to the non-financial businesses and professions specified in article 45 of that law, who in the exercise of their profession or business activity undertake, control or advise on transactions involving funds movements which could be used for money laundering or terrorism financing. In particular this covers:

    a) professional external accountants, tax advisers, auditors, economists and business agents (*gestories)*
    b) notaries, lawyers and members of other independent legal professions when they are involved in the planning or execution of transactions on behalf of their clients in the framework of the following activities:
        - buying and selling real property or business entities
        - the handling of the money, deeds, or other assets of their clients

- the opening or management of bank accounts, savings accounts or securities accounts
- the organisation of the contributions necessary for the creation, operation or management of companies
- creation, operation or management of companies, contractual fiduciary arrangements (*fideicomisos*) or similar structures; or when acting for their customers in financial or real estate transactions;

c) sellers of high value goods, such as precious stones and metals, when payment is made in cash, for an amount equal to or exceeding € 30 000[3], or the equivalent in any other currency
d) suppliers of services to companies or contractual fiduciary arrangements not referred to in any other paragraph of this article
e) gaming establishments
f) real estate agents carrying out activities related to the purchase and sale of property.

31. Members of the professions referred to in paragraphs a) and b) are not bound by the obligations laid down in the LCPI with regard to information they receive or obtain from one of their clients in the course of ascertaining the legal position of the client or performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings. These exemptions from the obligations regarding identification of customers and verification of their identity are not provided for in the FATF Recommendations and go beyond what is required (i.e. where they prepare or carry out the activities explicitly provided for under criterion 12.1.d).

32. Lastly, the Andorran authorities have envisaged the possibility of applying Recommendations 5, 6, 8-11, 13-15, 17 and 21 to other non-financial businesses and the Andorran list of DNFBPs is accordingly broader than that of the FATF. Under the LCPI sellers of high value goods are subject to AML/CFT requirements, drawing on article 2.1 e) of Directive 2005/60/EC.

33. Sellers of high value goods are subject to the LCPI obligations regarding identification of customers and verification of their identity solely when they carry out transactions with their customers for an amount equal to or exceeding € 30 000, which is significantly higher than the amount stipulated by the FATF in its recommendations (€ 15 000).

34. The LCPI also applies to all natural or legal persons whose business activities may channel or facilitate a money laundering operation or terrorism financing.

35. No study or assessment to evaluate the risk of laundering linked to each profession covered by R.12 has been performed in Andorra. The authorities (and professionals themselves) consider that these activities involve a very low risk. The only game of chance not banned in Andorra is bingo, which is covered by a law of 1996 whereby government authorisation is required for opening a bingo hall. In view of the value of the winnings, the risk of money laundering can be regarded as low in this sector.

36. DNFBPs are not required to implement specific due diligence measures concerning customers who are politically exposed persons, the use of new technologies and the risks associated with relationships which do not require the customer's physical presence.

37. Moreover, as regards the legal framework applicable to DNFBPs, concerning the implementation of obligations under Recommendations 5, 9 to 11 and 17, which are applicable to DNFBPs in the circumstances covered in R.12, and Recommendations 14, 15, 21 and 17 in the context of

[3] Act 4/2011 on amendments to the LCPI, which entered into force on 23 June 2011, amended article 45 of the LCPI by lowering to 15,000 Euros the threshold of transactions for which dealers in precious goods are subjected to the LCPI.

suspicious transaction reporting (R.16), the deficiencies set out above in respect of financial institutions also apply in the case of DNFBPs.

38. The authority responsible for monitoring compliance with AML/CFT requirements by DNFBPs in Andorra is the FIU. In this connection, as mentioned above, it must be underlined that, although the FIU has a fairly broad range of powers and functions in this area, it still does not have sufficient resources to perform its role, especially taking into account the extent of its tasks compared with the number of staff.

39. In 2009 and 2010 there were no inspections of DNFBPs aimed at verifying the proper application of the due diligence measures in AML/CFT matters. It was also noted that, in practice, certain DNFBPs did not full comply with their obligations regarding identification of customers and verification of their identity, that the commitment and level of interest of DNFBPs regarding money laundering and terrorism financing issues is still very low and that they make a very small contribution in terms of suspicious transaction reporting. On account of this finding, together with the deficiencies in the exercise of regular supervision by the Andorran authorities, it cannot be concluded that the due diligence requirements imposed on Andorran DNFBPs are fully effective.

Legal persons and arrangements and non-profit organisations

40. The legal and regulatory framework applicable to legal persons in Andorra has been considerably amended since the previous evaluation. Although progress has been noted in terms of improvements to the system of registration of legal persons, a number of problems subsist such as the issue of name-lenders or the non-conversion of bearer shares following the expiry of the time-limit laid down in the legislation. The system of sanctions does not seem sufficiently dissuasive to guarantee the effective implementation of the legal and regulatory requirements, including as regards the updating of information recorded in the Companies Register. It should be ensured that the competent authorities can obtain information on the beneficial ownership and control of legal persons in a timely fashion by introducing obligations so that updated information is reported without delay and duly registered and dissuasive sanctions become applicable and are applied where appropriate.

41. Although, in view of the particularities of NPOs operating in Andorra, the risk of misuse of this sector for terrorism financing can be regarded as low, this analysis is not based on an objective assessment of the situation. There have been no changes in the regulation, operation or supervision of associations since the 3rd round evaluation. At the time of the previous evaluation, although they existed in Andorra, foundations were not regulated. The situation has changed following the adoption of the Foundations Act No. 11/2008,[4] which governs various aspects of their functioning. This law applies to Andorran private foundations which are registered in Andorra and to public foundations. The LCPI also specified that associations, foundations and other non-profit organisations are required to retain for five years the identification data concerning persons to whom funds are paid and the documents mentioned in section 28 of the Associations Act (register of members, book of minutes, inventory of assets and accounting registers relating to their activities).

42. A formal risk assessment study should be carried out, in particular in view of the relatively relaxed regime applicable to associations and the limited oversight exercised regarding them. No awareness-raising measures have been taken in respect of NPOs regarding the risks of their being misused for terrorist purposes and the protective measures available. The authorities should also review the suitability of the legal framework relating to non-profit organisations to ensure that it meets financial transparency requirements, ranging beyond the specific measures provided for where an organisation is in receipt of public subsidies, and requirements concerning the updating of identification data in the event of any change in the founders or persons managing the activities

[4] Act passed on 12 June and published in the Official Gazette on 16 July 2008.

of NPOs, including identification of the main managers, governing board members or directors. Effective monitoring of NPOs' compliance with their legal obligations should be established, as should appropriate penalties to sanction non-compliance with these requirements.

National and international co-operation

43. A decree of 13 February 2008 established a Standing Committee on Money Laundering and Terrorism Financing. Its role is to (1) analyse the money laundering situation in Andorra, providing available information in the form of statistics or findings resulting from the exercise of its tasks; (2) participate in the assessment of measures and action taken in the AML/CFT field; (3) provide legal advice concerning proposed legislation; (4) assist the FIU in connection with its international activities; (5) provide advice on drafting reports to be submitted to international bodies. The establishment of the Standing Committee is an important step and should in the long run permit effective co-ordination between all the competent authorities if this body is effectively used as a forum for dialogue, co-operation and policy co-ordination and for regular analysis of the AML/CFT situation in Andorra and of measures taken, with a view to proposing reforms where necessary. The effectiveness of operational co-operation regarding the application of interim measures needs to be improved. Co-operation arrangements between the FIU and the INAF do not seem to be sufficiently utilised so as to ensure a satisfactory degree of co-operation, and such arrangements have not been put in place with the customs authorities.

44. Andorra has been a party to the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 since 1999. Since the 3rd round evaluation Andorra has ratified the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism and has launched the ratification procedure in respect of the 2000 United Nations Convention on Transnational Organised Crime (Palermo Convention). There are nonetheless a number of deficiencies in implementing these conventions, the bulk of which are technical in nature (for example the offences of laundering and terrorism financing). The measures adopted to implement the UN Security Council resolutions on the prevention and suppression of terrorist financing (S/RES/1267(1999) and subsequent resolutions (S/RES/1373(2001)) leave something to be desired.

45. The system and practice regarding international judicial co-operation appear to be sound and effective. Andorra is able to offer a broad range of judicial assistance measures and the authorities' attitude is flexible and constructive. The limits of the laundering offence established by article 409 of the Criminal Code, as regards the predicate offences, do not in practice impede the execution of requests made by letters rogatory, even in the case of coercive measures. The time taken to execute international letters rogatory naturally varies, with an average of six months, which could be improved. There are nonetheless still a number of reservations as a result of the deficiencies noted regarding confiscation of the subject matter and establishment of the offences of laundering and terrorism financing so as to avoid situations where the principle of dual criminality causes problems.

46. International co-operation at the level of the police and the FIU does not seem to pose any specific problems. The situation differs, however, concerning co-operation with foreign supervisory authorities as regards the exchange of AML/CFT information since, at the date of the on-site visit, no co-operation activities had taken place. It is considered that any exchange of information held by the FIU as supervisory body should be made via the co-operation arrangements with the finance sector supervisor (INAF) for requests concerning institutions subject to the INAF's prudential supervision. Although the law does not provide expressly that the FIU may ask the INAF to submit a request to a foreign oversight authority on its behalf, the authorities consider that such a request would be possible in accordance with article 23 paragraph 2 of the RLCPI. Andorra should nonetheless review the applicable legislative and regulatory framework to ensure that the existing arrangements are sufficiently clear and precise and, if need be, to supplement them so that they permit the Andorran supervisory authorities rapidly to provide the broadest possible assistance to foreign supervisory authorities not just as regards the exchange of

information on financial sector institutions, subject to the INAF's prudential supervision, but also concerning the insurance sector and DNFBPs.

Resources and statistics

47. The human, financial and technical resources allocated to the authorities in AML/CFT matters are generally unsatisfactory, and there is particular cause for concern regarding resources allocated for AML/CFT supervision. Firstly, as regards the FIU, at the time of the on-site visit the premises and the measures taken did not provide appropriate protection for the information held by the FIU. As regards human resources, the fluctuations in staff and the posts that remain unfilled do not allow the FIU to carry out its functions in an optimal way. It has not been established that the customs services have sufficient operational independence and autonomy, and there are still questions about the adequacy of resources should the customs services be required to fully implement Special Recommendation IX. The means deployed for the supervision of financial institutions and DNFBPs are clearly insufficient. Staff training efforts are also inadequate and need to be reviewed.

48. The arrangements to review the overall effectiveness of Andorra's AML/CFT system are not considered to have fully attained their objective of enabling a regular review of the AML/CFT system's effectiveness. Overall, Andorra collects the necessary statistics on matters pertaining to the effectiveness and proper functioning of the system to combat money laundering and terrorism financing. In the absence of a detection system and corresponding measures, the Principality of Andorra does not have statistics on declarations made regarding the physical cross-border transportation of currency and bearer negotiable instruments, as required by R.32. Statistics on requests for mutual legal assistance were not available. The authorities should remedy these matters.

Table 1: Andorra's Compliance with FATF recommendations

The rating of compliance with the FATF Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004: Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non-compliant (NC) or could, in exceptional cases be marked as not applicable (N/A). These ratings, solely based on the essential criteria, are defined as follows:

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
The following table sets out the ratings of compliance with FATF Recommendations which apply to Andorra. It includes ratings for FATF Recommendations from the 3rd round evaluation report that were not considered during the 4th round. *These ratings are set out in italics and shaded.*	

Forty recommendations	**Rating**	Summary of reasons for the rating[5]
Legal system and related measures		
1. The offence of money laundering	**PC**	• Non-compliance of the offence of laundering with the conventions with regard to concealing, disguising, possessing and using assets of criminal origin. • List of predicate offences does not cover all the designated categories of offences • Immunity of self-financing • Effectiveness: (1) weak proactive approach; (2) modest results with regard to prosecuting the offence, particularly in view of the disparities between the numbers of prosecutions and convictions; (3) resources and manpower allocated to the courts and prosecution authorities not judged sufficient.
2. *The offence of money laundering – element of intention and responsibility of legal persons*	*LC*	• *The offence of laundering has been narrowed in a number of areas, including the criminal liability of legal persons although certain accessory sanctions can be applied to legal persons (in the framework of a case against a natural person).*
3. Confiscation and interim measures	**LC**	• No legal basis for the confiscation of funds as the subject matter of the offence in autonomous laundering cases • Effectiveness: modest results of own initiative confiscations
Preventive measures		
4. Laws on professional confidentiality compatible with recommendations	**C**	This recommendation is fully observed.
5. Customer Due Diligence	**PC**	• The following obligations have been introduced or spelled out explicitly through amendments of the RLCPI after the visit; they were too recent to be considered as fully effective: - the regulations governing the use of numbered accounts are too recent to be considered fully effective; - the regulations requiring financial institutions to apply due diligence measures to customers regardless of any exceptions or thresholds where there is a suspicion of money laundering or terrorist financing or where there are doubts about the veracity or adequacy of previously obtained customer identification data are too recent to be considered fully effective;

[5] These reasons are only required to be set out when the rating is less than compliant.

Forty recommendations	**Rating**	Summary of reasons for the rating[5]
		- the regulations requiring financial institutions to obtain corroboration of the information obtained (notably concerning the business activity) from a reliable, independent source are too recent to be considered full effective, - the broadening of the identification measures provided for by the law and regulation to customers who are trusts or legal arrangements is too recent to be considered fully effective. - the requirement to obtain information concerning the names of senior management (for legal persons) or administrators (for trusts) and the provisions governing their powers to commit the legal person or legal arrangement are too recent to be considered fully effective. • The definition of a beneficial owner is incomplete and should in particular cover natural persons who constitute the brains behind a legal person and the settlor and beneficiaries of a trust.6 • The requirements of criterion 5.3* concerning verification by means of information and documents from reliable independent sources are not fully covered • Lack of adequate rules concerning identification and verification of the identity of beneficiaries of professional accounts kept by lawyers • The simplified diligence measures provided by article 49ter LCPI go far beyond what the FATF is saying since none of the diligence measures of article 49 are applicable in the situations foreseen, notably concerning the on-going monitoring of transactions • Where identification cannot be performed, there is no requirement to consider filing an STR when the relationship has not yet been established, which leaves uncovered situations of attempted establishment of relationship which do not materialise • The full effectiveness of the implementation of a number of measures is not established: (1) doubts remain concerning the implementation and interpretation of certain obligations by financial institutions; (2) the controls put in place are very

[6] See the footnote in the report concerning amendments to article 41 letter g) of the LCPI, which introduced an explicit reference to the decision-maker of the legal entity (i.e. the person who effectively manages the entity)

Forty recommendations	Rating	Summary of reasons for the rating[5]
		inadequate.
6. Politically exposed persons	**LC**	• The concept of PEP is not applicable to persons who exercise or have exercised important public functions in a foreign country but who reside in Andorra • The due diligence measures relating to politically exposed persons refer to customers and say nothing about their possible application to beneficial owners.[7] • The full effectiveness of the implementation of a number of measures is not established: there are still reservations about the adequate implementation of the obligations when initiating a business relationship and the sufficient level of approvals and concerning the very insufficient monitoring by the authorities of financial institutions' effective implementation of their obligations relating to R.6.
7. Correspondent banking relations	**LC**	• In the context of control assessments, financial institutions are not required to ascertain that the AML/CFT controls implemented by the respondent institution are adequate and effective. • Financial institutions are not required to ascertain that the respondent financial institution is able to provide relevant customer identification data on request. • The full effectiveness of implementation by financial institutions of obligations relating to R.7 could not be demonstrated.
8. New technologies and remote business relationships	**PC**	• The risk of money laundering through the use of new technology is insufficiently monitored, since the obligations solely concern false identification of the customer • The full effectiveness of implementation by financial institutions of obligations relating to R.8 could not be demonstrated.
9. Third parties and business generators	**LC**	• There is no requirement that the delegating party obtain the necessary information concerning, inter alia, elements of the customer due diligence process • The financial institutions should not be permitted to delegate to third parties the performance of

[7] See the amendments introduced to section 49 quater 1 c) by Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011.

Forty recommendations	**Rating**	Summary of reasons for the rating[5]
		their diligence obligations concerning the monitoring of transactions • The full effectiveness of the implementation of a number of measures is not established: delegations to third parties seem to have been put in place without reporting them to the FIU; lack of measures to verify the delegation's compliance with the legal requirements.
10. Keeping of documents	**LC**	• Effectiveness (1) in the light of the information provided and the recent adoption of the amendments to the RLCPI, effectiveness cannot be established.
11. Unusual transactions	**LC**	• Effectiveness (1) lack of precise instructions to parties under obligation concerning the detection of unusual or suspect transactions; (2) recordkeeping concerning numbered accounts is solely in hard copy format, which makes it difficult to perform a full analysis of transactions and compare them with other transactions so as to detect suspicious transactions. •
12. Designated non-financial businesses and professions (DNFBPs)	**PC**	• Sellers of high value goods, precious stones and metals, are bound by the LCPI solely when they perform cash transactions for an amount exceeding €30 000.8 • Lawyers, notaries and other legal professions, accountants, tax advisors, auditors, economistas and gestorias are not subject to the LCPI's requirements on identification and identity verification • Accountants, tax advisers, auditors, economists and business agents, are not bound by the LCPI "with regard to information they receive or obtain from one of their clients in the course of ascertaining the legal position of the client or performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings." • Recommendations 6 and 8 still do not apply to DNFBPs. • The observations and compliance ratings set out

[8] See the above footnote on the amendment of the € 15 000 threshold under Act 4/2011 of 25 May 2011 amending the LCPI, which has been in force since 23 June 2011.

Forty recommendations	**Rating**	Summary of reasons for the rating[5]
		in Chapter 3 concerning Recommendations 5 to 9 and 11, and R.17, which are applicable to DNFBPs in the circumstances covered in R.12, are also applicable. • The full effectiveness of the implementation of a number of measures is not established: (1) in view of the recent adoption of the amendments to the RLCPI, which followed the visit, the effectiveness of certain measures cannot be assessed in respect of certain obligations; (2) doubts remain concerning the implementation and interpretation of certain obligations by the DNFBPs; (3) the observations regarding the lack of effectiveness of the supervisory machinery and the application of sanctions are also applicable here.
13. Suspicious transaction reporting	**PC**	• Deficiencies in the offence of money laundering (failure to include certain behaviours and a number of predicate offences) restrict the scope of suspicious transaction reports. • Deficiencies in the offence of financing of terrorism restrict the scope of suspicious transaction reports • The obligation to report suspicious transactions, including attempted transactions, extends only indirectly to the proceeds of crime through the definitions of the offence of money laundering and terrorist financing. • Effectiveness: (1) low number of suspicious transaction reports; (2) concerns about the quality of reports and effective implementation of the reporting obligation by the subjected entities in view of the downward trend in reports made by the banking sector and the virtual absence of reports by other parts of the financial sector.
14. Protection and prohibition of tipping off	**LC**	• Effectiveness not established: 1) despite the protection measures provided for in the legislation the identity of a person having made a suspicious transaction report was disclosed in one case, notably in the press; 2) suspicious transaction reports have been included in the case-file documents of a number of judicial proceedings.
15. Internal controls and compliance	**LC**	• Training initiatives are inadequate in comparison with the needs reported by the parties under obligation. • The full effectiveness of implementation of a number of measures is not established: financial institutions have no adopted specific procedures

Forty recommendations	**Rating**	Summary of reasons for the rating[5]
		for hiring staff or further training programmes.
16. Designated non-financial businesses and professions - R.13-15 & 21	**PC**	• The threshold below which sellers of high value goods are excluded from the AML/CFT requirements is far higher than that established by R.16. • The observations and compliance ratings set out in Chapter 3 concerning Recommendations 14 15, 21 and 17, which concern DNFBPs in respect of their suspicious transaction reporting obligation, are also applicable. • The full effectiveness of the implementation of the reporting obligation by DNFBPs is not established as their contribution and commitment in AML/CFT matters is still very limited.
17. Sanctions	**PC**	• The range of sanctions is not proportionate to the seriousness of the acts • Effectiveness: (1) No sanctions imposed in recent years; (2) The lack of on-site inspections in 2009 and 2010 and the supervisory authorities' inadequate resources raise doubts about the effectiveness of the system of sanctions.
18. Shell banks	**C**	This recommendation is fully observed.
19. Other forms of declaration	**NC**	• The failure to provide the study conducted during the preparations for promulgating Act 2/2008 precludes any finding that a study concerning the introduction of a reporting obligation concerning all transactions in excess of a certain amount has been performed.
20. Other non-financial businesses and professions / Modern and secure techniques of money management	**LC**	• Lack of precisions as to the natural or legal persons whose business activities may channel or facilitate a money laundering operation or terrorism financing and who should apply the LCPI. • No measure has been taken to encourage the development and use of modern and secure techniques of money management that are less vulnerable to money laundering.
21. Particular attention to higher-risk countries	**LC**	• In practice criteria are lacking for the identification of countries at risk in a uniform manner • Effectiveness: (1) the establishment of general controls concerning all transactions and all entities in countries at risk raises questions; (2) in the light of the recent adoption of the amendments to the RLCPI, effectiveness cannot be established.

Forty recommendations	**Rating**	Summary of reasons for the rating[5]
22. Foreign branches and subsidiaries	**LC**	• No obligation for financial institutions to pay particular attention to their branches and subsidiaries located in countries that do not or insufficiently apply the FATF Recommendations. • Problem of effectiveness due to the inadequate monitoring by the authorities of financial institutions' effective implementation of their obligations relating to R.22.
23. Regulation, control and monitoring	**PC**	• Supervision is based AMLost entirely on the review of external audit reports and the approach adopted does not seem to satisfy all the criteria in terms of planning • The insurance sector is not subject to appropriate supervision in AML/CFT matters. • Lack of legislative or regulatory measures regarding fitness and integrity (23.3) for insurance sector companies other than financial institutions • Post offices propose financial services without authorisation or licence • In view of the information provided and the very small number of on-site inspections, effectiveness is not established.
24. Designated non-financial businesses and professions - Regulation, control and monitoring	**PC**	• Supervision of compliance with AML/CFT requirements by DNFBPs is inadequate. • No thorough study has been made of risks linked to DNFBPs. • The effectiveness of the controls and sanctions applicable to DNFBPs has not been established.
25. *Guidelines and feedback*	*LC*	• *Relatively little has been done to raise awareness of terrorist financing; the FIU could do more to provide laundering typologies.* • *Professional associations seem to react purely passively to AML/CFT issues; too much reliance on the FIU.*
Institutional and other measures		
26. The FIU	**PC**	• Although the legislation contains general provisions on how to write STRs, the FIU has not elaborated standardised reporting forms for the various categories of subjected entities • There remain a number of reservations regarding certain aspects concerning the administrative autonomy of the FIU, which is not sufficiently

Forty recommendations	**Rating**	Summary of reasons for the rating[5]
		guaranteed by the rules in force (e.g. as regards the appointment of the manager and employees, their dismissal, lack of internal rules including on the duration of secondment / appointment of staff from other institutions); • The current measures do not offer satisfactory protection of the data held by the FIU9. • Effectiveness: the way the FIU operates raises a number of questions - 1) the human, financial and technical resources allocated to the FIU and the numerous tasks it has been assigned do not enable it to carry out satisfactorily its main functions; 2) reservations are expressed regarding the FIU's analysis function and on the methodology applied.
27. *Criminal prosecution authorities*	*C*	•
28. *Powers of the competent authorities*	*C*	•
29. Supervisory authorities	**PC**	• The FIU's failure to perform on-site inspections in 2009 and 2010 raises questions regarding the effectiveness of the system of supervision and the application of the powers of compulsion and of sanction conferred by law.
30. Resources, integrity and training[10]	**PC (consolidated rating**	• FIU • Some reservations remain regarding the structure of the FIU and on the regulatory framework to fully guarantee its administrative independence and autonomy; • The FIU's human resources, equipment and premises at the time of the on-site visit were not sufficient to enable the FIU to successfully perform its tasks; • Training of FIU members is of an ad hoc nature and would appear to be insufficient • Customs • It has not been shown that the customs services have sufficient operational independence and autonomy, and there are still questions about the adequacy of resources, especially where the customs services are required to fully implement the criteria set out in Special Recommendation IX. • Supervisory authorities

[9] See the footnote in the report concerning the allocation of new offices in December 2011, and the assurances given by the authorities that these are now subject to reinforced security measures.

[10] The analysis in respect of Recommendation 30 took into account the recommendations rated in this report. Account was also taken of the conclusions in the 3rd mutual evaluation report concerning Recommendation 27.

Forty recommendations	**Rating**	Summary of reasons for the rating[5]
		• The FIU's resources for supervision purposes (staff, training, etc.) are clearly inadequate
31. Cooperation at national level	**PC**	• Co-operation in general policy and co-ordination matters through the Standing Committee, which did not hold regular meetings in 2009 and 2010, is not sufficiently satisfactory; • The level of consultation/coordination between the FIU and the INAF in matters of oversight is inadequate; • There is no co-operation between the FIU and the customs authorities for monitoring cross-border transportations of currency since there is no AML/CFT policy in this matter.
32. Statistics[11]	**LC (consolidated rating**	• The arrangements to review the overall effectiveness of Andorra's AML/CFT system are not considered to have fully attained their objective of enabling a regular review of the AML/CFT system's effectiveness. • Minor differences in the statistics received concerning STRs (FIU). • Given the lack of a detection mechanism and corresponding measures, Andorra has no statistics concerning declarations of cross-border movements of cash and bearer securities, as required by R.32.
33. Legal persons – actual beneficiaries	**PC**	• Despite the Andorran authorities' efforts to improve the system of registration of legal persons, a number of problems subsist such as the issue of name-lenders or the non-conversion of bearer shares following the expiry of the time-limit laid down in the legislation. • The possibility for the competent authorities to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership (managers, settlors, partners) and control of legal persons is not guaranteed. • The system of sanctions does not seem sufficiently dissuasive to guarantee the effective implementation of the legal and regulatory requirements, including as regards the updating of information recorded in the Companies Register.

[11] The analysis in respect of Recommendation 32 took into account the recommendations rated in this report. Account was also taken of the conclusions in the 3rd mutual evaluation report concerning Recommendation 39.

Forty recommendations	**Rating**	Summary of reasons for the rating[5]
• International co-operation		
35. Conventions	**PC**	• Ratification of the Palermo Convention approved by the General Council but not yet deposited with the United Nations at the time of the evaluation12 • Deficiencies in the implementation of certain provisions of the Vienna Convention and the Palermo Convention
36. Mutual assistance[13]:	**LC**	• The effectiveness of mutual legal assistance may be impaired by the deficiencies noted concerning establishment of the money laundering offence.
37. Dual criminality	*LC*	• Unlike in other countries, tax evasion is generally not an offence, but Andorra tries to be flexible so as to meet dual criminality requirements. •
38. Mutual assistance in confiscation and freezing	**LC**	• Doubts as to the legal basis for confiscation on request of laundered assets or assets of an equivalent value • Restrictions in the way in which the offence of laundering is established may affect the legal feasibility of confiscation on request (dual criminality principle)
39. Extradition	*LC*	• Additional measures may be necessary to speed up the processing of requests in view of the diplomatic authorities' workload
40. Other forms of co-operation	**LC**	• For lack of machinery to detect cross-border transportation of currency or bearer instruments, the Andorran authorities are not able to co-operate as fully as possible at an international level. • The legislative framework in place does not seem to cover correctly the exchange of information and international co-operation with foreign supervisory authorities in matters of insurance (non-banking entities) and DNFBPs • The effectiveness of international co-operation in supervisory matters is not established.
Nine special recommendations	**Rating**	• Summary of reasons for the rating
SR I Application of UN instruments	**NC**	• Failure to implement UN Resolutions 1267 and 1373 • Deficiencies in the implementation of the

[12] See above

[13] The analysis in respect of Recommendation 36 took into account the recommendations rated in this report. Account was also taken of the conclusions in the 3rd mutual evaluation report concerning Recommendation 28.

Forty recommendations	**Rating**	Summary of reasons for the rating[5]
		Convention for the Suppression of the Financing of Terrorism.
SR II Criminalisation of the financing of terrorism	**PC**	• No offence as such of financing offences provided for in the CFT treaties • Generic definition of terrorist acts not consistent with that of the CFT • Immunity of self-financing of an individual • No formal criminal liability of legal persons in connection with terrorism financing
SR III Freezing and confiscation of terrorist funds	**NC**	• No legal framework for the implementation of Resolutions 1267, 1373 and following • No machinery for reviewing lists submitted by other states under Resolution 1373 • Failure to carry out obligations arising from Resolutions 1267, 1373 and following (instructions, removal from lists, unfreezing of funds, access to funds, third party rights, definition of funds, etc.)
SR.IV Suspicious transaction reporting	**PC**	• Deficiencies in the offence of financing of terrorism restricting the scope of suspicious transaction reports • Effectiveness: concerns about (1) the quality of reports and (2) adequate knowledge of the scope of the reporting obligation by the parties under obligation, giving rise to reservations about the effective implementation of the reporting obligation
SR V International co-operation	**LC (consolidated rating**	• The deficiencies noted in the establishment of the offence of financing of terrorism affect the possibility of rendering mutual legal assistance (dual criminality) • The deficiencies noted in respect of Recommendation 40 also apply to SR.V.
SR VI AML/CFT obligations applicable to agencies transferring moneys or securities	**PC**	• Money and value transfer services are proposed by the Spanish and French post offices without any formal legal framework • The earlier recommendations concerning the supervisory machinery, proportionality of sanctions and their effectiveness also apply in this context.
SR VII Rules applicable to electronic transfers	**LC**	• Verification of identity is not provided for by law in the case of transfers for an amount up to €1250 performed by occasional customers. • Provision should be made for the lack of originator information to be regarded as giving

Forty recommendations	**Rating**	Summary of reasons for the rating[5]
		rise to suspicions with a view to filing a suspicious transaction report with the FIU • Effectiveness: (1) there are no preventive controls to detect transfers lacking the required accompanying information; (2) in the light of the information provided, effectiveness cannot be established.
SR VIII Non-profit organisations	**PC**	• The legal framework governing the requirements in respect of financial transparency and record keeping and updating is not fully satisfactory, in particular as there is no possibility of imposing sanctions. • Andorra has performed no specific review to identify any weaknesses in this sector that could give rise to terrorist activities. • No awareness-raising measures have been taken in respect of NPOs regarding the risks of their being misused for terrorist purposes and the protective measures available. • Effectiveness of implementation not established: (1) very limited involvement of the competent authorities in the implementation of SR VIII; (2) it is not clear to what extent the registers of associations and foundations are kept up to date in practice; (3) partial oversight exercised by the authorities regarding this sector.
SR IX Cash couriers	**NC**	• Andorra has still not implemented measures for the detection of cross-border transportation of cash and bearer securities, including a system of declaration or reporting, nor has it implemented the other criteria of SR IX.