



Anti-money laundering and counter-terrorist financing measures

Andorra

1st Enhanced Follow-up Report & Technical Compliance Re-Rating

December 2018

Follow-up report



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 1st Enhanced Follow-up Report and Compliance Re-Rating on Andorra was adopted by the MONEYVAL Committee at its 57th Plenary Session (Strasbourg, 3 – 7 December 2018).

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Table of Contents

I.	INTRODUCTION.....	4
II.	FINDINGS OF THE MUTUAL EVALUATION REPORT.....	4
III.	OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE.....	5
3.1.	Progress to address technical compliance deficiencies identified in the MER.....	5
3.2.	Progress on Recommendations which have changed since adoption of the MER.....	15
IV.	CONCLUSION.....	17
	GLOSSARY OF ACRONYMS.....	19

Andorra: 1st Enhanced Follow-up Report and Technical Compliance Re-Ratings

I. INTRODUCTION

1. The mutual evaluation report (MER) of Andorra was adopted in September 2017. The report analyses the progress of Andorra in addressing the technical compliance (TC) deficiencies identified in its MER, as well as the implementation of new requirements relating to FATF Recommendations which have changed since the MER was adopted: Recommendations 7, 18 and 21. The expectation is that countries will have addressed most if not all TC deficiencies by the end of the third year from the adoption of their MER. This report does not address what progress Andorra has made to improve its effectiveness. Progress on improving effectiveness will be analysed as part of a later follow-up assessment and, if found to be sufficient, may result in re-ratings of Immediate Outcomes at that time.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

2. The MER rated¹ Andorra as follows:

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

3. Given these results, Andorra was placed in enhanced follow-up.

4. Andorra has submitted requests for re-ratings in relation to **Recommendations 2, 3, 10, 11, 12, 15, 16, 20, 21, 22, 23, 25, 26, 32 and 34.**

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

- Romania

¹ There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

- France

6. Section III of this report summarises the progress made to improve TC. Section IV sets out the conclusion and a table showing which Recommendations have been re-rated.

III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

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

- a) Addressing the TC deficiencies identified in the MER, and
- b) Implementing new requirements where the FATF Recommendations have changed since the MER was adopted (R.7, R.18 and R.21).

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

8. Andorra has made progress to address the TC deficiencies identified in the MER. As a result of this progress, Andorra has been re-rated on **Recommendations 2, 3, 11, 12, 15, 16, 20, 21, 22, 23, 32 and 34.**

Recommendation 2 (Originally rated PC – re-rated as C)

9. Andorra was rated PC with R.2 in light of the following gaps: i) absence of national AML/CFT policy/strategy which would address risks identified in the NRA; and ii) the existing coordination mechanism was of an informal character (its members have not been officially designated by the competent ministries) with no clear responsibility allocated for developing national AML/CFT policies.

10. The Government of the Principality of Andorra adopted the AML/CFT National Strategy (2018-2020) in January 2018. The Strategy objectives derive from the following: i) the commitment of Andorra to implement the Fourth EU AML/CFT Directive in line with the monetary Agreement signed between the Principality of Andorra and the European Union; ii) the MONYVAL fifth round mutual evaluation report adopted in September 2017; and iii) the National Risk Assessment (hereafter NRA). The Strategy envisages the adoption of a national action plan which will provide specific measures to be implemented, responsible authorities, calendar of their implementation and resources required.

11. The AML/CFT Law adopted in June 2017, in its Article 64.2 designates the Permanent Committee (PC) for the Prevention and Fight against Money Laundering and Terrorist Financing as a coordination body in the field of detection, prevention and fight against money laundering, terrorist financing, and the proliferation of weapons of mass destruction. Moreover, the implementation of the National AML/CFT Strategy will be monitored by the PC. The monitoring reports will be prepared on an annual basis and made available to the Government. Following the adoption of the AML/CFT Law in June 2017, the PC members were appointed by the relevant authorities in line with Article 63 of referred Law.

12. Andorra has addressed the deficiencies under C.2.1 and C.2.2. Andorra is re-rated as C with R.2.

Recommendation 3 (Originally rated PC – re-rated as LC)

13. In the 5th Round MER, the main deficiencies noted under R.3 related to the absence of criminalisation of all offences listed in the FATF Glossary as “predicate offences”; tax crimes and smuggling in goods other than tobacco. A lot of weight was given to these two missing predicate offences, particularly tax offences, when determining the overall rating of R.3, due to the significant ML threat they pose in Andorra. Concerns were also raised with regard to the insufficient criminalisation of bribery in the private sector. In addition, criminal liability of legal persons was not provided for in the legislation although there were no fundamental principles of domestic law which precluded it.

14. Tax crimes and smuggling of goods were fully criminalised in July 2017 (Qualified Law 15/2017, of 13 July, amending the Criminal Code – Articles 245 and 248). The deficiency concerning the criminalisation of bribery in private sector was not rectified. This is a minor remaining deficiency, given that there are other bribery and corruption offences in the Criminal Code. Overall, criterion 3.2 is now mostly met.

15. No amendments were carried out to introduce criminal liability of legal persons. Therefore, criterion 3.10 remains partly met. However, as noted in the MER, specific measures can be imposed on legal persons by courts 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 on legal persons in ML cases (Article 411(2)(3)(4) and (5) of the CC). These measures are equal to those specified under Article 71.

16. Given the specific weight attached to the introduction of tax crimes and smuggling as predicate offences under the Criminal Code and also the fact that, although the criminal liability of legal entities has still not been introduced, some form of sanctions is in place (including in ML cases), **Andorra is re-rated as LC with R.3.**

Recommendation 10 (Originally rated LC – no re-rating)

17. In the 5th round MER, Andorra was rated LC with R.10 in light of the following gaps:

- i. As far as C.10.4 is concerned, there were no requirements relating to a person acting on behalf of a customer who is an individual (e.g. under a power of attorney); requirements applicable to legal persons and legal arrangements only covered representatives who are natural persons, and not also persons purporting to act on behalf of legal persons.
- ii. Cascading effect of C.1.6 on C.10.5
- iii. There were no general requirements to undertake a review of existing records in line with C.10.7.
- iv. There were no explicit requirements 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 was there a requirement to obtain sufficient information in line with cC10.11 where beneficiaries are

designated by class.

- v. There were no specific requirements to apply CDD measures to the beneficiary of an insurance policy as soon as identified or designated, as required by C.10.12. There were 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, as required by C.10.13.
- vi. Requirement to adopt risk management procedures in those circumstances when a customer may utilise the business relationship prior to verification, were narrower than those required by the standard (C.10.15).
- vii. Requirements to undertake CDD were applicable when there was a risk of tipping-off (C.10.20).

18. Andorra took number of steps to rectify the aforementioned deficiencies:

- i. Deficiencies with regard to C.10.4 were addressed, since the AML/CFT Act (from June 2017) requires reporting entities, when identifying and verifying the identity of the customer and beneficial owner, to verify that any person purporting to act on behalf of the customer is authorised to do so, in addition to the requirements to identify and verify the identity of that person (Art. 9.1 of the AML/CFT Act). These provisions, as indicated by the Andorran authorities, apply to both legal and natural persons.
- ii. As far as C.10.5 is concerned, the AML/CFT Act (Art.9(1)) requires reporting entities to identify and verify the identity of the customer and beneficial owner using information from reliable and independent sources, such that the reporting entity is satisfied that it knows who the beneficial owner is. When simplified due diligence is undertaken, requirements to identify and verify the identity of beneficial owner still apply (Article 9 of the AML/CFT Regulation permits reporting entities to adjust the level of information gathered for identification and verification purposes when carrying out simplified CDD). Therefore C.10.5 is considered to be met.
- iii. Shortcomings related to C.10.7 were rectified by Article 9(1)(d) of the AML/CFT Act which requires reporting entities to undertake a review of existing records. This provision is in line with criterion 10.7.
- iv. With regard to C.10.11, the AML/CFT Act broadened the definition of “beneficial owner”, which now includes: a) in the case of trusts, among others, the settlor and the protector (if any); b) in the case of legal arrangements similar to trusts or legal entities such as foundations, the natural persons holding equivalent or similar position to beneficial owners of trusts. The AML/CFT Act now requires reporting entities to obtain sufficient information on beneficiaries in the case of trusts or of similar legal arrangements that are designated by particular characteristics or class.
- v. Shortcomings related to C.10.12 and C.10.13 have been rectified, since the AML/CFT Act (Article 9.4) requires the application of CDD measures to the beneficiaries of life insurance or other investment-related insurance policies as soon as the beneficiaries are identified or designated. CDD measures required to be taken by the AML/CFT Act are in line with C.10.12, covering all the elements from a) to c). Shortcomings related to C.10.13 are rectified given that Article 9.4 of the AML/CFT Act requires reporting entities to consider the beneficiary of

a life insurance policy as a relevant risk factor when they determine whether enhanced due diligence should be applied.

- vi. With respect to criterion 10.15, FIs may only conduct identification and verification of the customer and the beneficial owner during the course of the business relationship if necessary so as not to interrupt the normal conduct of business, this occurs as soon as reasonably practicable after initial contact and when there is a low risk of ML/FT (Article 10(2) of AML/CFT Act). This provision is stricter than the Standards, as it only allows verification to be completed after the establishment of the business relationship only where the risk is low. As far as accounts are concerned, Article 10(3) of AML/CFT Act allows opening an account provided that adequate safeguards are in place to ensure that no transactions are carried out before identification and verification of the customer and beneficial owner takes place. Therefore criterion C.10.15 is considered as met.
- vii. As far as C.10.20 is concerned (prohibition of tipping off), the AML/CFT Act (Article 10(6)) allows reporting entities not to pursue the CDD process in the circumstances, where reporting entities has reasonable grounds to believe that performing CDD will tip-off the customer. It is considered that C.10.20 is met.

19. Andorra has addressed a number of deficiencies under R.10. Some other minor deficiencies noted in the MER remain. Andorra maintains the LC rating for R.10.

Recommendation 11 (Originally rated LC – re-rated as C)

20. In the 5th Round MER, Andorra was rated LC with R.11 because of the following gaps: insurance companies and two foreign post offices were not required to keep records obtained through the CDD process, account files, business correspondence and results of analysis undertaken; other FIs were required to keep “operational records”.

21. Andorra addressed the shortcomings under R.11:

- i. The AML/CFT Act (Article 37) requires all reporting entities to keep the records obtained through the CDD process, including account files, business correspondence and results of the analysis undertaken. Article 37 is applicable to all reporting entities, including insurance companies.
- ii. The post offices are not explicitly listed among other obliged entities in the AML/CFT Act, at least in the English version made available to the Secretariat and the rapporteurs. However, it was confirmed by the Andorran authorities that this was a translation issue and that the original Catalan version of AML/CFT Act (Article 2(1) d)) refers to “post office giro institutions”). Therefore, the criterion is considered as met.

22. Andorra has addressed the deficiencies under R11. Andorra is re-rated as C with R.11.

Recommendation 12 (Originally rated PC – re-rated as LC)

23. In the 5th Round MER, Andorra was rated PC due to the following shortcomings:

- i. There were no obligations in the legal acts that would require an approval to continue business relationships with foreign PEPs. The definition of PEP in the AML/CFT Act did not include important political party officials.

- ii. FIs were 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. The definition of PEP in the AML/CFT Act did not include important political party officials.
- iii. Given that the definition of PEP in the AML/CFT Act did not include important political party officials, domestic PEPs or persons entrusted with a prominent function by an international organisation, relevant requirements were not in place for their family members or close associates.
- iv. FIs were not required to take reasonable measures to determine whether the beneficiaries of life insurance policies and/or - where required - the beneficial owner of the beneficiary, are PEPs.

24. Andorra has taken steps to address the deficiencies identified under R.12.

25. AML/CFT Act (2017) provides the following provisions as regards to PEPs:

- i. The AML/CFT Act, Article 14 (b), now requires reporting entities to obtain senior management approval before establishing or continuing business relationships with PEPs (in line with C.12.1);
- ii. A PEP is defined in Article 2(6) of the AML/CFT Act as any natural person who is or has been entrusted with prominent public functions, irrespective of their status of residence (thus covering domestic and foreign PEPs);
- iii. The definition of PEPs in the AML/CFT Act, Article 2(6)) was also revised to include members of the governing bodies of political parties;
- iv. The AML/CFT Act (Art.17) requires the same CDD measures (including enhanced CDD) to be applied to family members or persons known to be close associates of PEPs.
- v. However, some minor deficiencies still remain under C.12.4: whilst the AML/CFT Act (Art. 15) requires reporting entities to take reasonable measures in order to determine whether the beneficiaries of life insurance policies and/or - where required - the beneficial owners of the beneficiary, are PEPs, there is no direct requirement set out in the AML/CFT Act to consider making STR in higher risk cases, as required by criterion 12.4.

26. Andorra has addressed the large majority of the deficiencies under R.12. Andorra is re-rated as LC with R.12

Recommendation 15 (Originally rated PC - re-rated as C)

27. In the 5th Round MER, Andorra was rated PC due to the following deficiencies:

- i) Reporting entities were not required to assess the ML/FT risks that arise in relation to the development of new products and new businesses practices, including new delivery mechanisms.
- ii) There was no requirement for reporting entities to undertake a risk assessment prior to launching new products, practices and technologies, nor to take appropriate measures to manage and mitigate risks identified in relation to their development.

28. Andorra has addressed the deficiencies under R.15 through Art. 9(6) of the 2017 AML/CFT Act which requires reporting entities to assess the ML/FT risks that arise in relation to the development of new products and new business practices, including new delivery mechanisms. The AML/CFT Act (Art.9(6) points a) and b)) sets out a direct requirement for reporting entities to conduct a risk assessment prior to the launching or use of such products, practices and technologies and to take appropriate measures to manage and mitigate the risks.

29. Andorra has addressed all the deficiencies under R.15. Andorra is re-rated as C with R.15

Recommendation 16 (Originally rated PC – re-rated as LC)

30. In the 5th round MER Andorra was rated as PC due to following shortcomings:

- i. There was no requirement in place to ensure that all cross-border wire transfers of EUR 1,000 or more are always accompanied by concerning beneficiary information (C.16.1).
- ii. There were no specific provisions in legal acts in relation to batch transfers (C.16.2).
- iii. *A de minimis* threshold was 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 (C.16.3).
- iv. There was no requirement for the account number or unique identifier used to permit traceability of the originator or beneficiary of the transaction (C.16.5 and C.16.6).
- v. Although the law required FIs to reject transfers of funds where the complete information on the payer is missing, this does not concern information on the beneficiary as there are currently no requirements in place in this respect (C.16.8).
- vi. There was no requirement to ensure that all beneficiary information that accompanies a wire transfer is retained with it (C.16.9).
- vii. FIs were not required to take reasonable measures to identify cross-border wire transfers that did not have required beneficiary information (C.16.11 and C.16.13).
- viii. FIs were not required to have risk-based policies and procedures for determining: (a) when to execute, reject or suspend a wire transfer lacking required beneficiary information; and (b) the appropriate follow-up action (C.16.12 and C.16.15).

31. Andorra has addressed a number of deficiencies in relation to C.16.1 (a and b), 16.3, 16.5, 16.6, 16.8, 16.9, 16.11, 16.13, 16.13, 16.15 through the introduction of new provisions under the AML/CFT Act. These criteria are now considered as met. With respect to C.16.1, there is now a requirement for all cross-border wire transfers to be accompanied by relevant beneficiary information, regardless of the amount (Article 30, 31 and 36 of the AML/CFT Act). Deficiencies in relation to C.16.3 16.5, 16.6, 16.8, 16.9, 16.11, 16.13, 16.12, 16.15 were addressed through Articles 30, 31, 32, 34, 35, 36 of the 2017 AML/CFT Act (for further information please see Appendix 7).

32. However, deficiencies still remain under 16.2 (no specific provisions as regards batch transfers). The AML/CFT Act (Art. 31(2) and 31(5)) requires the payment service provider (PSP) of the payee and intermediary PSP to implement effective procedures in order to detect whether the required information (accompanying transfer of funds) on the payer and the payee is missing. These procedures are also applicable to batch file transfers, as stipulated in the AML/CFT Act, however, there is no direct requirement under the AML/CFT Act on the PSP of the payer (in cases when a

batch file is transmitted to the beneficiaries) to ensure that the batch file contains required and accurate originator information and full beneficiary information that is traceable within the beneficiary country.

33. Andorra has addressed the large majority of the deficiencies under R.16. However, minor deficiencies still remain. Andorra is re-rated as LC with R.16.

Recommendation 20 (Originally rated LC – re-rating as C)

34. R.20 was rated LC due to shortcomings in the criminalisation of the ML offence - tax crime and smuggling of goods (apart from tobacco) were not in the list of ML predicate offences. Given that the CC was amended (please see R.3) this shortcoming is no longer in place.

35. Andorra has addressed the remaining deficiency. Andorra is re-rated as C with R.20.

Recommendation 22 (Originally rated PC – re-rating as LC)

36. The 5th Round MER highlighted the following deficiencies:

- i) Shortcomings identified under R.10 applied equally to DNFBPs. In other words, requirements in Articles 49 bis (5) dealing with failure to satisfactorily complete CDD applied only to “financial parties” (C.10.19), and not also to DNFBPs (C.22.1).
- ii) With regard to casinos, some AML/CFT requirements applied only to 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 was no particular requirement in the legislation 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 (C.22.1(a)).
- iii) In respect of trust and company service providers, measures were not applied as widely as required under the standards (22.1 (b-e)).
- iv) Shortcomings identified under R.11, R.12, R.15 and R.17 applied equally to DNFBPs (C.22.2; 22.3, 22.4 and 22.5).

37. Andorra has taken several steps in order to address the deficiencies noted under R.22:

- i) and ii) The AML/CFT Act (2017) requires all obliged entities (including DNFBPs) to comply with the CDD requirements set out in R.10 (the scope of the CDD measures are listed in Article 9 of the Act). The Act (Article 8 (d)) also requires casinos and other gambling services providers to apply CDD measures upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to EUR 2,000 or more (C.22.1 a)).
- iii) On the other hand, the definition of trust and company service providers in the Article 3(4) of the AML/CFT Act is still narrower than what is required by the standard (criterion 22 (e)). The definition does not include activities, such as: a) providing accommodation for a company, a partnership or any other legal person or arrangement; b) arranging for another person to act as a trustee of an express trust or performing the equivalent function for another form of legal arrangement; c) acting as (or arranging for another person to act as) a nominee shareholder for another person.

38. As for the shortcomings identified under R.11 (c 22.2), the new provisions on record keeping

(article 37 of the AML/CFT Act) are applicable to all reporting entities.

39. As far as the shortcomings identified under R.12, R.15 and R.17 (c 22.3, C.22.4 and C.22.5) and their application on DNFBPs are concerned, it needs to be noted that the AML/CFT Act rectified these deficiencies, whilst some minor issues are still outstanding (please also see Appendix 7).

40. Minor shortcomings still remain in relation C.22.5. Article 18 of the AML/CFT Act sets out the requirements to reporting entities in those cases when they decide to rely on third parties for the purpose of obtaining CDD information. The reporting entities that rely upon third parties are required to ensure that the third party provides, immediately, upon request, relevant copies of identification and verification data and other relevant documentation on identity of the customer or the beneficial owner. However, there is no similar requirement to immediately obtain information on the nature and purpose of a business relationship. Therefore, the criterion is considered as mostly met.

41. Andorra has addressed the major deficiencies. Andorra is re-rated as LC with R.22.

Recommendation 23 (Originally rated PC – re-rated as LC)

42. The 5th Round MER rated R.23 as Partially Compliant taking into account the following deficiencies:

- i) Shortcomings identified under R.20 applied equally to DNFBPs. As regards providers of services to legal persons and legal arrangements, the reporting obligation did not cover all activities listed under C.22.1.
- ii) Shortcomings identified under R.18 applied equally to DNFBPs. Under Article 52(2) of the then AML/CFT Act, non-financial entities were not required to contract an independent external audit each year to verify compliance with the Act. Furthermore, DNFBPs were not required to ensure that foreign branches and majority owned subsidiaries apply AML/CFT requirements consistent with home country requirements.
- iii) Shortcomings identified under R.21 applied equally to DNFBPs (c 23.4).

43. With regard to i) the shortcomings were duly rectified through the amendments to the Criminal Code and criminalisation of tax crimes and smuggling in goods (please see R.3 and R.20). However, the deficiencies identified under C.22.1 (e), might have a cascading effect on C.23.1(c) affecting reporting obligations of trusts and company service providers (please see Appendix 7 and C.22.1 (e)).

44. New provisions in relation to R.18 also apply to DNFBPs (please see Appendix 7 and C.18.1 and C.18.2). When it concerns the requirements that have to be applied by foreign branches and majority owned subsidiaries, new provisions as established by Article 41 of the AML/CFT Act (2017) provide that branches and subsidiaries of Andorran reporting entities are subject to similar requirements with those applied in Andorra. However, no provisions requiring application of group-wide policies and procedures are in place for majority owned subsidiaries at the national level.

45. Analysis provided under C.21.1 confirms that the shortcoming related to C.23.4 has been rectified.

46. Andorra addressed most of the deficiencies noted in relation to R.23. Andorra is re-rated as LC with R.23.

Recommendation 25 (Originally rated PC – no re-rating)

47. Andorra received a PC rating for R.25. The main shortcomings were the following:

a) C.25.2 - The factors underlying C.10.7 (and C.22.1) and deficiencies highlighted thereunder had an impact on the level of compliance under R. 25. The requirement to keep information on the trust (and parties to it) up to date did not also extend to holding basic information on regulated agents of, and service providers to, the trust.

The analysis of Andorra's response to this shortcoming confirmed that this criterion is still partly met. As noted in the MER, Andorra does not recognise trusts, 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.

According to Article 2(2) of the AML/CFT Act, service providers to companies, other legal entities, trusts and other fiduciary arrangements as well as independent legal professionals where they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning the '*creation, operation or management of trusts, companies, associations, foundations, or similar structures*' are considered as obliged entities under AML/CFT law and would therefore be required to keep information on the trust. Article 9(1) of the AML/CFT Act requires obliged entities to adopt measures to ensure that the documents, data or information held are kept up-to-date and are appropriate, verifying the existing documentation, especially for high-risk customers. However, this requirement does not also extend to holding basic information on regulated agents of, and service providers to, the trust. The definition of trust and company service providers in the Article 3(4) of the AML/CFT Act is still narrower than required by the standard (criterion 22.1 (e)). The definition does not include activities, such as: a) providing accommodation for a company, a partnership or any other legal person or arrangement; b) arranging for another person to act as a trustee of an express trust or performing the equivalent function for another form of legal arrangement; c) acting as (or arranging for another person to act as) a nominee shareholder for another person.

b) C. 25.3 – The MER noted that no obligation was in place for the trustees to declare their status to a FI or other DNFBP if they are acting in that capacity professionally or non-professionally. Although reporting entities are required under the 2017 AML/CFT Act to identify and verify the customer and the beneficial owner, including beneficial owners of the trusts, no obligation is placed on trustees to disclose their status to financial institutions or other DNFBPs if they are acting in that capacity professionally or non-professionally. Therefore this criterion is not met.

c) C. 25.4 - The former AML/CFT Act included provisions relating to client secrecy. There was no provision in the Act allowing a trustee to provide information on a trust to FIs or DNFBPs, as the duty of secrecy was in place. The effect of this was that the trustees were prevented from providing information where it is not possible to do so by mutual agreement. This shortcoming is now rectified since the AML/CFT Act from 2017 no longer has the provisions granting client secrecy upon directors, managers and employees of reporting entities. Article 10(4) of the AML/CFT Act (2017) prohibits reporting entities from establishing a business relationship or carrying out an occasional transaction if they cannot comply with the identification and verification requirements of the customer and beneficial owner.

d) C. 25.5 - The legislation did not permit LEAs to set deadlines for information to be provided by reporting entities, thereby potentially impacting the timeliness of the provision of information (this

issues was also discussed under C.31.3 in the MER). In response to this the authorities advised that in practice deadlines could be established. However, just as it was the case during the on-site, there is still no clear legal provision on this matter. Given that the response of the authorities is more of an effectiveness issue rather than TC, it cannot be considered that this shortcoming was rectified.

e) C. 25.7 - Another shortcoming noted in the MER was the fact that there were no sanctions in place for a person resident in Andorra acting as trustee in a non-professional capacity, although a person acting as a professional trustee of a foreign trust is subject to sufficiently proportionate and dissuasive sanctions for failing to comply with CDD and record-keeping requirements. However, no amendments were introduced in the legislation to address this deficiency.

48. Andorra has addressed some of the deficiencies noted in the MER, however deficiencies still remain as regards C. 25.2, C. 25.3, C. 25.5 and C. 25.7, therefore R.25 remains PC.

Recommendation 26 (Originally rated PC – no re-rating)

49. The following deficiencies led to PC rating for R.26:

- i) Supervisors did not have a direct power to: (i) remove a particular shareholder or to freeze a particular shareholder's rights; or (ii) permanently remove a director or senior manager from their post (except in the case of a bank) (c 26.3).
- ii) INAF was 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 (essential criterion 5 of Core Basel Principle 6); (2) consolidated group supervision (combination of the INAF and the UIFAND) was quite limited (principle 12). (3) Not all relevant International Association of Insurance Supervisors (IAIS) Principles were applied. (4) Two foreign post offices were not licenced to provide financial services (c 26.4).
- iii) The frequency and intensity of on-site supervisory inspections was not truly risk-based (c 26.5).

50. For i) and ii) Andorra provided information that the Bill on Solvency, Liquidity and Prudential Supervision, which includes amendments to address the deficiencies under c 26.3 and c 26.4, has not yet entered into force. Consequently, c 26.3 and c 26.4 are not yet met. Although information provided for iii) discusses the relevant matter, this criterion is still partly met - whilst UIFAND has taken a number of measures to enhance the supervisory approach (e.g. off-site reporting has been introduced or is planned to be introduced for some of reporting entities; on-site inspections taking place as the result of risk assessment, etc.), these steps do not fully justify that a risk based supervisory model has been implemented. It remains unclear whether frequency and intensity of on-site supervisory inspections is truly risk-based.

51. Andorra did not address the deficiencies noted in the MER, therefore R.26 remains PC.

Recommendation 32 (Originally rated PC – re-rated as C)

52. Andorra was rated PC with R.32 in light of the following gaps: the existing sanctions for a false declaration or disclosure were not proportionate and dissuasive; the Customs Department was not able to stop or restrain currency and BNI.

53. With the adoption of the new AML/CFT Act the revised sanctions (amount of fine imposed) for

the false declaration or disclosure as stipulated under Article 47 seem to be proportionate and sufficiently dissuasive, considering that this presents an increase of the maximum fine by 4 times.

54. The new AML/CFT Act vests the Customs Department with powers to restrain currency and BNIs in all scenarios as reflected in C.32.8. The Act makes the exception from this rule for '*the first EUR 1,000 in concept of minimum survival amount*'. The referred limitation concerns only administrative procedure whilst in case of ML/FT suspicion, law enforcement, as a part of criminal investigation, may restrain all funds. Given that law enforcement and customs share the same premises at two border points that Andorra has, criterion 32.8(a) is met.

55. Andorra has addressed the deficiencies identified in the MER. Andorra is re-rated as C with R.32.

Recommendation 34 (Originally rated PC – re-rated as LC)

56. The 5th round MER noted that the number of customer risk factors had 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, complex ownership structures of companies, sources of wealth of PEPs, etc.). In addition, UIFAND did not provide aggregated feedback (as a supervisor) on findings from onsite visits and external reviews completed by auditors.

57. The deficiencies were rectified to a large extent: according to the information provided by the authorities, UIFAND issued the following:

- i) guide on the individual risk assessment which addressed number of the risk factors.
- ii) aggregated feedback as a result from the on-site supervisory visits for DNFBPs sector (lawyers and other legal professions, economists, tax advisors, accountants, auditors, gestories and other companies service providers, real estate agents).
- iii) individual feedback is being provided to FIs after the submission of the annual external audit report and after the on-site inspections. This, however, does not fully address the issue concerning the lack of aggregated feedback for FIs in order to promote the consistent application of best practices across the financial sector.

58. Given that majority of deficiencies were addressed, Andorra is re-rated as LC with R.34.

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

59. Since the adoption of Andorra's 5th round MER, Recommendations 7, 18 and 21 have been amended. This section considers Andorra's compliance with the new requirements in these three Recommendations. In addition, the analysis also covers Andorra's progress with regard to the deficiencies identified in the MER in respect of these recommendations.

Recommendation 7 (Originally rated C –no re-rating)

60. The 5th Round MER found no shortcomings in the implementation of targeted financial sanctions related to proliferation.

In June 2017, the Interpretive Note to R.7 was amended to reflect the changes made to the proliferation financing-related United Nations Security Council Resolutions (UNSCRs) since the FATF standards were issued in February 2012, in particular, the adoption of new UNSCRs.

61. Article 49 of the AML/CFT Act states that the Permanent Committee (PC)² should proceed with modifications and derogations in accordance with the UNSCRs. The Resolution 1/2016 issued by the PC on designation of individuals and entities applies to all restrictive measures that can be imposed under UNSC Committees, therefore ensuring immediate implementation of the UNSCR 2231 (2015).

62. There are no deficiencies related to R.7. Andorra remains rated as C with R.7.

Recommendation 18 (Originally rated LC – no re-rating)

63. In November 2017, the Interpretive Note to R.18 was amended to clarify the scope of information-sharing requirements.

64. In the 5th round MER, Andorra was rated LC with R.18. The LC rating was based on deficiencies identified with respect to C.18.1 and C.18.2, which were the following:

- i. There was no legal requirement in place when implementing policies, procedures and controls, to take into account the size of a business. No explicit and practical requirements or guidance explaining the substance of measures to be taken when hiring staff were introduced.
- ii. There were shortcomings in relation to the implementation of group-wide programmes against ML/FT to all branches and majority-owned subsidiaries of a financial group.

65. Minor shortcomings under C.18.1 and C.18.2 still remain, therefore both criteria are considered as mostly met:

- i. Whilst Article 17(1) of AML/CFT Regulation now requires reporting entities to implement internal policies and control procedures to ensure high ethical standards when hiring staff, no practical requirements or guidance explaining the substance of these standards are in place.

The AML/CFT Act requires reporting entities, when implementing internal controls, to take into account the size of business in order to manage the risks. This appears to be narrower than a standard since it requires taking into account not only to the size of business, but also the risks to which reporting entities are exposed.

Insurance undertakings authorised to operate in the life insurance sector fall under the list of obliged entities as per Article 2 (1)(b) of the AML/CFT law. Post offices are also included in the list of obliged entities (please see R.11).

- ii. A requirement for reporting entities to implement *AML/CFT group-wide policies and procedures* is set out in Article 41.1 of the AML/CFT Act. However, these policies and procedures are to be applied at the level of branches and majority-owned subsidiaries in other countries, which is narrower than the standard (does not include branches and majority-owned subsidiaries in the country).

² Permanent Committee for the prevention and fight against money laundering and terrorism financing

Article 15(5) on compliance management arrangements and 16(2) on the internal audit function of the AML/CFT regulation, however, leaves a discretion for reporting entities to decide, whether the above mentioned procedures are applicable to the branches and majority owned subsidiaries (wording used in AML/CFT act: *"In the case of reporting entities belonging to a group, compliance with the obligations contained in this article may be made within the framework of the group."*). Thus the requirement is not considered as binding.

With regard to the revised standard (financial groups AML/CFT programmes which include *sharing of information and analysis of transactions or activities which appear unusual, including also when relevant and appropriate to risk management*), Article 41.5 of the AML/CFT Act allows the exchange of information within the group, including STRs, unless the UIFAND explicitly opposes the exchange of information on STRs.

- iii. No provisions are in place on adequate safeguards on the confidentiality and use of information exchanged, as required by the standard (criterion 18.2 c).

66. Andorra has addressed some deficiencies under R.18, however minor deficiencies still remain. Requirements of the revised standard have been addressed. Andorra is rated as LC with R.18.

Recommendation 21 (Originally rated LC – re-rated as C)

67. The Methodology for assessing R.21 was amended in February 2018 to clarify the interaction between the tipping-off provisions and the revised requirements on information sharing within financial groups (R.18). In the 5th Round MER, Andorra was rated LC with R.21.

68. The deficiency noted in the MER with regard to R.21 was that the AML/CFT Act, which was in force at the time, did not specify that the protection envisaged under C.21.1 should apply only where a report is made in good faith. The AML/CFT Act (2017) introduced provisions that addressed this deficiency. More precisely, Article 24 of the said Act specifies that protection from both criminal and civil liability for any breach of the restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision should apply only where a report is made in good faith.

69. The requirement that the financial institutions and their directors, officers and employees should be prohibited by law from disclosing the fact that a STR or related information is being filed with the Financial Intelligence Unit, is introduced through Article 26 of the AML/CFT Act. Furthermore, paragraph 3 of the same article states that this prohibition shall not prevent financial parties and their branches and majority-owned subsidiaries to share information within the group as provided for under R.18 (as per the revised standard).

70. There are no deficiencies related to R.21. Andorra is re-rated as C with R.21.

IV. CONCLUSION

71. Overall, Andorra has made commendable progress in addressing the TC deficiencies identified in its 5th Round MER and has been re-rated on 12 Recommendations (12 upgrades). Recommendations 2, 3, 12, 15, 16, 22, 23, 32 and 34, initially rated as PC, are re-rated as LC or C. Recommendations 11, 20 and 21 initially rated as LC, are re-rated as C. Recommendations 7 and 18,

initially rated as C and LC, remained with the same rating after being assessed against the revised standards.

72. Andorra is encouraged to continue its efforts to address the remaining deficiencies.

73. Overall, in light of the progress made by Andorra since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

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

74. Andorra will remain in enhanced follow-up, and will continue to report back to MONEYVAL on further progress to strengthen its implementation of AML/CFT measures in a year's time.

GLOSSARY OF ACRONYMS

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
BNI	Bearer negotiable instrument
BO	Beneficial ownership
C	Criterion
CC	Criminal Code
CDD	Customer due diligence
CFT	Countering the financing of terrorism
DNFBP	Designated non-financial business and professions
FATF	Financial Action Task Force
FI	Financial institutions
FT	Financing of terrorism
LC	Largely compliant
MER	Mutual evaluation report
ML	Money laundering
NRA	National risk assessment
PC	Partially compliant
PF	Proliferation financing
R	Recommendation
STR	Suspicious transaction report
TC	Technical Compliance
TFS	Targeted financial sanctions
The UIFAND	Unitat d'Intel·ligència Financera d'Andorra
UNSCR	United Nations Security Council Resolutions

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December 2018

Anti-money laundering and counter-terrorist financing measures -

Andorra

**1st Enhanced Follow-up Report &
Technical Compliance Re-Rating**

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

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