No. 3 Year 2020 (15 January 2020)

Andorran Parliament
Laws

Law 21/2019, of 28 November, on amendment of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing

Whereas the Andorran Parliament in its session of 28 November 2019 has approved the following:

Law 21/2019, of 28 November, on amendment of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing

Explanatory statement

Andorra has undertaken the strongest commitment to implement the international rules and standards on the prevention and fight against money laundering and terrorist financing. Within this framework Andorra is assessed by different international bodies, including the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval) and the Joint Committee formed by representatives of the Principality of Andorra and of the European Union within the framework of the Monetary Agreement signed between the Principality of Andorra and the European Union on 30 June 2011.

These two bodies have recently made some observations to supplement the implementation of the FATF recommendations and the transposition of the Directive (EU) 2015/849 of the European Parliament and of the Council, of 20 May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, incorporated into the Andorran legal system by means of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing.

The purpose of this amendment is to incorporate these improvements into the Andorran legal system and to strengthen interpretive aspects which have been observed in the course of the effectiveness of the Law.

This law is structured in sixteen articles relating to the amendment of said Law 14/2017 and in six final provisions.

The First Final Provision amends Law 7/2013, of 9 May, on the legal system of the entities operating in the Andorran financial system and other provisions which regulate the exercise of financial activities in the Principality of Andorra. This inclusion is based on the fact that, as a result of the legislative amendments made in the years 2018 and 2019 affecting the legal system of the entities operating in the financial system, aspects were identified which, in order to ensure a precise legislative framework, should be rectified for correct adaptation of Law 7/2013, for the purpose of the clarification of the rule, while in no case does the legal sense of such aspects undergo any change.

The Second Final Provision amends the Qualified Law on amendment of the Code of Criminal Procedure, of 10 December 1998, since the short term of the secrecy of the proceedings in our criminal procedure laws, when compared to the laws of our

neighbouring States, was one of the issues which was of concern to Moneyval within the framework of the latest assessment, inasmuch as it could negatively affect both national investigations and international criminal cooperation, and Moneyval recommended that it should be increased. For this reason, Articles 40 and 46 of the Code of Criminal Procedure are amended, and the terms of the secrecy of proceedings are increased.

The Third Final Provision, following the recommendations of Moneyval, amends the definition of "funds" in Article 366 bis of Qualified Law 9/2005, of 21 February, of the Criminal Code, to explain concepts already included in the definition of "funds", in line with what is established by the FATF Recommendation 5, on the criminalization of terrorist financing, while the material content of the article is maintained.

The Fourth Final Provision establishes that both the Final Provision Two and Final Provision Three have the character of Qualified Law.

The Fifth Final Provision establishes the need to submit the consolidation project of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing; of Law 7/2013, of 9 May, on the legal system of the entities operating in the Andorran financial system, and of other provisions which regulate the exercise of financial activities in the Principality of Andorra; of the Qualified Law on amendment of the Code of Criminal Procedure, of 10 December 1998; and of Qualified Law 9/2005, of 21 February, on the Criminal Code.

Lastly, the Sixth Final Provision determines the entry into force of this Law.

Article 1. Amendment of Paragraph 2 of Article 2 of Law 14/2017

Letters c), e), f) and g) of Paragraph 2 of Article 2 of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing are amended, and a Letter h) is added to said paragraph, in the following terms:

"Article 2. Scope

[...]

2. The following natural persons or legal entities, in the exercise of their professional activity:

c) economists, administrative services managers, and other service providers to companies, other legal entities, trusts and other fiduciary arrangements;

[...]

e) persons trading in goods to the extent in which the payments are made or are received in cash for an amount equal to or greater than 10,000 euros or the equivalent value in foreign currency, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

f) casinos and other providers of gambling services, on-site or online. By regulatory means, gambling that presents a low risk of money laundering and terrorist financing may be excluded totally or partly (except in the case of casinos), on the basis of a risk analysis using all relevant sources of information;

g) non-profit organizations under the terms established in the First Additional Provision of this Law. By regulatory means, the group of organizations which will be parties under obligation may be determined, on the basis of a risk analysis using all relevant sources of information, identifying the characteristics and type of organizations which, by virtue of their activities and particularities, are susceptible to be exposed to the risk of being used for purposes of terrorist financing;"

h) trustees or persons who hold an equivalent position in legal structures similar to trusts in a non-professional way, under the terms established in the Third Additional Provision of this Law."

Article 2. Amendment of Paragraph 1 and of Paragraph 4 and addition of Paragraphs 18 and 19 of Article 3 of Law 14/2017

Paragraphs 1 and 4 of Article 3 of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing are amended, and Paragraphs 18 and 19 are added to said article, in the following terms:

"Article 3. Definitions

[...]

1. Funds: those which are defined as such according to Article 366 bis of the Criminal Code.

[...]

4. Service providers to companies and trusts: a natural person or legal entity who provides the following services to third parties:

a) the formation of companies or other legal persons;

b) acting as, or arranging for another person to act as, a director or secretary/attorney-in-fact/administrator of a company, a partner of a partnership, or a similar position in relation to other legal persons;

c) providing a registered office, business address or accommodation, correspondence or administrative address or other similar services for a company, a partnership or any other legal person or arrangement;

d) acting as, or arranging for another person to act as, a trustee of a trust or performing the equivalent function in other legal arrangements;

e) acting as, or arranging for another person to act as, a nominee shareholder for another person."

[...]

18. Gambling services : any service that involves bets of monetary value in games of chance, including those with an element of skill such as lotteries, casino games, poker and betting, which service is provided in a physical location, or by any remote means, by electronic means or by any other technology that facilitates communication, at the individual request of the recipient of the service.

19. Non-profit organizations (NPOs): a legal person or arrangement or organization, including associations and foundations, that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of good works."

Article 3. Amendment of Letter d) of Article 8 of Law 14/2017

Letter d) of Article 8 of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing is amended, in the following terms:

"Article 8. Obligation to apply customer due diligence measures

[…]

d) in the case of casinos and other providers of gambling services, upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to EUR 2,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;"

Article 4. Addition of Letter e) to Paragraph 1 and amendment of Paragraph 3 of Article 9 of Law 14/2017

A letter e) is added to Paragraph 1 of Article 9 of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing, and a third point is added to Paragraph 3 of said article, in the following terms:

"Article 9. Scope of the customer due diligence measures

[…]

e) the assessment, understanding, and procurement of information to identify and to verify the origin of the funds which are the object of the business relationship or of the occasional transaction.

[…]

3. […]

In any case, parties under obligation should be able to prove to UIFAND that the customer due diligence measures which they have adopted are appropriate to the money laundering and terrorist financing risks which have been identified."

Article 5. Amendment of Paragraph 1 of Article 13 of Law 14/2017

Paragraph 1 of Article 13 of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing is amended, in the following terms:

"Article 13. Correspondent banking relationships

1. With respect to cross-border correspondent relationships with entities of other countries, the correspondent Andorran banking and financial entities shall:

a) gather sufficient information about the foreign respondent entity to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the entity and the quality of supervision, including if it has been subject to an investigation or any other regulatory action concerning money laundering or terrorist financing;

b) assess that the respondent entity's money laundering and terrorist financing controls are adequate and effective;

c) obtain approval from senior management before establishing new correspondent banking relationships;

d) document the respective responsibilities of each entity;

e) with respect to payable-through accounts, be satisfied that the foreign respondent entity has verified the identity of, and performed ongoing due diligence on, the customers having direct access to accounts of the Andorran correspondent entity, and that it is able to provide the necessary data for the purposes of identification and verification of the customer and of the beneficial owner to the correspondent entity, upon request.

[...]."

Article 6. Addition of a Letter c) to Article 15 of Law 14/2017

A Letter c) is added to Article 15 of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing, in the following terms:

"Article 15. Life insurance with politically exposed persons

[...]

c) consider the submission of a suspicious transaction report."

Article 7. Amendment of Paragraph 5 of Article 18 of Law 14/2017

The second point of Paragraph 5 of Article 18 of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing is amended in the following terms:

"Article 18. Performance by third parties

[...]

5. [...]

Likewise, parties under obligation shall take adequate steps to ensure that the third party provides, immediately, upon request, relevant copies of identification and verification of the identity documents and other relevant documentation on the identity of the customer or the beneficial owner, as well as the documents, information or data on the purpose and intended nature of the business relationship.

[...]."

Article 8. Addition of a Paragraph 7 to Article 30 of Law 14/2017

A Paragraph 7 is added to Article 30 of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing, in the following terms:

"Article 30. Information accompanying transfer of funds

[...]

7. The provisions of this article also apply to batch transfers."

Article 9. Amendment of Article 40 of Law 14/2017

Paragraphs 2 to 6 are amended, and a Paragraph 7 is added to Article 40 of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing, in the following terms:

"Article 40. Internal procedures

[...]

2. Parties under obligation which are legal entities shall:

a) appoint an internal control and communication body in charge of organising and monitoring compliance with the provisions on the prevention of money laundering and terrorist financing and notify this appointment to the UIFAND.
The members of the internal control and communication body shall be members of the management or the senior management of the party under obligation.

b) establish the internal control procedures.

3. Non-financial parties under obligation which are natural persons that conduct activities which determine their status as parties under obligation, will be considered to be their own internal control and communication body.

4. Parties under obligation shall designate, at least, one manager who is a member of the internal control and communication body, as a representative before the UIFAND, on the basis of the person's training, suitability and experience in the sector.

5. The representatives before the UIFAND of the parties under obligation have, in all cases, the following functions:

a) to submit the suspicious transaction reports referred to in Article 20 of this Law;

b) to receive the inquiries and requests from the UIFAND.

6. Where a natural person falling within any of the categories listed in Article 2, Paragraph 2 of this Law performs professional activities as an employee of a legal entity, the obligations of this section shall apply to that legal entity rather than to the natural person.

7. Financial parties under obligation which carry out financial activities occasionally or in a very limited way may be exempted by regulatory means from compliance with any or all

of the provisions established in this article, when there is a low risk of money laundering or terrorist financing."

Article 10. Amendment of Paragraphs 2 and 3 of Article 44 of Law 14/2017

Paragraphs 2 and 3 of Article 44 of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing are amended in the following terms:

"Article 44. Control and inspection powers

[...]

2. A failure to declare, where this is required, or the lack of veracity in the reported data, shall lead to the seizure by the Customs officials of all the cash carried and/or discovered, with the possibility of an exception of EUR 1,000 in concept of minimum survival amount.

3. Where, regardless the obligation to declare, there are suspicions that the cash is related to money laundering or terrorist financing, the Customs officials shall seize all the cash carried and/or discovered, and shall immediately communicate it to the UIFAND and the Police.

The possibility of EUR 1,000 exception in concept of minimum survival amount shall be granted on the basis of the circumstances of the case, such as the persons' need to continue the trip or the lack of any other means of survival."

Article 11. Amendment of Paragraph 11 of, and addition of Paragraph 12 to, Article 71 of Law 14/2017

Paragraph 11 of Article 71 of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing is amended, and a Paragraph 12 is added to said article, in the following terms:

"Article 71. Very serious infringements

[...]

11. Failure to comply with the record-keeping obligations in the terms established in article 37 of this Law.

12. The commission of more than three serious infringements in a period of one year."

Article 12. Amendment of Paragraph 12 and of Paragraph 17 and addition of Paragraphs 18 and 19 of Article 72 of Law 14/2017

Paragraph 12 and Paragraph 17 of Article 72 of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing are amended, and Paragraphs 18 and 19 are added to said article, in the following terms:

"Article 72. Serious infringements

[...]

12. Failure to comply with the measures and obligations established in the First Additional Provision of this Law.

[...]

17. Failure to comply with the measures and obligations established in the Third Additional Provision of this Law.

18. The conducts specified in Article 71 of this Law, when they have not been committed in a serious, repeated or systematic manner.

19. The commission of more than three minor infringements within a period of one year."

Article 13. Amendment of Article 76 of Law 14/2017

Article 76 of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing is amended, in both its content and its title, in the following terms:

"Article 76. Exceptions to the ordinary sanctioning system

1. Under no circumstances may the infringer benefit financially from the commission of an infringement.

2. When the financial benefit that the infringer obtains as a result of committing an infringement can be determined, the upper limit of the fine provided for in the preceding articles will be increased up to twice the aforementioned benefit, provided that the amount of the doubled benefit is higher than the upper limit.

3. When the infringer entity is a financial party under obligation, including the branches which carry out activities of the same nature in the Principality of Andorra, and the infringement has been serious, repeated and systematic, or has shown a combination of these characteristics, and such infringement is related to the customer due diligence obligations, the reporting of suspicious transactions, record-keeping, or the establishment of internal control procedures, the upper limit of the fine provided in the preceding articles may be raised:

a) In the case in which the infringer is a legal entity: up to 5% of the total annual turnover, proven by the latest available accounts approved by the governance body; or if the party under obligation is a parent company, or the subsidiary of a parent company, which draws up consolidated financial statements, the pertinent total turnover is the total annual turnover or the respective type of income, according to the most recent available consolidated financial accounts approved by the governance body of the ultimate parent company.

b) In the case in which the infringer is a natural person: up to 1,000,000 euros."

Article 14. Addition of a Letter g) to Article 77 of Law 14/2017

A Letter g) is added to Article 77 of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing, in the following terms:

"Article 77. Criteria for setting sanctions

[...]

g) The cooperation of the infringer or responsible entity, with the UIFAND."

Article 15. Amendment of the First Additional Provision of Law 14/2017

First Additional Provision of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing is amended, in both its content and title, in the following terms:

"First additional provision. Non-profit organizations

1. The board of directors, the surveillance body, the board of trustees, or the pertinent representation body that manages the interests of the organization, and the personnel of same with management responsibilities, shall ensure that these organizations are not used for money laundering or to channel funds or resources to persons and entities linked to terrorist groups or organizations, in accordance with the provisions on the prevention and fight against money laundering and terrorist financing.

To this end, all organizations shall keep, for ten years, records with the identity of all the persons who receive funds or resources from the organization, and, in the case of associations, shall also keep the record books which are referred to in Article 28 of the Qualified Law of Associations. These registers and books shall be at the disposal of the administrative or judicial bodies with competences in the field of the prevention and fight against money laundering, and terrorism and its financing, as well as at the disposal of the persons in charge of the Register of Associations, when applicable.

2. The scope of the obligations established in this provision may be developed by regulatory means.

Article 16. Addition of a Third Additional Provision

A Third additional provision is added to Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing, in the following terms:

"Third additional provision. Persons who exercise functions of trustee or an equivalent position

The natural persons or legal entities that exercise functions of trustee or an equivalent position in legal structures similar to trusts, of professional or non-professional nature, are subject to the following measures:

a) they are to keep the following updated information on the trust:

i) the beneficial owners,

ii) the residence of the trustee or of the analogous figure,

iii) any assets held or managed by a financial or non-financial party under obligation.

b) they are to keep the documents, data and information within the framework of the procurement of the information required in the preceding point, according to the terms

established by Article 37 of this Law, and communicate it to the competent authorities as soon as it were to be requested.

c) when they establish a business relationship or carry out an occasional transaction, they are to communicate their status to the financial institutions and to other non-financial parties under obligation, as well as the up-to-date information with respect to:

i) the beneficial owners,

ii) the residence of the trustee or of the analogous figure,

iii) any assets held or managed by a financial or non-financial party under obligation."

First Final Provision. Amendment of Law 7/2013, of 9 May, on the legal system of the entities operating in the Andorran financial system and other provisions that regulate the exercise of financial activities in the Principality of Andorra

The following amendments are made in Law 7/2013, of 9 May, on the legal system of the entities operating in the Andorran financial system and other provisions that regulate the exercise of financial activities in the Principality of Andorra.

1. Paragraphs 1, 2 and 4 of Article 2 are amended, in the following terms:

"Article 2. Definitions

1. General Management: this is formed by the natural persons who exercise executive functions within the entity and who are responsible for the daily management of the entity and who form part of the top management body of the entity, who are to render accounts for the daily management to the administration body.

2. Appropriate professional experience: it is considered that appropriate professional experience is possessed by the persons who have exercised, with normality, during a time of over three years, top administration, management or control functions in banking entities, or functions of similar responsibility in other public or private entities of significant dimension.

[...]

4. Financial instruments: financial instruments are to be understood in the broadest sense of this term, especially including those listed below:

- Marketable securities.

- Money market instruments.

- Units in CISs.

- Options, futures and swaps contracts, forward interest rate agreements and other derivative contracts relating to securities, foreign currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled in kind or in cash.

- Options, futures and swaps contracts, forward interest rate agreements and other derivative contracts relating to raw materials that are to be settled in cash or that may be settled in cash at the request of one of the parties (for different causes of breach or for some other cause that leads to the termination of the contract).

- Options, futures and swaps contracts, and other derivative contracts relating to raw materials that may be settled in kind, on the condition that they are negotiated in a regulated market or in a multilateral negotiation system.

- Options, futures and swaps contracts, forward interest rate agreements and other derivative contracts relating to raw materials that may be settled by physical delivery which are not mentioned in the foregoing point and which are not addressed to commercial purposes, which present the characteristics of other derivative financial instruments, taking into consideration, among other things, whether they are settled through recognized clearing houses or are the object of regular adjustments of margin calls.

- Derivative instruments for credit risk transfer.

- Financial contracts for differences.

- Options, futures and swaps contracts, forward interest rate agreements and other derivative contracts relating to climate variables, transport expenses, emission permits or inflation rates or other official economic statistics, which are to be settled in cash or which may be settled in cash at the choice of one of the parties (for different causes of breach or for some other event that leads to the termination of the contract), as well as any other derivative contract relating to assets, rights, obligations, indices and measures which are not mentioned in the foregoing points, which present the characteristics of other derivative financial instruments, taking into consideration, among other things, whether they are negotiated in a regulated market or in a multilateral negotiation system, whether they are settled through recognized clearing houses or whether they are the object of regular adjustments of margin calls.

[...]."

2. Paragraph 3 of Article 4 is amended, in the following terms:

"3. Lastly, the legal entities which, even though their corporate purpose includes any of the activities listed in Letter a), Points i) and ii), b) and c) of Paragraph 1 of Article 49, do not provide their services to third parties but rather they provide their services exclusively within the scope of their economic group and do not allow the public offering of shares (financial vehicle corporations) and therefore limit the aforesaid financing activities to the sales and provisions of services made by the companies of their group to its customers, do not have the status of financial entities for the effects of this Law and consequently do not form part of the financial system. These limitations should be provided in their articles of association."

3. Article 5 is amended in the following terms:

"Article 5. Prohibition of performing, without authorization, activities reserved to the operative entities of the financial system

It is forbidden to carry out banking, financial, payment or electronic money activities without prior authorization. No natural person or legal entity may provide to third parties, professionally or as a habitual activity, a service or services relative to financial instruments or ancillary services, or any of the activities or services which are included in Articles 8, 20, 21, 38, 49 and 61, unless such natural person or legal entity has previously obtained the respective administrative authorization."

Second Final Provision. Amendment of the Qualified Law on amendment of the Code of Criminal Procedure, of 10 December 1998

1. Article 40 of the Qualified Law on amendment of the Code of Criminal Procedure, of 10 December 1998, is amended in the following terms:

"Article 40

[...]

The Judge of the First Instance may decree, by reasoned writ, the total or partial secrecy of the preliminary proceedings which have been initiated, up to a maximum time of one month in the case of misdemeanours, and three months in the case of felonies. The taking of any evidence which may affect the integrity or privacy of persons requires a prior reasoned court order and compliance with the legal requisites established in this Code for the pre-trial period."

2. Article 46 of the Qualified Law on amendment of the Code of Criminal Procedure, of 10 December 1998, is amended in the following terms:

"Article 46

[...]

During the investigation, the Judge of the First Instance, ex officio, at the proposal of the Public Prosecutor's Office or of any of the parties, by means of a reasoned writ, may decree the secrecy of the totality or of a part of same, making it a separate element in the latter case, up to a time of two months in the case of misdemeanours, and up to a time of six months, extendable by reasoned writ for another period of six months, with the obligation to lift the secrecy of the proceedings at least one month before the conclusion of the preparation of the case file."

Third Final Provision. Paragraph 3 of Article 366 bis of the Criminal Code is amended in the following terms:

"Article 366 bis. Terrorist financing

[...]

3. For the purposes of this Article, "funds" is understood to mean: financial assets and assets of any nature, tangible or intangible, movable or immovable, acquired by any means, legal or illegal; and documents, titles or legal instruments of any type, including electronic or digital, which certify an ownership right or an interest in said assets, especially but not exclusively bank assets and credits, traveller's cheques, cashier's cheques, payment orders, shares, securities, bonds, bills of exchange and letters of credit, as well as interests, dividends or any other benefit that were to be derived from same.

[...]."

Fourth Final Provision. Character of qualified law

Final Provisions Two and Three have the character of qualified law.

Fifth Final Provision. Consolidated texts

The Government is requested to submit, within a maximum time of six months from the entry into force of this Law, and in the terms provided in Article 116 of the Regulations of the Andorran Parliament, the draft consolidation of Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing; of Law 7/2013, of 9 May, on the legal system of the entities operating in the Andorran financial system and other provisions that regulate the exercise of financial activities in the Principality of Andorra; of the Qualified Law on amendment of the Code of Criminal Procedure, of 10 December 1998; and of Qualified Law 9/2005, of 21 February, of the Criminal Code; and to integrate the laws in force on the regulated matters.

Sixth Final Provision. Entry into force

This Law will enter into force on the day following its publication in the Official Gazette of the Principality of Andorra (BOPA).

Casa de la Vall, 28 November 2019