UIF

UNITAT D'INTEL·LIGÈNCIA FINANCERA

Activity Report

Andorran Financial Intelligence Unit (FIU)

2012

CONTENTS

1. INTRODUCTION

In compliance with its legal mandate, the Andorran Financial Intelligence Unit (FIU) presents its Activity Report once again, this time for the year 2012.

Three years have gone by since the current direction of the Andorran FIU was appointed in February 2010. This has been time enough to verify, with the necessary perspective, the evident progress achieved by the Unit in material terms and in terms of governance.
This radical transformation, as it may well be objectively qualified, is the result of an agenda that was conceived with some definite goals in mind, primarily focused on the improvement of the domestic system of prevention and repression of money laundering in accordance with the applicable laws of Andorra, the harmonization of these laws with the constantly evolving international standards, and the achievement of progress in the application of the methodology developed by the laws themselves in the various spheres in which we act.

Likewise, the Andorran Government's unflagging determination in this respect has been decisive and crucial in favouring and simplifying the path towards the full expansion of the Unit, which has become not only a necessary reference and a timely example as regards the international community –something that has allowed us to set ourselves on an equal footing with our counterparts abroad–, but also in the domestic sphere as an indicator of the socio-economic system as a whole.

Accordingly, if we referred in the Andorran FIU's Activity Report for 2011 to a turning point in the development of the Unit and to its "period of improvement", our efforts have been clearly and positively materialized in the course of the past year as will be seen in greater detail in the Balance section.

In short, we are now in a position to confirm without a shadow of a doubt that in this third year of activity, the Unit has finally achieved the indispensable solidity, fullness and stability. These are factors that, taken together, form the necessary fabric and base to carry out the many different tasks that we have launched or that have been entrusted to us, and above all to face the new challenges that will be arising for us in the near future and that will confirm these changes even more clearly.

The new challenges are set within a twofold framework involving:

a) a legislative reform, which has already been begun as will be explained further on, in two fields: firstly, the challenges deriving from the signing of the Monetary Agreement and the implementation of the various applicable international standards, contained in Block 1; and secondly, the "action measures" and other recommendations deriving from the Moneyval report on the 4th evaluation of Andorra.

b) the preparation for the next Moneyval examination, planned for March 2014, with the submission of the Progress Report.

As is now our usual practice, we are also providing the pertinent statistics in the form of graphics that show the volume of activity that has been generated and we include a comparison with the preceding year. However, it should be pointed out that these statistical data should be "read" and interpreted carefully and not from a purely arithmetical standpoint focused on a constant increase of figures.

Aside from this, we are including Section 6 on Conferences as a new feature in this Activity Report. This section contains studies prepared by members of the Unit's various areas and they deal with the specific work that these areas carry out. We trust that these studies will be of interest to the reader.

Lastly, I would like to express my sincere and well-deserved gratitude for the selfless but not always clearly understood work carried out by the members of the Andorran FIU team.

I also wish to extend this acknowledgement on this occasion to the Moneyval Secretariat, headed by its Executive Secretary Mr. John Ringguth, for its always extremely helpful attitude in our regard. At the same time I wish to congratulate Moneyval on this, the 15th anniversary of its creation, which we celebrated at the 40th Plenary Meeting of this regional body in December 2012

Carles FIÑANA PIFARRÉ
Head of the Andorran Financial Intelligence Unit

2. BALANCE

The reader may recall that we began last year's report for the year 2011 by mentioning the 4th evaluation of Andorran FIU, the time devoted to the preparation of the questionnaire and to its continuous revision as pertinent, and the preparatory meetings held with Moneyval before the Plenary Meeting. As you know, the 4th evaluation came to a positive conclusion on 8 March 2012.

Now the time has come to bring this matter to a close while keeping it closely in mind for forthcoming challenges that we are now envisaging, as mentioned in relation to the Progress Report of the coming month of March 2014.

A significant part of the legislative studies and reform proposals that are regularly carried out by the Standing Committee on Money Laundering and Terrorist Financing has also been devoted during this period to the Monetary Agreement that the Head of the Andorran Government signed with the European Union on 10 February 2011 and that was later signed in Brussels by the same parties on 30 June 2011. With regard to the Andorran FIU, this agreement entails a revision and verification of Andorra's domestic rules on money laundering and terrorist financing.

In the presentation made by the Andorran Minister of Finance and Public Function to the Parliament of Andorra on 27 June 2012, this task is situated in Block 1 and 18 months are available to carry it out. The countdown began on 1 April 2012 and it will consequently come to an end on 1 October 2013.

The following international instruments have been taken as a basis for this Report:

1.- Instruments of general character: Directive 2005/60/EC of 25 October, of the Council of Europe, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, known as the Third Directive; it was subsequently implemented by the Commission Directive 2006/70/EC of 1st August, , which includes terrorist financing. These Directives are to be transposed in their full extension.

Over the years, these directives were amended through the adoption of four more instruments which are briefly listed as follows:

- Directive 2007/64/EC of 13 November, on payment services in the internal market.
- Directive 97/5/EC, relating to the powers granted to the Commission.
- Directive 2009/110/EC, relating to the supervision of electronic business.
- Directive 2010/78/EU, on the powers granted to the European supervisory authority.

2.- Instruments of special character, comprising the following international instruments:

- Council Decision 2007/845/JHA of 6 December, concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.
- Regulation 2006/1781/EC of 15 November, relating to the information on originators which accompanies the transfer of funds.
- Regulation 2005/1889/EC of 26 October, on controls of cash entering or leaving the Community.
- Council Decision 2000/642/JHA of 17 October, concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information.
- Framework Decision 2001/500/JAI of 26 June, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime

On the basis of this implemented work plan, an Andorran delegation, of which we formed part, went to Brussels between 27 and 29 November 2012 to prepare and participate in the first meeting between the parties involved.
The meeting was held on 29 November at the Berlaymont Building in Brussels. In attendance on behalf of the European Union were representatives of the European Commission, of the European Central Bank, of the Kingdom of Spain and of the French Republic; and on behalf of Andorra, representatives of the Andorran Ministries of Foreign Affairs and of Finance and Public Function, of the Andorran National Institute of Finance (INAF), of the Andorran Financial Intelligence Unit and of the Andorran Mint, accompanied by various experts.

In this way, the Mixed Working Committee on the Monetary Agreement between the European Union and the Principality of Andorra was established as provided in the text. Its schedule and rules of procedure were adopted and the matters included in the agenda were begun.

The other part of the study, which was subsequent to the first part and, likewise in application of the "action measures" recommended by Moneyval in its report on the 4th evaluation, was devoted to the necessary revision and amendment of Act 28/2008 of 11 December on International Penal Cooperation and Cooperation in the Fight against the Laundering of Money and of the Proceeds of International Delinquency and against Terrorist Financing.

The new bill of law is in a quite advanced stage at present and it is envisaged that it will be submitted to the Andorran Parliament this spring and that the Parliament will approve it, if it so deems appropriate, this autumn.

Moreover, just as we stated in the Introduction with respect to the turning point in the course of the Andorran Financial Intelligence Unit's development, beyond the radical transformation involved by the possession of a new headquarters with suitable premises that dignify and favour our activity, and beyond the filling of the existing voids in several areas, newly-created and consequently heretofore non-existent action measures have been adopted, which notably include the following:

a) The strengthening of the ties of good understanding with the Andorran National Institute of Finance (INAF) through the signing of a Memorandum of Understanding on 30 November 2012.
This cooperation agreement covers the various areas and matters of common interest, such as on-site supervision and inspections, training, cooperation with international bodies and foreign supervisory authorities, cooperation on authorization processes for the creation or acquisition of both financial and non-financial entities, and the establishment of periodic meetings for the purpose of dealing with matters of current interest.

Signing of the cooperation agreement

b) The creation and making available of the Andorran Financial Intelligence Unit's continuously updated website as a quick and effective means of communication with the exterior.

The public presentation of this initiative was made on 25 September 2012 together with His Excellency Mr. Jordi Cinca Mateos, Minister of Finance and Public Function of Andorra. According to the information that has reached us, it has been very well received.

Detail of the website's homepage

Presentation of the website

c) The addition (although they actually began their functions in February 2013) of two new people with suitable profiles to the Unit's working team. They have been assigned to the Inspection and Control Area and the Legal Area, respectively.

This matter, which entailed an intense job of searching for and studying candidates over the course of the year with the publication of successive edicts, was finally resolved by a different method, hiring the two professionals directly. Their incorporation has been providential and has proven highly significant in the whole process of improvement of the Unit discussed here.

d) One of the members of the Unit, Ms. Tanjit Sandhu Kaur, in her capacity of financial evaluator, participated for the first time in the evaluation process of a third country, specifically Bulgaria. This is a sign of Moneyval's acknowledgement of our work and of its trust in us, and it moreover highlights and demonstrates our Unit's qualification level. Now, before the holding of the last preliminary meeting between the parties involved, it is planned to submit the joint report to the Plenary Meeting of September 2013.

This is an exceptionally important matter since, from the evaluation standpoint, a broad professional experience is acquired which will be necessarily transferred to the domestic sphere on training the reporting entities.

e) It has been agreed with the representatives of the Small States of Europe to establish periodic meetings at the international sessions that we attend, in order to evaluate the similar us and to find solutions to them.

In this respect, after previously setting the agenda, we met on two occasions in the year 2012. The first meeting, with the attendance of Liechtenstein, Monaco, San Marino and Andorra, was held on 4 July, and the second meeting on 4 December. The latter meeting was also attended by the Holy See, Jersey, Guernsey and the Isle of Man.

f) We continue to enlarge upon the study and analysis of legislative amendments with respect to money laundering and especially in relation to the new FATF Recommendations of February 2012 while awaiting the methodology to be applied to them.

It should be pointed out that at the time of this writing, FATF has already published (in February 2013) the guide as a suggestion and proposal of ideas for proceeding to the study of country risk as a prior step for any upcoming FATF GUIDANCE National Money Laundering and Terrorist Financing Risk Evaluation, as well as the methodology and criteria which it contains. This methodology and criteria supplement the new 40 Recommendations that are applicable to future control processes and to progress and evaluation reports. They include the analysis of both the compliance with and the effectiveness of the METHODOLOGY for Evaluating Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems rules.

g) In matters of inspection and control, various inspections have been carried out on site between 14 November and 27 December on financial system entities in relation to files in progress or investigations that have been started.

We are also drafting and preparing a set of preliminary questionnaires primarily to be applied in the future to designated non-financial businesses and professions (DNFBP), which contain general questions as well as other specific questions that are more closely related to each sector or each respondent.

This new feature has a twofold objective: on the one hand, in a preliminary way, to learn more about the reality of the sector in general (professional bodies and associations) and about the reporting entities in particular in relation to the knowledge and application of the rules in matters of money laundering and, on the other hand, once the requested information has been obtained and studied, to proceed more carefully and objectively to the necessary on-site inspections and controls.

The start-up of this practice is envisaged as from the second third of 2013.

Up to here we have been presenting the most prominent new features of the Unit and now we will provide information on the activity carried out in the year 2012 in the various spheres of action. With respect to training, we have taken an active part in various events and we have given conferences at several venues:

- University of Andorra, on 26 April 2012, under the title "Financial Intelligence: Andorran FIU, FATF, Moneyval and Egmont", within the frame of the postgraduate programme in Andorran Law.
- Catalan Summer University at Prades (France), on 18 August 2012, on the 25th Day of Andorra, which dealt with Andorra and Economic Opening, giving the conference "Economic Opening and Money Laundering: An Inseparable Tie".
- Seminar on the prevention of money laundering and terrorist financing, on 18 December 2012, organized by the Lawyers Association of Andorra, with the conference "The Andorran FIU's Role and Inspections: the Fair Balance with Respect to Professional Secrecy".

Likewise, two members of the Unit, Mr. Carles Tomas Aché and Ms. Tanjit Sandhu Kaur, registered for and attended the seminar that was held in Strasbourg on 19 to 21 September 2012 by experts from Moneyval and the Euroasian Group (EAG) with respect to the FATF standards and the revision of the 40 FATF Recommendations, discussing their most important changes and future implications.

With respect to inspection and control, we refer to what has previously been explained about the actions that have been implemented. These actions have provided the required knowledge of the sector and of the corrective measures to be taken, if appropriate.

In relation to cooperation in the domestic sphere, on the one hand there has been a notable increase in the number of meetings with the cooperators and the official bodies with a view to improving the system, and on the other hand several cooperation agreements have been signed, for example with INAF, which will provide a high degree of effectiveness in the prevention of and fight against money laundering and terrorist financing.

By way of example, meetings have been held with representatives of:

- the judicial spheres, on 27 April, 29 May and 8 September.
- the Lawyers Association, in an ongoing way, on 19 April, 6 June, 17 and 24 September and 2 October.
- the general management of INAF on 10 February, 30 March, 21 May, 4 September, 15 October and 15 November.
- all the reporting entities of non-financial businesses and professions in the weeks of 4 and 11 June.
- the financial sector forming the Association of Andorran Banks (ABA), on 8 February.
- and the Standing Committee on Money Laundering and Terrorist Financing, with regular meetings held on 3 and 11 January, 29 February, 15 and 29 March, 23 April, 12 June, 12 and 26 September and 9 October.

With respect to cooperation in the international sphere, we attended as usual all the plenary meetings of Moneyval held in Strasbourg, specifically the 38th plenary meeting held on 5 to 9 March; the 39th plenary meeting held on 2 to 6 July, and the 40th plenary meeting, held on 3 to 7 December.

At these plenary meetings we favoured the participation of third persons connected with the matters involved, such as, for example, the attendance of the Andorran Attorney General who accompanied us at the last-mentioned plenary meeting.

In this respect, our intention is that, on an alternating basis, other representatives of the various Andorran bodies, including the Courts with Judges and Magistrates; the Police Service with heads of the Organized Crime and Money Laundering Group, INAF or other bodies as the circumstances may advise, should attend the plenary meetings and share the knowledge that is conveyed through the working groups.

We consider that there is no better way to promote the efficiency of our work than to share knowledge with them all.

40th Moneyval plenary meeting with the attendance of the Andorran Attorney General

Detail of the meeting held to mark the 15th anniversary of the creation of Moneyval, with the participation of, among other persons, Messrs. Thorbjørn Jagland, Secretary General of the Council of Europe; Jean-Claude Mignon, President of the Parliamentary Assembly of the Council of Europe, and Bjørn S. Aamo, President of FATF.

Likewise, we attended for the first time the FATF plenary meeting held in Rome on 20 to 22 June as observers, forming part of the group in attendance on behalf of Moneyval since we do not belong to FATF. This organization presented (and this was the primary reason for our interest) the basic principles around which the new 40 Recommendations revolve. As previously mentioned, these Recommendations were published on 16 February and will soon be applicable.

Aside from the Follow-ups to Mutual Evaluations that several countries underwent, similar to the progress or mutual evaluation reports that we make at Moneyval, the following matters of significance, in our opinion, were dealt with at the plenary meeting:

- With respect to Monitoring the Implementation of the AML/CFT Measures, that is to say, the implementation of the new 40 Recommendations (the conclusions of which were presented in October 2011), two main points were highlighted: firstly, that a task of synthesis and technical conformance of the standard was carried out under a criterion of effectiveness; and secondly, with respect to the risk criterion, a thorough study must be made, focusing attention on the sites where the risk is real and harmful so that the pertinent emphasis may be placed on such sites.

- With respect to Typologies and the 4 main working areas of the groups (namely, corruption, the roles of the financial intelligence units, illicit tobacco trade and money laundering), the heads of each group presented the work carried out and the respective conclusions in documents distributed beforehand. The heads of the groups subsequently took part in the plenary meeting, which approved the 1st and 3rd documents (on corruption and illicit tobacco trade), requesting that the other documents should be improved.

- With respect to Fighting Terrorist Financing and Money Laundering, some directors of FIUs expressed the need to be prudent and to be attentive to certain political movements unfolding in Arab countries because they could represent a terrorist substrate.

- In relation to International Cooperation against Money Laundering and Terrorist Financing, on the basis of the document that was prepared, certain problems were evidenced with countries that are not making sufficient progress, especially on the African continent.

Details of the FATF plenary meeting

Additionally, we attended the Egmont plenary meeting held in Saint Petersburg (Russia) on 9 to 13 July. We were present at the plenary assemblies themselves and also in the working groups.

1.- With respect to the plenary meeting exclusively for the directors of the world's financial intelligence units, which was consequently a closed session, the most significant public matters dealt with were the following:

- After the presentation of the report, the entry of OSCE into the Egmont group as an observer, its status having been approved, was unanimously accepted.

- With the presentation of new candidatures of financial intelligence units that requested admittance to the group, having completed all the various stages of the procedure, that is to say, in relation to the working group, with the analysis of the unit's functionality and operativity; in relation to the sponsors that provide help in the legal and financial spheres, and in relation to the legal group, which makes the final verification, the following countries were accepted as new members: Gabon, Jordan, Tajikistan and Tunisia, bringing the number of Member Countries of Egmont to a significant total of 131.

- With respect to the legal aspects, it was resolved to carry out a revision of the Egmont Bylaws, bearing in mind the changes that have arisen with FATF in the form of the new 40 Recommendations, and the new international framework and good practices of the financial intelligence units.

The working group presented by Mr. Paolo Constanzo has now been formed. Experts from 10 countries have participated in it. After a careful analysis of the current rules and the revocation of some outdated ones, new rules were proposed with a view to the following aspects:

  - The improvement of practices from the financial standpoint.
  - A new definition of the financial intelligence units, with greater operational independence.
  - The improvement of the core functions of the financial intelligence units and the envisaging of diagonal international cooperation.
  - The possibility of accessing information directly; the information should be disseminated spontaneously or by request.
  - The specification and envisaging of orientative goals which will consequently not be compulsory in nature, according to the respective national law.
  - The paying of permanent attention to the international context and its continuous evolution.
  - The strengthening of the criterion of operational independence of the intelligence units with respect to their functions and for their internal organization, according to the new FATF Recommendation 29.

- In relation to corporate aspects, improvements should be made with respect to:

  - The research and understanding of the content of the documents conveyed.
  - In accordance with the documents reviewed, 4 working subgroups have been created that will deal with: the structure of internal relations, conformance, exterior relations and the revision of the Founding Charter.

- With respect to the structure and relations between the regional groups, the need is revealed for a greater coordination in the search for the desired effectiveness.

For this reason, it is the responsibility of the heads of the financial intelligence units to exercise a better governance of their own resources and to work in accordance with the new FATF rules.

20th Egmont meeting. Detail of the plenary session

20th Egmont meeting. Detail of the plenary session

2.- With respect to the plenary meeting held with the attendance of the directors of the financial intelligence units and accompanying persons (in open session), the following matters were dealt with, among others:

- The presentation of the new FATF standards, which are the work of the representatives of the 34 Member Countries, 2 regional entities, 22 observer countries or bodies and 8 regional bodies, forming a total of 180 experts of various jurisdictions.

The main features of the new standards are:

- The Key Recommendations and the Core Recommendations have not varied: they are still the object of analysis in all evaluations or progress reports.
- The new text and its methodology, which is envisaged for February 2013, seek to be more clearly understandable in order to avoid duplicities.
- The rules should be flexible and coherent, with a new consolidated structure of 40 Recommendations, divided into 7 sections.

- Recommendation no. 1 and the approach to the risk study; the responsibility that will be entailed by its start up, which includes not only the supervisory entities but also the reporting entities, is announced.

This approach and evaluation of risk should be made according to the established rules and under some basic principles:

- In accordance with the risk evaluation, the simplified or necessary strengthened diligence measures shall be adopted.
- Under the principle of a good evaluation, which is based on two fundamental principles: firstly, the responsibility of each country, which shall be acquainted with its problems; and secondly, the financial institutions and the rest of the reporting entities (DNFBP) shall be acquainted with and understand their own risk.

Lastly, to carry out this study, all the figures forming the prevention and repression system shall become involved, that is to say, the ministries, specific bodies and the selfsame reporting entities.

- Recommendation no. 2 relating to domestic cooperation and coordination is particularly important because it forms the basis for success in the fight against money laundering.

- Recommendation no. 29 relating to the financial intelligence units specifies the types of strategic analysis of information:

  - Analysis: either operational or strategic.
  - Dissemination: spontaneous or by request.
  - Access of the units to two types of information: the selfsame report of the entities or through other sources.

In any case security and confidentiality are necessary in the processing of information and above all operational independence without any type of external interference is required.

- Recommendations nos. 30 and 31 relating, respectively, to the responsibility of the repressor authorities and of the authorities in charge of the inquiries, and with respect to the powers of these authorities; it is necessary that the information should be conveyed to the law enforcement bodies, the inquiries should be taken into consideration for the financial investigations that are to be carried out, and the necessary power should be held to identify and decide on the freeze or seizure of assets, with the help of the necessary mechanisms.

- Recommendation no. 40, on international cooperation, should be observed from a twofold perspective: in a general way, through the rules applying to all the competent authorities, and specifically, through the rules that are applied authority by authority.

The exchange of information should be promoted between the financial intelligence units, regardless of the type of unit involved.

An indirect exchange of information or diagonal exchange, that is to say, with other competent foreign authorities, is envisaged for the near future.

3.- At the meeting of unit directors for the Regional Group Europe, after the election of the representatives for the next two years, the following were the main points that were dealt with:

- The problems that have appeared on the basis of the 4th evaluation (which various countries have already passed), with a discussion of the scores that were assigned.
- The risk study that should be carried out for future evaluations and the current situation of some countries that have already made initial proposals.
- Continued training for the various typologies.

Meeting of unit directors for the Regional Group Europe

4.- Lastly, with respect to our participation in the working groups, on the first day Ms. Tanjit Sandhu attended the meeting of the Training Working Group, in which the following was discussed:

- The training programmes and planned courses on legal entities, financial products and strategic analysis.
- The three cases presented, which are finalists for the "Case of the Year".

On the second day she attended the Working Group meetings on:

- Regulation of the real estate system and the risks in matters of money laundering and terrorist financing.
- Typologies and risks for new financial products and new payment methods.
- Feedback and methods of communication with reporting entities.
- Operational and analytical methods of the financial intelligence units.

On this occasion, we also signed a memorandum of understanding with the director of the financial intelligence unit of Macedonia.

An agreement of this type seeks basically to establish cooperation mechanisms between the signatory units to undertake a commitment on access to and analysis and dissemination of information and, more particularly, to further strengthen internal cooperation under international parameters.

Details of the signing of the MOU

Another new aspect with respect to these participations was our presence in Vienna on 15 to 19 October at the 6th United Nations Conference of the Parties for the U.N. Convention against Transnational Organized Crime.

This was a significant session because, as from the signing of the Palermo Convention by the Principality of Andorra, we have been considered for all purposes a State Party to the Conference. We took this opportunity to make a declaration of intents in this respect.

1.- During the five days of the plenary meeting, the following were the main topics that were dealt with:

- In relation to the examination of the application of the Convention against Transnational Organized Crime and the three protocols (trafficking of persons, migrant smuggling and firearms trafficking), various countries spoke out, including France, China, Philippines, Finland, Qatar, Turkey, Egypt, Colombia, Belarus, Morocco and Vietnam, referring basically to the need to fight against the groups devoted to international organized crime, which are seriously jeopardising their security as well as international security in general, and more than ever in this period of crisis.

It is the countries' joint will to insist on the programmes for the fight against transnational organized crime that have been launched individually, and technical assistance and police and judicial cooperation should be strengthened.

Now, ten years after the signing and establishment of the Convention, it is necessary to carry out a revision of it. In this respect, Mexico proposed a text that could serve as a working basis.

United Nations headquarters in Vienna

Specifically, Philippines explained the serious problems it is having with piracy, which threatens 80% of its sea transport business, and with human trafficking.

Turkey has substantially modified and enlarged upon its legislation, which includes rules on the looting and trafficking of cultural property.

For Colombia, security is a priority aspect and it is effectively addressing the problems of drug trafficking and terrorism because otherwise their impact would be so large as to prevent stable governance.

Morocco spoke out along the same lines and has approved numerous legislative reforms since 2002.

- With respect to the Protocol against the Smuggling of Migrants by Land, Sea and Air, new projects for dealing with this problem were presented under the co-sponsorship of various countries. Many of these countries expressed the intention to ratify it because they have already amended and adapted their domestic legislation in this respect.

By way of example, Algeria proposes zero tolerance in this respect and has strict laws providing, among other punishments, sentences of up to 20 years' imprisonment; while Ecuador has a problem with the sexual and labour exploitation of minors (between the ages of 15 and 17 years).

- With respect to the new forms of crime, such as piracy, environmental crime and computer crime, Italy spoke out, considering that the Convention responds correctly at international level to the need to fight these phenomena, with a correct legal framework and appropriate legal and police cooperation.

In connection with this, the Russian Federation referred to the particular problem for the free transport of goods that is entailed by piracy in Somalia.
The representative of the United States of America, in turn, mentioned the significant increase in computer crime, which may lead in the near future to the consideration of a new Convention.

For its part, South Africa expressed its problems with identity theft and fraud, with the trafficking of species and animals, and with the trafficking of precious stones, which are highly lucrative businesses. It has signed 19 cooperation agreements with countries to fight this scourge.

- With respect to legal assistance, international cooperation and extradition, the countries have adapted their domestic legislation to the parameters marked by the Convention and this was expressly stated, for example by Egypt.

Japan and the United States of America stated that they provide technical assistance (training and seminars) in this respect.

Various details of the Plenary Meeting of the 6th U.N. Conference of the Parties

2.- The topics listed below were dealt with in the working group sessions in which Ms. Marta Salvat took part for two days. The results of these sessions have been presented in Point 4 of the agenda of the UNTOC plenary meeting.

It should also be pointed out that the information relating to the working groups may be found at the following link:

http://www.unodc.org/unodc/en/treaties/CTOC/working-group-international-cooperation-2012.html

The following are the main topics that were discussed:

- Examination of possible synergies between the group of experts on international cooperation established by UNTOC and the group of experts on international cooperation established by the Conference of the States Parties (CoSP) in the Convention against Corruption (UNCAC).
- The disposition, use and repatriation of confiscated assets proceeding from crime.
- The role of the regional networks and the initiatives to fight transnational organized crime.
- The sharing of good practices and experiences in international cooperation for the application of the Convention against Transnational Organized Crime, in particular Articles 16, 18 and 21.

Generally speaking, all the participants emphasized that the investigation, indictment and sanction of crime requires the cooperation of more than one country. Within this framework, the full application of UNTOC by the States Party to the Convention is important because this expedites the requests for extradition, mutual judicial assistance and cooperation for purposes of forfeiture among 168 Party States without the need for there to be bilateral agreements between them.

Within this framework, the Secretariat of UNTOC reported that its website contains the following manuals of interest for experts on this matter:

- The directory of competent national authorities, with 478 competent authorities of the 168 Party States. These are the competent bodies of each country and the persons in charge of receiving, attending to and processing requests for extradition, transfer of indictees and promotion of mutual judicial assistance in matters relating to crime.
- The programme of mutual judicial assistance for the drafting of requests in this matter. This is a standard form designed to expedite international cooperation and to avoid incomplete requests for assistance in this way, reducing delays and refusals.

- The legal library, which offers information on the legislation of the States on applying the treaty on international drug control and UNTOC.

- Various manuals including the one relating to mutual judicial assistance and extradition, the Manual on international cooperation for the purposes of confiscation of proceeds, the Manual on the transfer of sentenced persons, and the Compendium of cases of organized crime.

With respect to the examination of possible synergies between the group of experts on international cooperation (UNTOC) and the group of experts on international cooperation established by the Conference of States Parties to the Convention against Corruption (UNCAC), the cooperation and coordination of the two groups is of fundamental importance since international cooperation forms the basis of the two conventions in matters relating to extradition, mutual judicial assistance and international cooperation for purposes of confiscation (indeed, the articles of the two conventions with respect to international cooperation are identical).

On the other hand, UNCAC, in contrast to UNTOC, has a revision mechanism that assures the appropriate application of the Convention by the States in matters of international cooperation (Article 4 of UNCAC). Consequently, UNTOC could use this information to apply the rules of the Convention against organized crime.

In relation to the disposition, use and repatriation of the confiscated goods proceeding from crime, the parties that spoke out at the session considered that confiscated goods should be returned in their totality to the country of origin.

The representative of Ecuador spoke out in this respect, stating that the Attorney General's Office of Ecuador is in charge of supervising and guarding confiscated goods and delivers them in their totality to the foreign authorities when so requested. For its part, Panama reported that it has returned to Peru 100% of the goods confiscated in a case of corruption.

With respect to the role of the regional networks and the initiatives against transnational organized crime, it is considered that online networks offer informality while advancing, expediting and enlarging upon information outside the formal channel of procedure.

These networks are supplementary because they do not replace the competent authorities and because they operate without hierarchies and the professionals who have access to them are fully acquainted with the rules of international cooperation and are ready to provide specific responses.

Moreover, the need was emphasized to strengthen and intensify the international structures and institutions in order to create a genuine empowerment at the national and regional levels.
Likewise, the following regional networks were presented:

- European Judicial Network: www.ejn-crimjust.europa.eu/ejn. The contact points of the States are judges, prosecutors and personnel of the Ministry of the Interior. There is direct contact between them since they hold regular meetings. The goal of the network is to establish a better coordination with Eurojust.

- Ibero-America Network, which also includes Spain and Portugal: www.iberred.org. The contact points are the competent authorities and its purpose is the exchange of information and the expediting of Letters Rogatory. A memorandum of understanding has been signed with Interpol with the aim to promote the exchange of information.

- Ibero-American Network of Public Prosecutors, which also includes Spain and Portugal: www.aiamp.net. It promotes direct contact between the Attorney Generals of all the countries with the aim to expedite international cooperation. The network seeks to supplement the liaison agents who are already established.

- Network of Prosecutors for Central America and the Caribbean: www.refco.org.pa. It promotes exchange in relation to national legislation and examines its application, studying cases and the punishments established. It also holds training courses.

In this respect, various representatives of the following States spoke out:

- France. Although this country is in favour of promoting the various regional networks, it recalls that the direct transmission of information between prosecutors and examining judges is good, as it is between the national authorities who execute Letters Rogatory. The coordination between the national authorities is important.

- Slovakia. It mentioned that the committee of experts of the Council of Europe on penal matters prepares reports and instruments of interest for the promotion of international cooperation.

- Turkey. This country pointed out the importance of the cooperation between customs authorities, police forces and prosecutors. In this respect, Article 27 of the Convention encourages the Party States to intensify cooperation and the exchange of information.

- Russian Federation. It stated that although the international networks are important in promoting trust between the various stakeholders, they are of supplementary nature because the Attorney General's Office is the competent body for the launching of international initiatives. Moreover, it questioned the reliability and security of transmitting information through the Internet.

The need was emphasized to continue to share good practices and experiences in international cooperation in making use of the Convention against transnational organized crime and particularly Articles 16 and 18.

- In relation to Article 16 (Extradition), the speakers referred to the challenge posed by the non-extradition of nationals in response to the requests of States. Within this framework, the Party States should continue to examine among each other how the existing differences between the various penal systems may be improved and look for solutions to mitigate the existing difficulties.

Moreover, the extradition procedures are long and costly. In this framework, the Manual on Mutual Legal Assistance and Extradition will be presented at UNTOC as an instrument offering technical assistance through a training manual and reference guide for experts (it is to be found at the UNODC website).

- In relation to Article 18 (on Mutual judicial assistance), it is considered that videoconferences can favour this assistance. It is reported that UNODC has also prepared a manual on this subject to assist judges, prosecutors and magistrates as necessary.

Lastly, the problem of bank secrecy was dealt with. Bank secrecy has been the cause for some States to refuse mutual judicial assistance. The problem is smaller today because many States now possess the necessary legislative and regulatory frameworks that oblige financial reporting entities to report on suspicious transactions.

The financial intelligence units also have the capacity to analyse and investigate suspicious financial activities, which are key functions in the fight against money laundering. Indeed, Article 18, paragraph 8 of the Convention forbids States not to provide the required information on grounds of bank secrecy.

Lastly, with respect to the section on statistics, as usual we are providing those of the year under study for the various sections and areas of work, and a comparison is made with the previous year to show more clearly the evolution that has taken place.

In this respect, bearing in mind that the figures and graphics accompanying the statistics are usually "very striking", I would insist once again that the statistics should be interpreted (or "read" as I said in the Introduction) simply for what they are and represent, and in any case they should be seen as the result of a working process that provides results which are not necessarily better year after year.

3. STATISTICS OF THE YEAR 2012 and COMPARISON WITH 2011

The section on statistics is unquestionably the one which we look at most closely and consider with the greatest interest because it is of course the section, with its graphic presentation, in which one most immediately and easily sees the volume of work carried out in the course of the year under examination.

For this reason we may say that here the reader can appreciate and form an absolutely true idea "at a glance" of the work carried out in all the departments or areas in which the Andorran Financial Intelligence Unit is active.

In Recommendation no. 33 of FATF's 40 recommendations from February 2012, which replaces the old Recommendation no. 32, Section F defines "pouvoirs and responsabilités des autorités compétentes et autres mesures institutionelles" ("powers and responsibilities of the competent authorities and other institutional measures") of the international standard as, and here I quote: "Les pays devraient tenir des statistiques complètes sur les questions relatives à l'effectivité et à l'efficacité de leur système de LBC/FT. Elles devraient comprendre des statistiques sur les DOS reçues et disséminées, les enquêtes sur le blanchiment de capitaux et au financement du terrorisme, les poursuites et condamnations liées au blanchiment de capitaux et au financement du terrorisme, les bien gélés, saisis ou confisqués et l'entraide judiciaire ou autres demandes internationales de coopération" (The countries should keep complete statistics on matters relating to the effectiveness and efficiency of their AML/CTF system. They should comprise statistics on the STR received and disseminated, the inquiries on money laundering and on terrorist financing, frozen, seized or confiscated assets, and mutual judicial assistance or other international requests for cooperation").

This Recommendation no. 32 is not considered a key or core recommendation but it is a very important one since it cannot be separated from a large part of the other recommendations.

For example, it is linked to:

- Recommendation 1, relating to the incrimination of AML together with Special Recommendation II for CTF.
- Recommendation 3, relating to confiscations.
- Recommendation 13, for STR in relation to Special Recommendation IV for CTF.
- Recommendation 19, for Customs.
- Recommendation 23, with respect to supervision.
- Recommendation 36, in relation to mutual assistance.
- Recommendation 40, which deals with international cooperation.

In this respect, when an evaluation or progress report process is underway, once the respective recommendation has been analysed point by point, the study of the statistics in relation to the degree of compliance immediately appears and it becomes an essential point for the achievement of a good score.

Having made this remark, it may also be observed that the two key words that give Recommendation 32 its sense appear in the aforementioned definition, namely: effectiveness with respect to the technical compliance of the rules and the efficiency of the response that the system gives to the problems that are considered.

Without doubt each country's system for prevention and repression of money laundering and terrorist financing faces threats and is the object of transgression by criminals, and for this reason it cannot appear as a system with fissures or a fragile one. This fact leads to the need to carry out a country risk study in order to identify the possible defects existing in the overall context and to provide a solution to them.

Beyond a result-based criterion, effectiveness is based on key objectives that are concentrated on the analysis of the system as a whole, that is to say, it is based on the examination of the set of entities, official bodies or collaborating bodies that appear and intervene at one moment or another in a case, and the response that is given to them.

I am referring to the degree of national cooperation between authorities or international cooperation between counterparts, to the appropriate processing and use of the available information, to the research and investigation work carried out by the financial intelligence unit, and to the examination to be carried out by the judicial authorities. In short, I am referring to how, with all the available means, each country's AML and CTF system responds to each case even if a conviction need not necessarily be achieved.

That is to say, the adjective "efficient" as defined in the dictionary: "having the quality of producing the desired effect", represents for all we who work in this area, in the event of a positive response, the satisfaction of having done one's duty.

It is appropriate now to include the annual graphics and the comparison with the previous year, and to attest to the work carried out by the Unit and to the degree of efficiency of the system for the prevention and repression of money laundering and terrorist financing in the Principality of Andorra.

The first data provided here form the table of the annual balance which, with the comparison with the previous year, illustrates very clearly all the work carried out and, therefore, essentially, the number of files begun according to various categories, the files conveyed to the General Attorney's Office and those which are in the course of investigation, and the number of natural persons or legal persons investigated.

The initial valuation in per cent leads us to state that the volume of work generated with respect to year 2011 increased significantly in some cases but also that the percentages in relation to international cooperation and the number of files conveyed to the Attorney General's Office diminished.

These decreases have no special significance. Just as we have remarked on other occasions, they are simply the result of circumstances just like the rest of the data.

BALANCE OF WORK GENERATED AND CARRIED AT THE ANDORRAN FIU - YEAR 2011 -			WORK GENERATED AND CARRIED OUT AT THE ANDORRAN FIU - YEAR 2012 -		Evolution %
Item	**Number**	**Remarks**	**Number**	**Remarks**	
STR received	21	-	25	-	**19,05%**
Files under FIU initiative	16	-	24	-	**50%**
Register of Companies	181	11 unfavourable	305	9 unfavourable	**68,51%**
National cooperation	2	Justice Cooperation Government Cooperation	2	Government Cooperation Police Cooperation	**0%**
International cooperation (FIUs)	43	Received and answered	20	Received and answered	**-53,49%**
Volume of work generated	263	-	376	-	**42,97%**
Files conveyed to Attorney General's Office	21	1 from 2009 2 from 2010 15 from 2011	14	3 from 2010 2 from 2011 9 from 2012	**-33,33%**
Shelved files	244		352	-	**44,26%**
Volume of work carried out	265		366	-	**38,11%**
Files in course of investigation	9	1 from 2007 2 from 2008 2 from 2009 4 from 2011	28	1 from 2007 2 from 2008 2 from 2009 5 from 2011 18 from 2012	**211,11%**
Persons investigated (natural and legal persons)	2121		2342		**10,42%**
Freeze of transactions originating at the FIU	1		0	-	**-**

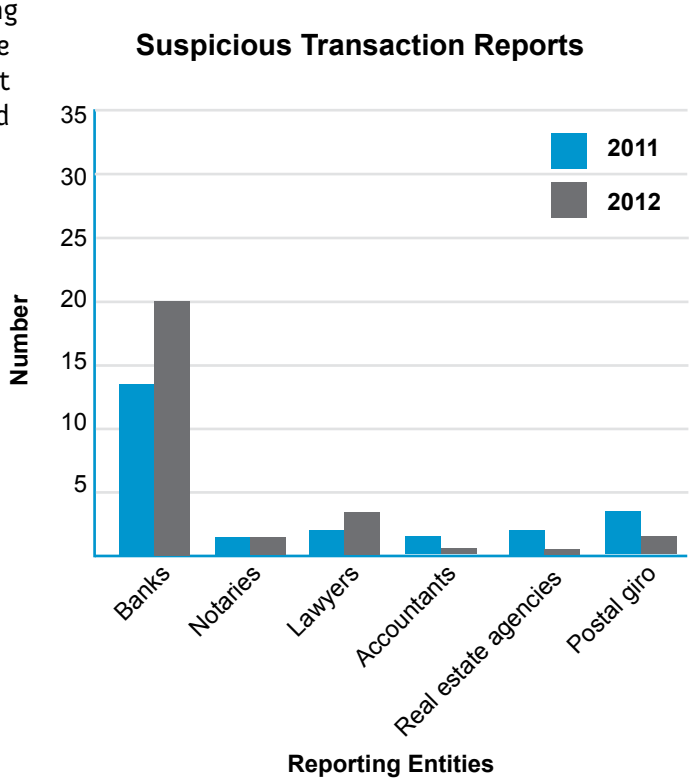
We now provide the following data for greater detail:

- The Suspicious Transaction Reports (STR) rose 19.05%. The reporting entity with the largest number of reports is the bank sector, with 20. This sector in particular increased 54% with respect to the previous year.
- The files opened at the Unit's own initiative increased 50%.
- National cooperation showed no changes.
- The international cooperation requested by our counterparts decreased from 43 to 20 requests; this represents a drop of 53.49%.
- The inquiries for requests for foreign investment, coming from the Register of Companies, grew 68.51%.
- The investigated persons (natural or legal persons) increased 10.42%.
- The volume of files generated increased 42.97%.
- The volume of files completed increased 38.11%.
- The number of files in the course of investigation grew 211.11%, basically due to the fact that the number of files that entered was larger and that the complexity of the investigation of some of the files is especially large.

a. Suspicious Transaction Reports

The Suspicious Transaction Reports remained within the usual figures for recent years, both with respect to the number of STR submitted (in this case a total of 25) and with respect to the reporting entities that submitted them. The financial sector (banks) is the leader, with a total of 20 STR, representing 80% of the sum total.

With respect to the rest of the sectors or reporting entities, the figures, as we said last year, continue to be modest. We are convinced, however, that with the actions that have been started, the trend will improve considerably in the near future.



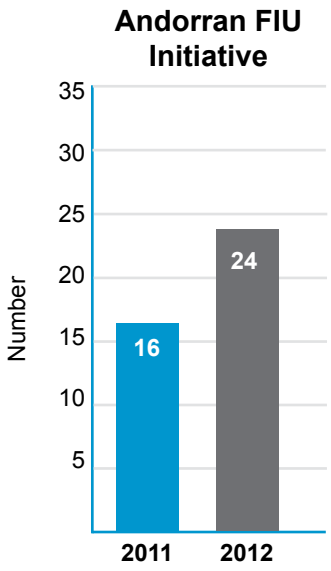
b. Initiative of the Andorran Financial Intelligence Unit

The number of files investigated ex parte by the Andorran FIU increased by 50%, rising from a total of 16 to 24.

This is seen as a natural development considering how the number of judicial processes linked to corruption and to the international networks of organized crime engaged in drug trafficking and money laundering has grown in the countries in our geographical area.

Ties with Andorra have been discovered in some cases.

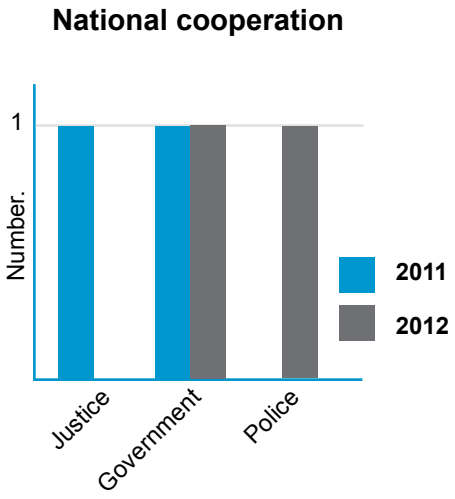
The Andorran FIU considers that such ex parte actions are an essential aspect of its work. They are unequivocal proof of Andorra's commitment to the fight against organized crime and the best way to preserve Andorra's good image as an economic and financial centre. The work carried out in this respect eventually comes to represent a categorical message to such criminal organizations, affirming that Andorra is not a good place through which to move the proceeds from their criminal activities.



c. National cooperation

Although the practices of cooperation with the other public bodies of Andorra linked to this matter have progressed and improved, at the present time this fact has not translated into a larger number of submitted STR.

The figures continue to be similar and, consequently, without change with respect to previous years.

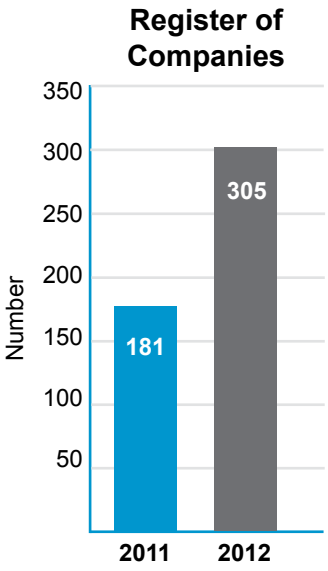


d. Register of Companies

In this case the volume of requests generated by the Register of Companies Department has indeed increased substantially with respect to requests for foreign investment.

This fact is without doubt due to the new policy of economic opening to the exterior promoted by the Government of Andorra in search of investment potentials that will invest in and increase our economic activity and competitiveness.

With respect to the forthcoming years and by virtue of the new Act 10/2012 of 21 June on Foreign Investment, approved by the Andorran Parliament, the number of requests will increase significantly.



e. International cooperation

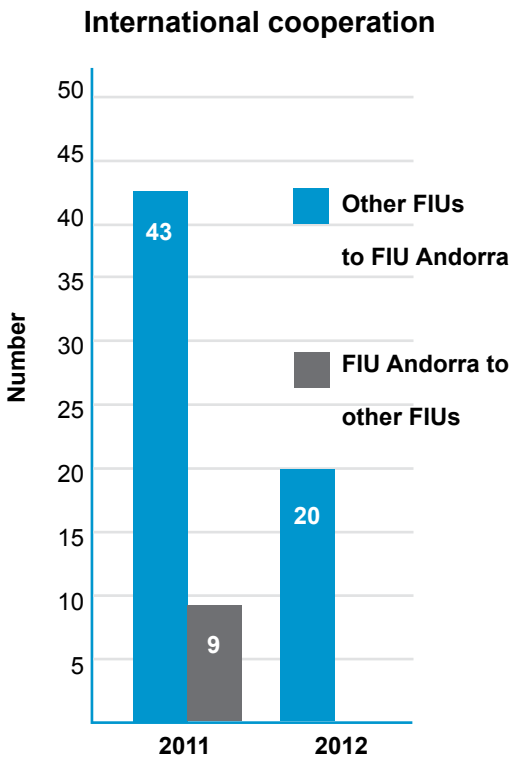
The next two graphics deal with the Unit's international cooperation. The first one refers as usual to the number of requests for information that our counterparts, that is to say, other financial intelligence units of the world, have addressed to us. As may be seen, this number decreased in 2012.

It should be pointed out that we only count the first request in each case and not the subsequent ones that may be necessary according to circumstances.

There is surely no specific cause for the number of requests registered but we may allow ourselves to think that the external need to communicate with us was not the same as in the previous year.
The cooperation processes used and our Unit's wish to receive, analyse and disseminate information remain unaltered.

The second graphic, which appears as a new feature here, presents a summary of the information on the response time of our Unit to the requests received. The average time was 42.40 days.

This is a very important figure for us because we consider it to be quite low and, consequently, very positive. It is necessary to take into account the content of the requests with respect to their volume or the complexity of the matter involved, which causes more or less time to be required to research the desired information. In any case, permit me to repeat that this is an essential figure and a matter of satisfaction for our Unit.

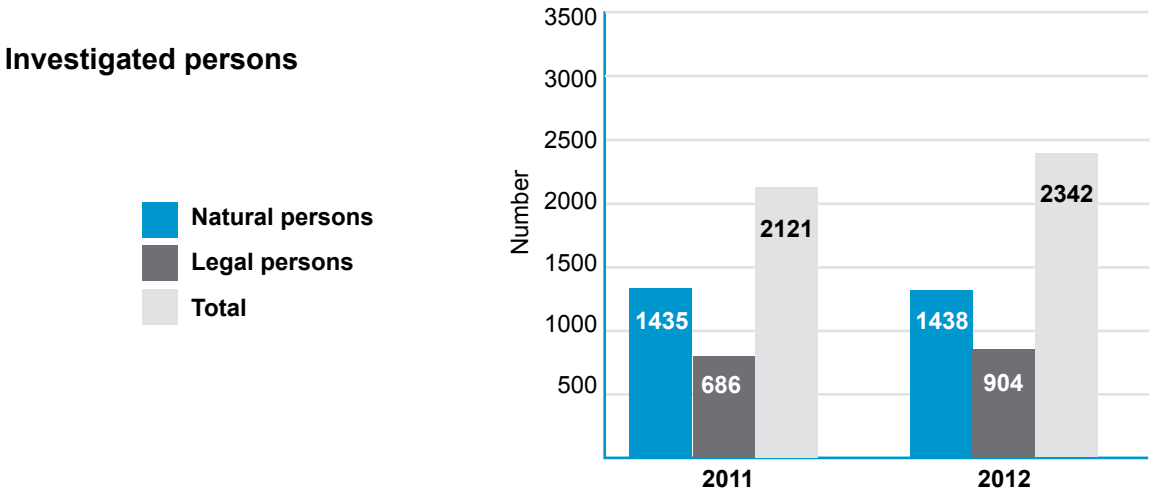


International cooperation by countries - Year 2012						
Requesting countries (Other FIUs to FIU Andorra)	Number of requests	Response time (days)				
Spain	5	37	53	41	22	7
France	3	15	21	78		
Kazakhstan	2	30	93			
Argentina	1	19				
Belgium	1	88				
Philippines	1	40				
Luxembourg	1	11				
Malaysia	1	45				
Malta	1	45				
Netherlands	1	54				
Senegal	1	18				
Sri Lanka	1	97				
Ukraine	1	34				
Total	**20**	**Average: 42.40 days**				

f. Investigated persons

With respect to investigated persons, the figure for the number of files handled increased 10.42% with respect to the previous year.

This is not surprising since the greater the volume of work generated, the larger the number of natural or legal persons who are examined.



4. JUDICIAL DATA

The data transcribed below are those which are sent to us annually by the jurisdictional bodies. It may be initially observed that the number of court decisions pronounced by the various jurisdictional bodies remains stable with respect to the two previous years. As has already been highlighted on other occasions, this upward trend differs from the usual figures from before 2009.
With respect to the Andorran Court of the First Instance, in the course of 2012 the examining judges initiated 9 new cases of diverse origin. In this respect, it should be pointed out that of these 9 cases, 3 are the result of the 14 files that the Andorran Financial Intelligence Unit has conveyed to the Attorney General's Office, 1 derives from International Letters Rogatory, and the remaining 5 are cases investigated by the Police.

Likewise, the judges of the first instance issued 12 writs as listed below, 2 of which decreed the final shelving of the preliminary proceedings while the remaining 10 decreed the provisional dismissal of proceedings. With respect to the Criminal Law Court of Andorra, 11 court decisions were pronounced, comprising as likewise listed below 8 writs and 3 sentences.

Of these 8 writs, 3 decreed the provisional dismissal of the respective cases and the provisional forfeiture of assets; 2 other writs decreed a favourable decision with respect to appeals lodged by the parties; 1 writ rectified a material error in relation to an earlier sentence; 1 writ ordered a banking institution to transfer the respective money to INAF's account, and the last writ decreed the forfeiture of the money under restraint. With respect to the 3 sentences, 1 decreed the sentencing of a person to various punishments and the forfeiture of the money under restraint, while the remaining 2 sentences decreed the acquittal of the parties involved and the restitution of the seized assets and rights.

The Andorran High Court of Justice (Criminal Division) issued two decisions: 1 sentence dismissing the request lodged for appeal and 1 writ admitting the request lodged for appeal, declaring the respective actions null and void.

Lastly, the Attorney General's Office issued decisions on 4 cases. It decreed the provisional shelving of 3 of them and the final shelving of the fourth.

	COURT OF THE FIRST INSTANCE			CRIMINAL LAW COURT				HIGH COURT OF JUSTICE	
Anys	WRITS			Writs and sentences (1st instance)				Writs and sentences	
				Firm		Under appeal		Firm	
	Cases	Writs of shelving or dismissal of proceedings	Indicted persons	Cases	Persons	Cases	Persons	Cases	Persons
2011	17	8	7	5[5]	9	-			
2012	9	12[1]	9	11[2]	16	2	8	2[3]	2

2012

Writs of the Andorran Court of the First Instance

1. DP-215-1/06. Writ of 29 February 2012. Shelving of the preliminary proceedings.
2. DP-846-1/07. Writ of 29 February 2012. Provisional dismissal, making null and void the measures decreed in relation to the assets and rights of the interested parties.
3. DP-3133-2/11. Writ of 20 March 2012. Shelving of the preliminary proceedings.
4. DP-1419-3/11. Writ of 30 March 2012. Provisional dismissal of the preliminary proceedings. The warrant for the arrest of the persons under investigation remains in force.
5. DP-3932-3/12. Write of 7 May 2012. Provisional dismissal of the preliminary proceedings.
6. DP-3941-2/07. Writ of 13 June 2012. Provisional dismissal of the preliminary proceedings.
7. DP-1999-04/09. Writ of 26 June 2012. Final partial dismissal with respect to the persons initially involved. The bank freeze measure is lifted.
8. DP-1500-1/09. Writ of 4 July 2012. Provisional partial dismissal of the interested parties.
9. DP-3565-4/09. Writ of 8 August 2012. Provisional partial dismissal of the proceedings, making null and void the preventive seizure decreed on the assets and rights of 5 persons. The preventive seizure is maintained, however, with respect to 2 other natural persons and 1 legal person.
10. DP-824-2/03. Writ of 21 September 2012. Provisional dismissal of the preliminary proceedings.
11. DP-3308/09. Writ of 24 September 2012. Provisional dismissal of the preliminary proceedings. The precautionary measures adopted, however, are maintained.
12. DP-1850-3/10. Writ of 17 October 2012. Provisional dismissal of the preliminary proceedings.

Writs of the Andorran Criminal Law Court

1. TC 014-3/10. Sentence of 25 January 2012 decreeing for 1 person, as responsible in the capacity of perpetrator of the felony of laundering of money or securities from the illegal traffic of narcotics, a sentence of 2 years and 6 months imprisonment, a fine of 90,000 euros and expulsion from the Principality of Andorra for 20 years. Likewise, it decrees the forfeiture of the money under restraint in the amount of 60,560 euros.
2. TC 108-2/11. Writ of 15 February 2012 decreeing the provisional dismissal of the proceedings against 1 person and the provisional forfeiture of money in the amount of 3,197,000 euros.
3. TC 101-3/11. Writ of 15 February 2012 decreeing the provisional dismissal of the proceedings against 2 persons, and the provisional forfeiture of the money deposited in the amount of 10,191.44 euros.
4. TC-095-3/10. Sentence of 23 February 2012 decreeing the absolution of 2 persons from the felony of money laundering of which they were accused, and the restitution of the seized assets and rights.
5. The Attorney General's Office lodges an appeal to the Criminal Division of the High Court of Justice.
6. DP-1398-2/07. Writ of 5 March 2012 decreeing the admission of the appeal and lifting the seizure and control of the accounts of the 2 persons.
7. TC-051-4/02. Writ of 9 March 2012 rectifying the 12th Ground of the sentence pronounced on 20 November 2009, in the sense that with respect to the assets under restraint it adds to the decision the forfeiture of one parking place and one real estate unit.
8. DP-292-5/99. Writ of 23 March 2012 decreeing the forfeiture in favour of the Andorran State of the money or securities deposited in the bank accounts of 6 persons, which amount to 53,406.99 euros. 1 of the interested parties lodges a request for appeal.
9. TC 078-1/11. Writ of 23 April 2012 decreeing the provisional dismissal of the proceedings against 1 person and the forfeiture of the deposited money, and the content of the safety deposit box.
10. DP 846-4/10. Writ of 30 April 2012 admitting the request for appeal lodged by the Attorney General's Office.
11. TC 108-2/11. Writ of 24 May 2012 ordering a banking institution to transfer money to INAF's account.
12. TC 101-4/10. Sentence of 17 July 2012 decreeing the absolution of 9 persons from the felonies that were attributed to them and making null and void the writ of indictment that had been issued and the precautionary measures that had been taken.

Writs and sentences of the Andorran High Court of Justice (Criminal Division)

1. TC-095-3-10. Sentence of 13 September 2012 dismissing the request for appeal lodged by the Attorney General's Office on 15 March 2012 and confirming in its entirety the sentence of the first instance.
2. DP.292-5/99. Writ of 15 November 2012 admitting the request for appeal that had been lodged and making null and void the actions as from the time of initiation of the enforcement procedure.

Decisions of the Andorran Attorney General's Office

1. DIMF no. 34/11 of 21 May 2012, decreeing the provisional shelving of the investigation proceedings.
2. DIMF no. 44/11 of 21 May 2012, decreeing the provisional shelving of the investigation proceedings.
3. DIMF no. 1/12 of 22 May 2012, decreeing the shelving of the investigation proceedings.
4. DIMF no. 5/12 of 26 September 2012, decreeing the provisional shelving of the investigation proceedings.

5. TYPOLOGIES

Case no. 1: A bank reporting entity submits a Suspicious Transaction Report to the Unit because one of its customers (A) repeatedly enters and withdraws money in cash. The type of transactions carried out does not concur with the representations made by the customer at the time of opening the respective bank account (for saving).

After studying the cash movements and after making the appropriate investigation, the Andorran FIU concludes that the money handled by the customer does not concur with the professional activity initially stated to be the customer's source of income.

On the one hand this was because the documents submitted to the banking institution with respect to the company that the customer held that he owned did not attribute to the customer any type of official tie, and on the other hand because the customer's recent past in Andorra showed that he carried out an occupational activity as an employee with scant financial income.

The totality of the assets deposited in the bank amounts to 49,700 euros, and the customer moreover rents a safety deposit box.

The file is conveyed to the Andorran Attorney General's Office.

Evidence of risk:

- Handling of substantial amounts of cash.
- Transactions differing from the purpose stated at the time of opening the account.
- Lack of official documentary support of the company.
- Lack of verification of the existence of the company.
- Recent occupational activity of (A) differing from the one that was stated.
- Lack of documentary support.

Case no. 2: A banking institution of Andorra learns from the foreign press that two persons (A) and (B) have been arrested as purported heads of an international criminal network devoted to the commission of frauds in their country of origin (X).

On making internal verifications, the bank verifies that the interested parties were previously denied the opening of respective accounts on an individual basis.

Consequently, the banking institution submits a Suspicious Transaction Report to the Andorran Financial Intelligence Unit.

This report is used by the Andorran FIU to make requests to the rest of the country's banking and notarial system. A positive result is obtained. Specifically, five bank accounts are detected.

(A) is the individual holder of one account and he is also the representative of an account whose holder is a company created in a certain country (Z). The same situation is found to exist for (B). The holder of the fifth account is an Andorran limited liability company in which the bank representatives are (A) and (B).

It should be said that the Andorran company is formed 100% by an Andorran national (C), who grants broad notarial powers of attorney to (A) and (B) so that they may, among other things, open bank accounts and operate financially through said accounts on behalf of the company. In practice this allows them to act in the name of the company without there being any official record of their participation.

The study of the respective bank movements allows the Andorran FIU to detect that the individual accounts are fed by various cash deposits and are subsequently transferred to the accounts of the foreign com-

panies (which are shell companies), said accounts being used only to receive the aforementioned assets and to deposit and withdraw money in cash.

Through these accounts, (A) and (B) have at their disposal a large volume of money in cash. Moreover, (A) purchases a dwelling in Andorra, paying for it with a bank cheque.

The account in the name of the Andorran company, which has no officially declared commercial activity, is fed with two international transfers issued by a third person (D) for the sum of about 27,000 euros, which is deposited in cash a few days later.

Presumably, this third person (D) was the victim of a fraud committed by (A) and (B).

The overall sum of the assets deposited in the banks totals about 65,800 euros, and the value of an apartment should also be added to this.

The file is conveyed to the Attorney General's Office of Andorra.

Evidence of risk:

- Handling of substantial amounts of cash.
- Use of shell companies.
- Concealment of official participation in an Andorran company.
- Operation that differs from what was stated at the time of opening the account.
- Parallelism in the transactions of (A) and (B).
- Lack of documentary support.

Case no. 3: Through international cooperation, a request for information is received from a country (X) with respect to a transfer for a sum of about 220,000 euros made by a customer (A) from a banking institution in that country.

According to our counterpart, the transfer lacked documentary support endorsing the transaction in the receiver bank and the recipient (B) had been publicly linked to a large-scale transnational drug trafficking network.

Once the pertinent investigation had been carried out, the Andorran FIU concludes that the transferred amount had been previously deposited by the customer (A) in cash on several occasions without negative police annotations. In order to justify the deposits, the customer stated that they came from the sale of vehicles of a company owned by him in the country (X). He did not submit any voucher supporting his statements.

To justify the remittance of money, the customer (A) stated that it was intended for the purchase of a dwelling owned by (B) which the latter possessed in the country (x). The customer (A) does not provide any proof of his statements.

The file is conveyed to the Attorney General's Office of Andorra.

Evidence of risk:

- Handling of substantial amounts in cash.
- Lack of documentary support.
- Use of a "bridge account".
- Negative public annotations on (B).

Case no. 4: The Andorran FIU learns through the digital information media of the country (X) that the latter's judicial authorities are investigating a series of natural persons and legal persons accused of misappropriation of public funds, misconduct in public office, falsification of documents and fraud.

A request is made ex parte to the Andorran bank system and information is received on several bank accounts, the study of which, despite their having been cancelled, revealed a set of accounting operations relating to the stated facts.
Specifically, one of the persons most deeply involved (A) has deposited money in cash in Andorra on various occasions for a sum of about 330,000 euros. This money is subsequently transferred to a foreign company linked to (A) with an account in a banking institution of the country (Y).

The file is transferred to the Andorran Attorney General's Office.

Evidence of risk:

- Handling of substantial amounts in cash.
- Lack of documentary support.
- Transfer of the totality of assets abroad.
- Consulting services linked to public institutions.

Case no. 5: Through international cooperation, a request for information is received from a country (X) on a transfer in the amount of 100,000 USD sent by the customer (A) from an Andorran banking institution. This transfer was justified as a "tip" paid to its beneficial owner.

After studying the numerous bank accounts detected in a single banking institution in Andorra and after receiving in parallel requests for information from two more counterparts of the countries (Z) and (Y) with respect to transactions of the persons (B) and (C), it was concluded that the three files were inter-related.

A total of 29 bank accounts were identified, the title or representation of which pertained to 41 persons (natural or legal persons).

It is important to emphasize in this case that all the natural persons were from the respective country (W), that one of the persons involved is the first cousin of a political authority with decision-making power within a specific ministry, and that another of the persons involved had been the supreme representative of a State-owned company.

The majority of the monetary transactions with Andorra as their destination were justified with million-dollar contracts for financial consulting between foreign companies from the countries (V), (V') and (V'') and State-owned companies of the aforementioned country (W).

They were also justified with hypothetically overvalued insurance contracts; the insured were the selfsame State-owned companies.

The pattern in this type of transactions consists of introducing the assets by means of international transfers, making these assets flow between the accounts of the national banking institution (for the purported purpose of diffusing their origin), and subsequently transferring them internationally to third countries.

The Andorran FIU concludes that the most plausible hypothesis is that the origin of the money is of illicit nature and that it derives from political corruption and/or the corruption of State civil servants of the respective country (W).

The respective files were conveyed to the Andorran Attorney General's Office.

Evidence of risk:

- Customers linked to high-ranking State officials.
- Contracts linked to State-owned companies.
- Dispersion of the assets entering from abroad among national accounts.

6. CONFERENCES

Efficient prevention

The purpose of this conference is to highlight some ideas that may be of interest to raise awareness with respect to the prevention of the crimes of money laundering and terrorist financing. These crimes involve a set of multidisciplinary factors that must be considered to achieve desirable levels of efficiency.

Likewise, if they are to have a positive effect on this efficiency, the public and private agents involved must show a proactive attitude in their efforts.

This having been said, and far from being critical or even self-critical, this paper seeks to generate in its readers ideas that may help to improve the present preventive system with a view to achieving a common goal, which is precisely that of endowing this system with greater efficiency.

It could be thought that such improvement calls for a large number of changes that require major investments but this is not the case at all. As will be explained, most of these changes require merely an exercise of will on the part of the parties concerned.

One of the first considerations is that the prevention of money laundering and terrorist financing should not be based primarily on the negative consequences deriving from the application of penal justice. Although it is indispensable for there to be punishments, they are applied post facto, that is to say, they entail an action that is taken after the crime has occurred.

On the other hand, it cannot be considered at present, contrary to the classic conception, that punishment is the only effective means of preventing crime. If nothing else, action may be taken from a neoclassic perspective by improving the selfsame police and penal system, endowing it with more personnel and making it easier for them to apply new technologies. However, neither is this concept fully adapted to present-day theories of prevention, in which there are numerous variables to be considered and a large number of players involved. Consequently, criminology's interest in prevention involves the suitability of acting outside the penal system.

Prevention is defined as the set of interventions addressed to reducing the risk of crimes being committed and their consequences on society.

Generally speaking, these interventions are not, as one might mistakenly believe, the exclusive domain of the public sector. It cannot be denied that the private sector is of crucial importance in this task and, specifically, it plays a fundamental role with respect to the prevention of money laundering and terrorist financing.

This is so for three evident reasons. Firstly, because the reporting entities are the parties that have a direct connection with the potential criminal and, consequently, they are situated closer to the reality of events. Secondly, because they have the obligation to submit a Suspicious Transaction Report (STR) to the financial intelligence unit (FIU) when there is any suspicion of an act of money laundering or terrorist financing on the part of their customers or potential customers. Thirdly, because the rules in force at present do not allow the FIU to have access, in a general way, to some of the data of the reporting entities for the purpose of studying them and detecting possible suspicious transactions as would be the case, for example, with a systematic reporting of financial transactions as from a specific threshold.

The compilation of statistical data in the period 2001-2012 allows us to calculate the average number of STR submitted by the reporting entities. Specifically, the banking institutions submit a total of 14.92 STR per year while the rest of the reporting entities register a figure of 4.34 STR per year.

Without seeking to make a specific analysis of these data in this study but rather to extrapolate them, it may be observed that the financial, commercial, notarial or corporate transactions carried out in Andorra

in a period of 12 years reflect a relatively lower coefficient of suspicion in the case of the reporting entities. The influential variables may be of widely differing nature and they are not the subject of this paper. Moreover, it may be said that there is no reason why they should affect the detection of a problem either.

What is evidenced is that the present focus of the preventive system does not allow a real view of criminality to be obtained. The official data on STR (recorded criminality) provide a knowledge of the criminality that comes to the surface but these data usually stand at a certain distance from the level of real criminality. In short, they represent the most reliable and closest data available but they are not the only ones required.

It is necessary to take into consideration the dark figure of suspicious transactions that do not come to be officially known and, consequently, that are not reflected in the statistics.

One should not overlook the various circumstances in which the reporting entities may find themselves and which may have a direct influence on the data of presumably criminal activity, such as not detecting suspicious transactions (owing to a shortage of training, knowledge, analytical tools, etc.), not attributing the data the importance that they deserve (refusal to allow a bank account to be opened, excessive trust in the explanations given by the customer which are not verified in supporting documents), not accepting for reasons of reputation the fact of having become a link between the criminal and the legal financial circuit, or being afraid of possible retaliations by the criminal, among other reasons.

The fact that the STR are submitted according to the sole judgement of the reporting entities makes it important to seek solutions for reducing the dark figure and this should be done on the basis of three specific criteria:

1. There should be a better knowledge of the criminal reality in matters of money laundering and terrorist financing in order to plan institutionally for a better prevention.

2. The evolutions in time should be analysed in order to take further action on worthwhile interventions or to reconsider neutral or ineffective interventions.

3. It should be possible to prevent a displacement of the presumed crime* to other institutions of the same sector or to some other sector of Andorra.

(*) Two examples are in order to illustrate this. If a banking institution refuses to allow a potential customer to open an account, when such decision has been made for reasons compatible with or provided in the rules in force on the prevention of money laundering and terrorist financing, such circumstance should be made known to the FIU.

Likewise, the FIU should be informed in the event that a customer decides to cancel his/her account or to transfer his/her assets to some other banking institution with the aim of operating, in his/her judgement, in a more "relaxed" way than at the original banking institution because the latter has requested the customer for documents supporting the explanations that he/she has given or that justify financial transactions that he/she carries out, for example.

The reporting of these circumstances, among others, to the FIU would prevent a displacement to some other banking institution of the country and it would consequently serve to protect the system itself and, indirectly, the rest of the sectors in the country.

It should be emphasized that such circumstances are not classified as criminal behaviours but even so it is important to be able to study them precisely in order to rule out this possibility.

Moreover, with a view to situational prevention, which may be applied to hypotheses in which the reporting entity is the first line of defence, one should any situation that encourages or favours rational criminal decisions.

One proposal of action addressed to neutralizing such situations is to achieve the greatest possible awareness and proactiveness on the part of the reporting entities, without whose participation it is impossible to be efficient for the reasons explained above.

It should also be emphasized that the present rules attribute an important role in prevention to the reporting entities, a circumstance that is questioned by some lines of criminological thought since this means that the State does not assume greater responsibility with respect to crime, yielding a large part of this responsibility to the private sector.

In contrast, it is also true that the reporting entities are not constantly required to spontaneously convey information on their customers but rather only when they detect suspicious transactions.

Efficient prevention policies should be addressed to exploring alternative ways to manage criminality which would prevent excessive social, financial and human costs, with the goal of promoting the control of criminality and decreasing its risk and effects.

Considering the eradication of criminality to be a goal reflects ambitious intentions that ignore the complexity of crime. This is why society must be capable of managing reasonable levels of criminality.

To bring this paper to an end, it should be said that one cannot seek to plan criminal policy on the basis of a single preventive model since such a model cannot, on its own, provide a perfect solution. It is indispensable to bear in mind the multidimensionality of the various models from the standpoint of actions that are focused indistinctly on the offender (or potential offender), the victim (or potential victim), the opportunity to commit crime, and control by society.

In conclusion, one must know and be aware that efficient prevention does not stem exclusively from the public institutions but rather that it is planned from the different public and private sectors of society. Consequently, the control of criminality is conditioned to a great degree by the involvement achieved in these various sectors.

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The trend in the new international standardss

Introduction

The adoption of the new Recommendations of the Financial Action Task Force (FATF-GAFI) in February 2012 and the European Community's intention to begin work on the proposal of the 4th European Directive on the prevention of the use of the financial system for money laundering and terrorist financing reflect an unavoidable need for change.

The new international standards entail a revision and harmonization of the existing obligations. They usher in changes that may be qualified as technical improvements and corrections aimed to assure a clearer understanding, evaluation and coherence of the various normative blocks. Nevertheless, aside from the revision of the existing rules, they also introduce other innovative elements.

For example, in the case of the new FATF 40 Recommendations, the anti-money laundering and counter terrorist financing measures are included in a single document. As a novelty, specific measures are added for the prevention of and fight against the financing of the proliferation of weapons of mass destruction.

In the case of the proposal of the so called 4th European Directive, work is being carried out along different lines including the following: the lowering from 15,000 euros to 7,500 euros of the threshold from which due diligence measures will be applicable to cash transactions carried out by merchants of high value goods; the alignment of the definition of beneficial owner with the FATF rules, and the introduction of a set of minimum rules on the sanctioning system.

Another novelty that should be mentioned in both the European rules and the FATF Recommendations is the inclusion of tax crime as a predicate offence of money laundering.

These are some of the particularities of the new legal instruments, whose detailed development goes beyond the scope of this document since all these aspects require a comparative study of each precept. For this reason, we will now consider the two main features defining in general terms the new approach of the anti-money laundering and counter-terrorist financing system, namely, the system's effectiveness and the risk criterion.

The effectiveness of the system

Els organismes internacionals han detectat que, un cop implementada la legislació, cal iniciar un estudi on es determini si els components del sistema del règim de prevenció i lluita contra el blanqueig de capital i el finançament del terrorisme interactuen, i si no és el cas, quina és la mancança que fa que el sistema no funcioni, és a dir, que el sistema no sigui eficaç.

The legislation having been implemented, the international bodies have observed that it is necessary to begin a study to determine whether the components of the anti-money laundering and counter-terrorist financing system interact and, if they do not, to determine the shortcoming that causes the system not to work, that is to say, that causes it not to be effective.

An effective system is characterized by the following:

- The identification and mitigation of the risks of money laundering and terrorist financing.
- The national and international cooperation of the competent authorities (financial intelligence units, supervisory bodies, judicial and police bodies, etc.).
- The exercise of control by the authorities entrusted with the supervisory task to assure that the reporting entities apply prudential measures and prevent them from being used in activities aimed to channel money deriving from criminal activities.
- The application of the due diligence measures that the financial and non-financial reporting entities shall take into account in their dealings with customers and their business relations.

· The State supervision aimed to prevent companies and enterprises from being created opaquely and to assure that the information relating to true beneficiaries will be available to the competent authorities without impediments.
· The provision of the necessary mechanisms to assure that the information available to the competent authorities will be sufficient for the pertinent investigation studies.
· The investigation of predicate offences and the application of proportional dissuasive punishments to criminals.
·The confiscation of the money from illicit activities and the money intended for terrorist financing.

The effectiveness criterion will be examined with the new FATF methodology, which contains two sections: the first one evaluates the specific requirements of the FATF Recommendations in relation to the country's legal and institutional framework, while the second one deals with the effectiveness of the system and consequently has the aim of evaluating the extent to which the application of the legal and institutional framework is meeting expectations.

The risk of money laundering and terrorist financing

Moreover, it is requested that, on the basis of the experience that the countries have been acquiring over the course of these years in the prevention of and fight against money laundering and terrorist financing, it should be determined that the adopted measures are those necessary and sufficient to combat the risk of money laundering and terrorist financing that each country faces according to its particular features. Once this potential risk has been determined, it is necessary to study the required degree of application of the measures, that is to say, to apply the well-known risk-based approach. The purpose is none other than to focus the preventive resources and efforts on the sectors and transactions in which the risk is highest.

The identified risks must be viewed in a context of several factors:

· The threat, that is to say, the intention of criminal groups to infiltrate our economy. The definition of predicate offences is crucial in determining the threat.

· The vulnerability, which involves everything that may be exploited by the threat including the particularities of each financial or non-financial sector that may make such sector useful or attractive for criminal purposes.

· The consequence and, therefore, the impact or harm that may be derived from the crimes involved, whether it is at international level (because we are in a context of international crime in which the consequences are devastating for society in general), at national level (where the stability of the country may be harmed), or in the sphere of each specific sector (with the damage to the sector's integrity and reputation).

When one speaks of risk in matters of money laundering and terrorist financing, the followingtres three levels should be distinguished:

a) The risk of money laundering and terrorist financing to which the State in itself is exposed, and which varies according to the particular features of each country. In order to measure this risk, it is necessary to conduct a national risk study. The form, scope and nature of the risk study must meet the needs of its users, whether they are politicians, legislators, regulators, operative agencies, reporting entities, etc. Consequently, it is the responsibility of the competent authorities to identify, evaluate and mitigate the risks in order to make available all the appropriate preventive and repressive measures.

b) The risk criterion that should be applied by the supervisory bodi when strengthening the resources in the sectors where this is most appropriate, that is to say, where the risk is highest. Likewise, it is the competence of the supervisory bodies to decide whether the degree of risk that the supervised reporting entities apply is appropriate and to understand the measures adopted by these entities, which are responsible for demonstrating the risk analysis carried out and which are therefore responsible for the decisions made.

c) The risk measures that should be applied by the reporting entities on establishing business relations. The risk in itself is variable by nature and due to the factors involved (both separately or combined), since these factors may increase or reduce the risk, thereby leading to the application of strengthened or simplified due diligence measures, affecting financial inclusion in this way.

Financial inclusion is a concept that cannot stand apart from the risk measures that are to be applied by the reporting entities and especially the financial reporting entities. Accordingly, it has been internationally acknowledged that the exercise of excessive prudence in the fight against money laundering and terrorist financing may lead to the exclusion of legitimate companies and consumers from the financial system as an undesired consequence. The States should implement measures to favour financial inclusion without compromising the existing measures against crime.

The problem of financial exclusion is more important in the less developed countries. Recent studies by FATF and the World Bank indicate that some 2.5 billion adults, representing about 50% of the adult population, do not have access to a formal bank account.

The causes may be diverse: lack of documentation, lack of trust, extremely high costs, etc. The consequences are likewise diverse because, for example, not having a current account leads to not having access to a mortgage, which may be an impediment for economic development.
Likewise, it should be observed that this group of potential customers should not be qualified as low-risk customers solely on the basis of their financial exclusion. An appropriate risk study is essential to approach this sector, a sector which unquestionably favours economic development.

Conclusion

The rules for the fight against organized crime and specifically against money laundering and terrorist financing form part of one of the normative blocks calling for constant and repeated changes, not as the result of an insufficient or inefficient legal framework but rather to respond to the variable nature of the threats posed by these crimes, which are characterized by the continuous evolution of technology and of the means that criminals have at their disposal. In this respect, it may be concluded that there is a lag in legislation with respect to criminal actions since the techniques and typologies of money laundering and terrorist financing are increasingly sophisticated and, consequently, the legislation on prevention must be increasingly strict and meticulous.

A broad international consensus among the international regulators is likewise necessary to achieve coherence among the various rules and to prevent legal insecurity. The common objective of all international bodies is the same: to develop appropriate formulas to fight effectively against money laundering and terrorist financing.

Lastly, it should be recalled that the Principality of Andorra has clearly demonstrated since 1990 its firm will to reject the crime of money laundering, defining it in Article 145 of the Andorran Penal Code. Despite this, however, it would appear that the strict evaluations to which our country has been subjected, just as has occurred in the majority of jurisdictions, has inevitably made conformity with the international standards and compliance with the international community's requirements the primary aim. This has perhaps been one of the causes leading to the need for change to which reference was made at the beginning of this paper: the rules on the prevention of and fight against money laundering and terrorist financing having been implemented, it is now necessary to concentrate efforts where they are most needed in order to assure that the system will be effective and in order to continue to demonstrate that Andorra is an attractive financial centre and not a source of money laundering.

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The legal nature of the Andorran Financial Intelligence Unit and its conception as an independent administrative authority

I. PRELIMINARY CONSIDERATIONS

Recommendation 26.6 of the Financial Action Task Force (FATF) provides that the financial intelligence units shall possess "sufficient operational independence and autonomy to assure their freedom with respect to undue influences or interferences".

Moreover, the Report of 8 March 2012 on the 4th evaluation of Andorra by Moneyval[1] stated that it would be appropriate for the Andorran Financial Intelligence Unit (FIU) to revise its legal conception in order to assure its independence and autonomy.

Accordingly, for the purpose of complying with the international recommendations, we consider that the Andorran FIU should be conceived as an independent administrative[2] authority. To this end, the French Council of State[3] already stated in 2001 that "the creation of independent administrative authorities has constituted, in the eyes of the legislator, an effective response to the need for international credibility required in administrative decisions on economic matters". These are considerations characteristic of a technocratic conception of the Administration, which, for better or worse, is imposing itself in the international sphere.

In this context, an in-depth study should be made of the concept of independent administrative authority, the legal nature of the Andorran FIU and the possibility of this Unit being conceived as an independent administrative authority, bearing in mind the Andorran constitutional and institutional framework.

II. THE CONCEPT OF INDEPENDENT ADMINISTRATIVE AUTHORITY

The concept of "independent administrative authority" originally arose in the Anglo-Saxon sphere with the British "quangos" and the independent agencies or commissions of the United States of America ("independent regulatory commissions"), the primary function of which is to regulate and supervise specific especially important economic sectors. This model quickly came to be replicated across Europe.

With respect to the conceptualization of the independent administrative authorities, two basic features that characterize them should be mentioned:

· They form an active part of the Administration, which acknowledges rights and imposes obligations, for which reason it usually exercises regulatory, supervisory or investigative and, on specific occasions, sanctioning powers.

· They possess a very large autonomy in the exercise of the functions which they carry out as an active administration.

Consequently, the degree of independence of these administrative entities will depend on the way in which these features are materialized in fact, and they will have to be conceived, in the case of financial intelligence units, in accordance with the FATF recommendations and the existing administrative doctrine in this respect, which tends to develop in a specific, rigorous and detailed way the concepts of "independence" and "autonomy"[4] as used by FATF in its Recommendation 26.

1 Committee of Experts on the evaluation of the measures against money laundering and terrorist financing.

2 Since Andorra has chosen to create a financial intelligence unit of administrative character.

3 Rapport Public 2001 of the French Council of State.

4 A difference is commonly drawn between "autonomy" and "independence" according to the degree of detachment from the Executive Power. Indeed, just as is highlighted by Magide Herrero, authors such as Tomàs Ramón Fernàndez Rodríguez ("L'autonomia dels Bancs Centrals"/"The Autonomy of the Central Banks", Papers d'Economia Espanyola no. 43, 1990, p. 5) favour the use of the term "autonomy" in substitution of "independence" because, by requirements of the constitutionally established institutional structure, there cannot exist an absolute detachment between the so called "independent administrative authorities" and the Executive Power.

III. THE ANDORRAN FIU AS AN INDEPENDENT ADMINISTRATIVE AUTHORITY

i. The legal nature of the Andorran FIU

Firstly, in order to determine the legal nature of the Andorran FIU, one must determine the legal system of the organic structure of the General Administration of the Andorran State, within which it is set:

· In accordance with Article 13.1 of the Andorran Administration Code of 10 April 1989, "the Public Administration is comprised by:
1. The Executive Council (Government) and the bodies placed under its direction (General Administration of the State).
2. The municipalities and boroughs and the bodies attached to them (Territorial Administration).
3. The autonomous bodies or the para-public entities (Institutional Administration)[5] .

· To this effect, according to Article 1 of the Andorran Government Act of 15 December 2000, "the Government is formed by the Head of the Government and the Ministers".

Likewise, Article 5.2 of the Government Act provides that "the ministries may be organized into one or more Secretariats of State, which are assigned one or more departments that are structured in the organic units of lesser rank which may be established by Government decree".

· Moreover, the Decree of 18 May 2011 on the structuring of the ministries of the Government and delimitation of their competences provides that the Government of Andorra is structured in ministries and, specifically, the Ministry of Finance and Public Function is structured in various departments or units, one of which is the Andorran FIU.

· Lastly, the applicable sectoral regulation in matters of prevention of laundering of money or assets and of terrorist financing, and specifically Article 53 of the Act on International Criminal Cooperation against Money Laundering and the Proceeds of International Crime (LCPI)[6] provide that "the Andorran FIU is an independent body".

Consequently, it may be concluded that the Andorran FIU is an independent administrative body that is set within the structure of the General Administration of the Sate but does not belong, strictly speaking, to the so called "Institutional Administration"[7] (formed by autonomous bodies and para-public entities, as is the case of the Andorran National Institute of Finance – INAF).
Despite this, the aforementioned independence is not absolute but rather the Andorran FIU is organically

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Despite this, however, bearing in mind the existence of a consolidated administrative doctrine in the countries of its sphere that makes generalized use of the term "independence" to refer to this type of administrative entities (in Spain the doctrine refers to "administración independiente", in Italy to "administrazioni independenti", in the U.S.A. to "independent regulatory commissions" or "independent agencies", and in France to "autorités administratives indépendantes", which is the term that we have generally adopted in this article), we consider that the term "independence" is clearer because it does not necessary involve an absolute independence and, moreover, it allows a differentiation between this type of entities and the "autonomous bodies" to which reference is made by Article 13.3 of the Andorran Administration Code.

5 The Institutional Administration is formed by entities or bodies "endowed with their own legal personality that are formally independent of their parent entity", just as is stated by Mónica Domínguez Martín (in the chapter entitled "Gestió directa a través d'organismes públics"/"Direct Management through Public Bodies" of her manual of more general scope, "Formes de gestió directa dels serveis sanitaris"/"Forms of Direct Management of Healthcare Services", Editorial La Ley, Madrid, November 2006).
In this respect, it should be pointed out that the Andorran Constitutional Court, in a sentence of 3 April 1995, has expressly provided that the Andorran institutions are set fully within the European legal institutional tradition and, consequently, it expressly acknowledges the existence of the doctrinal category called "independent administration" (despite the fact that it appears that it limits this concept to the para-public entities).

Act on International Penal Cooperation and on the Fight against the Laundering of Money and the Proceeds of International Crime and against Terrorist Financing of 29 December 2000, amended by Act 28/2008 of 11 December.

One sector of the doctrine considers that the independent administration forms part, in a broad sense, of the so called "Institutional Administration" (v.g. Mariano Magide Herrero, "Límits constitucionals de l'administració independent"/"Constitutional Limits of the Independent Administration", National Institute of Public Administration (Spain), 2000, p. 55).

6 Act on International Penal Cooperation and on the Fight against the Laundering of Money and the Proceeds of International Crime and against Terrorist Financing of 29 December 2000, amended by Act 28/2008 of 11 December.

7 One sector of the doctrine considers that the independent administration forms part, in a broad sense, of the so called "Institutional Administration" (v.g. Mariano Magide Herrero, "Límits constitucionals de l'administració independent"/"Constitutional Limits of the Independent Administration", National Institute of Public Administration (Spain), 2000, p. 55).

attached to the Ministry of Finance and Public Function, that is to say the Government, notwithstanding the measures that, with due respect for the Andorran constitutional framework, may be adopted in order for the FIU to preserve a certain degree of organic, functional, organizational and financial autonomy.

In this respect, it should be pointed out that the matter of the legal personality of the independent administrative authorities is a matter that is questioned by some:

· One sector of Spanish doctrine considers that mere administrative bodies[8] , without their own legal personality and generally forming part of the Institutional Administration stricto sensu, cannot be considered "independent administrations".

Despite this, however, there are other authors, such as Magide Herrero[9] , who consider that the administrative bodies without legal personality may be conceived as independent administrative authorities.

· The prevailing French doctrine considers that these independent administrative bodies are generally not endowed with their own legal personality[10] .

In our opinion, both the entities forming part of the Institutional Administration and the mere administrative bodies may be conceived as independent administrative authorities because the independence characteristic of these authorities is achieved through the implementation of a specific legal conception without the existence of an independent legal personality of these authorities being an essential feature.

II. THE ANDORRAN FIU AS AN INDEPENDENT ADMINISTRATIVE AUTHORITY

As explained above, the Andorran FIU would be conceived as an administrative body that is organically attached to the Ministry of Finance and Public Function, in contrast to other entities, such as the Andorran National Institute of Finance – INAF, which are considered an integral part of what is known as the "Institutional Administration", the functional decentralization of such entities would be derived from their selfsame legal nature[11] .

Consequently, bearing in mind that the Andorran FIU does not have its own legal personality nor a formal independence from the Institutional Administration strictly speaking, it must be conceived in such a way as to assure its independence, which is primarily shown in three spheres: (i) the organic or personal, (ii) the functional and (iii) the economic and organizational[12] .

a) The organic or personal sphere

The achievement of a certain degree of organic independence, the prelude to a veritable functional or "operational" independence (in the words of FATF), would entail the need to limit the Government's power of appointment or dismissal of the directors of the entity in question[13] . Accordingly, from a practical standpoint, it would be a matter of conditioning, by various techniques, the authority of the Government to appoint and dismiss the directors of bodies which, like the Andorran FIU, should be technical, neutral and beyond any influences or interferences deriving from partisan political interests. In this respect, a difference should be drawn between two techniques, the application of which could allow the independence and impartiality of the head of the FIU to be assured.

8 For example, Luis Alberto Pomed Sánchez, "Fonament i naturalesa jurídica de les Administracions independents"/"Foundation and Legal Nature of the Independent Administrations", RAP no. 132, 1993, p. 142-148 and Elisenda Malaret i Garcia, "La Comissió Nacional del Mercat de Valors (una aproximació a la seva configuració institucional")/"The National Securities Market Commission (An Approach to Its Institutional Conception"), REDA no. 76, 1992, p. 567

9 Mariano Magide Herrero considers that "there may exist mere administrative bodies that share with full intensity the essence of the phenomenon of independent administrations" (vid. p. 33 of the manual mentioned on Footnote 5).

10 According to the French Council of State ("Rapport Public 2001", p. 293), "in principle, [the independent administrative authorities] are not endowed with legal personality".

11 As has been previously mentioned, the Institutional Administration is formed by entities or bodies "endowed with their own legal personality and formally independent of their parent entity". Nevertheless it should also be noted that these entities are closely tied to their parent administration and, consequently, they are subject to some extent to a relation of hierarchical dependence or control. Indeed, Article 3.2 of the General Act of 19 December 1996 on Public Finance (hereafter called LGFP) provides that this type of entities "shall act in coordination with the General Administration".

12 Mariano Magide Herrero, "Límits constitucionals de l'administració independent"/"Constitutional Limits of the Independent Administration", National Institute of Public Administration (Spain), 2000, p. 82-110.

13 Ramón Parada, manual "Dret Administratiu II"/"Administrative Law II", 22nd edition, Editorial Marcial Pons, 2012, p. 255.

i. The establishment of subjective limitations, appointing the head of the Andorran FIU on the basis of criteria of merit, capacity and experience.

These limitations would take the shape of the inclusion of clauses or requirements relating to the capacity of the directors, entailing the depolitization, to the extent possible, of the respective appointment[14] .

In this respect, according to the doctrine established by the French Council of State, "the members of the independent administrative authorities shall be chosen on the basis of their professional profile".

ii. The establishment of formal limitations, which have the purpose of establishing a procedure for the appointment of the head of the Andorran FIU that will limit the discretion of the entity in charge of making such appointment.

Accordingly, these limitations would take the shape of (i) a demand for pluralism and for various instances of appointment, (ii) the application of the principle of collegiality in the decision-making process, (iii) the establishment of a term of office, and (iv) the establishment of some specific causes of dismissal [15]:

· The demand for pluralism and for various instances of appointment: at present, in accordance with Article 54.1 of the LCPI, "the Ministers of the Interior and of Finance, respectively, jointly appoint the supreme head from among the members of the Andorran FIU appointed by themselves".

· The application of the principle of collegiality in the decision-making process: at present, Article 54.1 of the LCPI assigns the appointment of the head of the Andorran FIU to two ministries (Interior and Finance, respectively) on a joint basis.
Consequently, in principle, collegiality would be respected to the maximum although it would still be susceptible to strengthening through the participation of another collegiate instance in the appointment process of the head of the FIU.

· The establishment of a term of office of the directors: at present, the LCPI does not make any provision in this respect.

In accordance with the aforementioned report of the French Council of State, the setting of the term of office of the director of an independent administration is a fundamental feature of such administration's autonomy.

Consequently, the system of appointing the directors of the independent administrative authorities and, in this case, of the head of the Andorran FIU, should be conceived on the basis of the following parameters:

- Term of office: in a general way, the doctrine concurs that the setting of a specific term of office favours the independence of the respective administrative body [16] because the maintenance of the position of director would not in such case depend on the political orientation of its decisions (which, in principle, should be based on strictly technical criteria).

- Renewability or non-renewability of the position: the French Council of State considers that the impossibility of renewing the position ad eternum is an element assuring the independence of the position, even though it also considers that "this is not an absolute criterion" as long as the assurance of independence is sufficiently strengthened in other ways.

Accordingly, it is obvious that the independence of the head of the Andorran FIU would be strengthened in the event that the renewal of the position were limited since this would obviate possible partisan political pressures with a possible renewal of the position as a hypothetical compensation.

14 Mentioned by Ramon Parada in his manual "Dret Administratiu II"/"Administrative Law II": "Els organismes autònoms en el Dret Públic espanyol: tipologia i règim jurídic"/"Autonomous Bodies in Spanish Public Law: Typology and Legal System", Jiménez Cisneros, Madrid, 1987.

15 Vid. supra Footnote 10.

16 Gabriel Fernàndez Rojas, "Les administracions independents de regulació i supervisió en Espanya"/"The Independent Administrations of Regulation and Supervision in Spain", Vniverstas (network of scientific journals of Latin America and the Caribbean, Spain and Portugal), 2005.

- Obligation to devote oneself full-time and system of incompatibilities: in this respect, the LCPI does not provide any limitation and neither does it regulate a specific system of incompatibilities.

· Establishment of some specific causes of dismissal: at the present time the LCPI does not make any provision with respect to this point.

This limitation of the Government's decision-making power primarily seeks to prevent changes in political orientation from harming the neutrality of action of the Andorran FIU, in order to maintain a stable line of action and to preserve its efficiency and its conception as a matter of State concern.

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Indeed, it should not be forgotten that the raison d'être of the so called "independent administrative authorities" is "the suitability of setting certain special administrative functions outside the political struggle"[17], such as the promotion and coordination of measures in matters of prevention of laundering of money or assets and terrorist financing.

b) Functional sphere

Functional independence translates fundamentally into the exclusion of the possibility that the independent administrative authorities may be directed according to the circumstances of the partisan political struggle of the moment.

Accordingly, the idea would be to maintain a stable consensually agreed strategy in matters of prevention of laundering of money or assets and terrorist financing.

In this respect, there are elements that would specifically affect the functional sphere of these independent administrations and that would allow their autonomy to be strengthened. Therefore, the functional independence of these entities would entail the need to assure the greatest possible part of the following elements:

i. Assignment of own competences and functions: according to Article 53 of the LCPI, the Andorran FIU "has the mission of promoting and coordinating measures of prevention of laundering of money and terrorist financing".

In this respect, the Andorran FIU is conceived as the supreme administrative authority in such matters, whereby the law assigns it functions of examination, decision-making and proposition that are its own functions,

ii. Relativisation of government guidelines: in accordance with Article 53 of the LCPI, the Andorran FIU is "an independent body" that is subject to the control of the Government, either because the Executive has competence to resolve on the appeals lodged against its decisions or because, in specific cases, the Government has direct competence to resolve on the files examined by the FIU.

This having been said, it should be pointed out that, traditionally, the structure of the General Administration of the State has been based on the principles of dependence and hierarchy. This conception of the organic structure of the State was evident in the old Article 15 of the Andorran Administration Code[18] , now repealed by the Government Act of 15 December 2000.

17 Juan María Bilbao Ubillos, "Les agències independents: una anàlisi des de la perspectiva jurídica-constitucional"/"Independent Agencies. A Study from the Legal-Constitutional Perspective, Afduam 3 (1999), p. 163-181.

18 The aforementioned article established that "the General Administration is hierarchically arranged" and added that "the higher bodies of the Administration direct the activity of the subordinate bodies by means of general service instructions or particular service orders".

Despite this, however, these principles of dependence and hierarchy continue to form the keystone of the Andorran administrative organization.

· Proof of this is that Article 72.2 of the Andorran Constitution provides that "under the authority of its Head, [the Government] directs the national and international policies of Andorra. It also directs the Administration of the State [...]". In this way, it makes it clear that the hierarchical structure of the Administration is enshrined even constitutionally.

· Moreover, Article 13 of the Andorran Administration Code provides that "the Public Administration is comprised by: 1. the Executive Council and the bodies set under its direction [...]".

With respect to this point, it should be observed that a certain doctrinal polemic exists on the constitutional problem that could be generated by the creation of "independent" administrative bodies when, by definition, the Administration is constituted on the basis of the principles of dependence and hierarchy.

This is why one cannot speak of strictly and absolutely independent administrative authorities but rather of administrative bodies with a high degree of autonomy. Accordingly, by means of the creation of this type of administrative bodies, it is sought to modulate the principles of dependence and hierarchy of the administrative organization, always with full observance of the delicate balance between the autonomy belonging to the administrative bodies and the power of direction of these bodies which is held by the Government[19] .

Consequently, from our standpoint one cannot speak of an "exclusion from the government guidelines[20]" but rather only of a relativization of these guidelines, which we consider would be perfectly legitimate.

iii. Processing of files: at present, the LCPI assigns to the Andorran FIU the power to resolve on files processed in the exercise of its functions and, in the case of sanctioning administrative files, the FIU possesses the powers of examination and resolution in the hypothesis of minor offences. In the case of serious and very serious offences, the Andorran FIU conveys its proposal of resolution to the Government for the pertinent effects.

Accordingly, in the opinion of the majority of the members of the Standing Committee on Money Laundering and Terrorist Financing, and in view of the reality and usual practice in Andorra, this conception of the powers of the Andorran FIU does not detract from[21] its independence[22] .

iv. Assignment of direct regulatory power: despite the fact that Article 6.2 of the Andorran Administration Code limits the regulatory power of the General Administration of the State to the decrees and orders of the Government, the LCPI empowers the Andorran FIU to issue technical communiqués of compulsory compliance for reporting entities.

c) Organizational and financial sphere

Although these aspects would be supplementary to those presented above, it is appropriate to point out that the assignment of a certain organizational and budgetary independence may help to achieve the independence we are dealing with here.

19 It should be kept in mind that, with the present legal conception of the Andorran FIU, this would be the only interpretation that would allow FATF Recommendation 26.6 to be fulfilled, without prejudice to the inclusion of the Andorran FIU in the so called "Institutional Administration" stricto sensu, something that would require a change in its present legal nature.

20 Mariano Magide Herrero, "Límits constitucionals de l'administració independent"/"Constitutional Limits of the Independent Administration", National Institute of Public Administration, (Spain), 2000, pp. 84-88.

21 In any case, it may be noted that there are other doctrinal currents that are accepted without debate: (i) some doctrine considers that, to assure the independence of the so called "independent" administrative bodies, it would be necessary in principle to grant these bodies the power to resolve on their own files; (ii) moreover, another sector of the doctrine has pointed out the suitability of even excluding the remedy of appeal requested outside the framework of the respective independent administrative authorities in order to assure the independence of these bodies. In such case, in view of Article 72.2 of the Constitution, it would be necessary to evaluate the constitutional viability of this option (vid. Sentence 99-17 of 21 April 1999 of the Administrative Division of the Andorran High Court of Justice).

22 In this respect, it should be recalled that FATF refers to a "sufficient operational independence and autonomy in order to assure its freedom with respect to undue influences and interferences".

i. Organizational element

With respect to the organization of the Andorran FIU, Article 54.3 of the LCPI provides that "the Government determines by regulation the modalities relating to the organization and operation of the Andorran FIU". Consequently, the Andorran Government is the holder of the organizational power of the Andorran FIU.

Despite this, the Andorran Government, by the regulatory channel, has assigned to the head of the Andorran FIU the functions of "administratively and technically managing and coordinating the Unit" as the "highest-ranking official of the FIU" (old Article 21 of the LCPI Regulations). This highlights the fact that, from the practical standpoint, the person in charge of organizing the operation of the Andorran FIU is the selfsame head of the Unit.

ii. Financial element

In accordance with Article 53.1 of the LCPI, the Andorran FIU's budget "is for the account of the budget of the State". Accordingly, the Andorran FIU has no budgetary power of any type. Nevertheless, the French Council of State considers that "it would not appear that this rule (of financial autonomy) may be considered an indispensable assurance of independence".

Moreover, it should be pointed out that this method of financing grants the Andorran FIU a certain degree of independence since the State Budgets Act is to be approved by the Andorran Parliament, which acts as a control body of the Government and, therefore, the aforementioned budgetary assignment to the Unit cannot be the result of an arbitrary unilateral decision of the Government but rather it must be defended before the Parliament in order to obtain its approval.

In view of all these considerations, the following conclusions are in order:

IV. CONCLUSIONS

· The Andorran FIU is an independent administrative body set within the structure of the General Administration of the State (and more specifically within the Andorran Ministry of Finance and Public Function), but it does not belong to the so called "Institutional Administration" (which is formed, strictly speaking, by autonomous bodies and para-public entities).

· Despite this, the international bodies' requirements are orienting the legal conception of the Andorran FIU towards a model of independent administrative authorities, basically in the organic and functional spheres and supplementarily in the organizational and financial spheres.
In this regard, although the international demands in this matter cannot be overlooked, these new trends should be applied while respecting the constitutionally established organic structure of the State.

· Consequently, it may be concluded that, quite probably, it will be necessary to revise the legal conception of the Andorran FIU in order to adapt its structure and operation to the best international standards on this matter, with full respect for the Andorran constitutional framework.

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