

*A brief Review
on the
**Anti-Corruption &
Anti-money Laundering
State of Play
in the Principality of
ANDORRA***

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The subject report by Mr. Martin Kreutner (“the author”), Dean Emeritus of the International Anti-Corruption Academy (IACA)¹ undertakes to draft and present a brief review on the (overall) anti-corruption (AC) and anti-money-laundering (AML) situation in the Principality of Andorra.

That report shall contain a concise review of the current state of play in the country, set that in context to international standards and developments, and encompass the findings in a comprehensive yet concise manner. Given the required brevity of the subject review, it is fully acknowledged that the paper - *nolens volens* - mainly is of a descriptive, eclectic, and (partly) evocative nature; further, it cannot and shall not give exhaustive analyses of *all* potential areas of thematic relevance and concern but shall rather present a well balanced and solidly referenced outline of the *overall* state of play and the situation in the country. Finally, it is understood that the author presents this report exclusively in his personal capacity, only.

General Disclaimer(s):

The boundaries and names shown and the designations used in any map and/or reference throughout this report do not imply any opinion, endorsement, and/or acceptance with regard to the legal status of any country, territory, city, or any area or its authorities, or with regard to the delimitation of frontiers or boundaries. The same applies - *mutatis mutandis* - to nationally, trans-nationally, and/or internationally challenged, disputed, or opposed political and other decisions (such as certain sanctions, mandates, unilateral recognitions, indictments, verdicts, etc.).

All data, details, and findings contained in this report are to the author’s best knowledge true and accurate but are explicitly made without any guarantee whatsoever (*salvo errore et omissione*).

¹ www.iaca.int

*“Every year, trillions of dollars
– the equivalent of more than five percent of global Gross Domestic Product –
are paid in bribes or stolen through corrupt practices
that seriously undermine the rule of law
and abet crimes
such as the illicit trafficking of people, drugs and arms. [...]*

*People are right to be angry.
Corruption threatens the well-being of our societies,
the future of our children and the health of our planet.
It must be fought by all, for all.”*

United Nations Secretary General António Guterres ²

*“...that so far as possible in the formation of international policy,
arguments about laundering should be kept separate from those
to do with corruption, tax evasion and tax avoidance.
Corruption is the logical prior issue, of the issues under consideration,
only corruption strikes directly at the rule of law.
If it is possible to bribe a judge, or a police officer or a tax inspector [...],
then it does not matter what the rules are,
because they will not be applied.” ³*

² UNSG Guterres on the occasion of International Anti-Corruption Day, 09 December (2019)
(<https://www.un.org/en/observances/anti-corruption-day/messages>)

³ Alldridge P., *Tax avoidance, tax evasion, money laundering and the problem of ‘offshore’* in Rose-Ackerman, S. & Lagunes, P. (2015), *Greed Corruption, and the Modern State – Essays in Political Economy*, page 317

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*"Corruption is the antithesis vis-à-vis human rights,
the venom vis-à-vis the rule of law,
the poison for prosperity and development,
the reverse of equity and equality.
Investing in anti-corruption education and empowerment
is therefore the smart way towards
sustainable development,
safeguarding human rights,
and strengthening the rule of law."*⁴

⁴ Martin Kreutner addressing the UNGA SDG-Summit, UNNY 25 September 2015

1. Executive Summary

The Principality of Andorra is a small, independent, landlocked country between France and Spain with strong (historical and other) affiliations to and affinity with the region of Catalonia. The country's GDP is above both the European average as well as that of her neighbours. Although not a member of the European Union, Andorra has concluded and is thus subject to a variety of EU free trade regulations and arrangements. Furthermore, upon the basis of a monetary agreement with the EU Andorra has made the Euro (€) her official currency. Among other branches, Andorra's banking and financial sector accounts for one of the most important economic segments of the country, representing 20% of the country's GDP.

Given the latter and recalling certain (both alleged and adjudicated) scandals and crises therein within the last decade (and beyond), the Principality's anti-corruption (AC) and anti-money laundering (AML) architecture and state of play seems of significant importance; the more so in a society that is – not the least by her sheer demographic “size” and composure – very tightly knit and where “everyone seems to know everyone”.

As far as solid statistical data on ‘corruption’ is concerned, reliable sources are scarce. Andorra does not feature on any of the main anti-corruption indices. With the (more general) World Bank's (corruption relevant) governance indicator, Andorra scores fairly well. The OECD removed Andorra from its list of “uncooperative tax havens” in 2009.

While Andorra has in recent years (in particular in 2016 and 2018), updated and upgraded her legislation in both thematic spheres (i.e. AC and AML, resp.), and has become member to at least some of the relevant international organizations and fora, there are still loopholes and gaps to fill in order to be compliant with international standards and expectations.

Among the (internationally discussed) shortcomings, Andorra is among the very few countries that have not yet ratified the most influential and universal anti-corruption instrument, the United Nations Convention against Corruption (UNCAC). Also, the country has not yet become Party to the OECD Bribery Convention⁵ and the Council of Europe's Civil Law Convention against Corruption, respectively.

The Principality also lacks the existence of a truly independent and specialized anti-corruption body/authority in line with international standards and requirements. Genuine independence also seems to lack with the country's Financial Authority (AFA) and her Financial Intelligence Unit, respectively.

In its latest Interim Compliance Report, the Council of Europe's Group of States against Corruption (GRECO) has criticized that Andorra has not yet fully implemented 8 out of 13 adopted recommendations.

What is more, one key and most important issue apparently persists to remain unresolved, i.e. the comprehensive and *lege artis* protection of persons who report breaches of (relevant) laws (=> whistleblowers protection legislation). In line with international regulations and standards that would, *inter alia*, include the provisioning of anonymous channels of reporting and communication.

⁵ Full and official name: *Organisation for Economic Cooperation and Development: Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*

With regard to the (supervision of the) financial sector and AML/CFT safeguards, Andorra has substantially revised, amended, and augmented her thematic legislation by, *inter alia*, Law 35/2018; furthermore, it has established relevant supervisory and regulatory institutions. However, it is argued that most of that legislation came at a relative late point in time.

As noted recently also by the IMF about financial policies, building on latest measures may strengthen the banking sector further as Andorran banks still face significant risks despite emerging from the pandemic with solid balance sheets.

Another risk stems from the fact that the Principality of Andorra has no central bank of her own yet runs a system of fractional reserve banking. Against that backdrop, it appears questionable which (national) entity – if required – is in a position to effectively act as ‘lender of last resort’.

Andorra partakes in the work of the Council of Europe’s MONEYVAL-Committee and is therefore evaluated *via-à-vis* the 40 FATF recommendation. In its latest enhanced follow-up report on Andorra, the body addressed three of the FATF recommendations where the Principality still ranks in the second lowest level of compliance. As a consequence, Andorra will remain in the more intense “enhanced follow-up” (scrutiny) process.

What is more, also in the AML/CFT domain Andorra has not ratified some of the more important thematic international instruments (as recommended by MONEYVAL/FATF).

Finally, it is noteworthy that Andorra’s official *Master Plan for the Andorra Development Cooperation 2021* apparently does not address such inherently important issues as AC and AML/CFT, respectively.

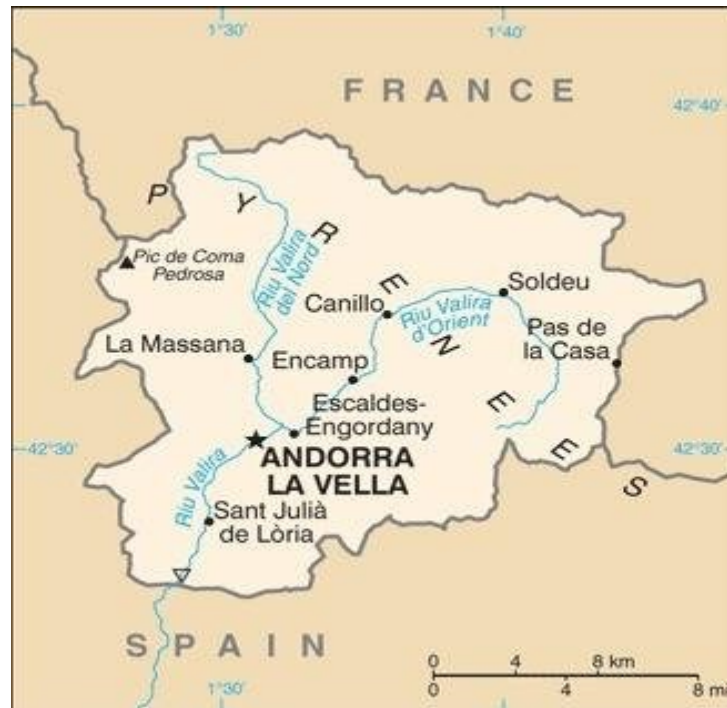
2. (The Principality of) ANDORRA – a Brief Overview⁶

Andorra (in full: The Principality of Andorra or: *Principat d’Andorra*), the sixth smallest European state, is an independent, landlocked European co-principality situated among the southern peaks of the Pyrenees Mountains and bounded by France to the north and east and by Spain to the south and west. Her capital is Andorra la Vella.

Andorra features a total area of 468 sq km with a population of 85,560 (2022 est.) (Andorran 48.3%, Spanish 24.8%, Portuguese 11.2%, French 4.5%, Argentine 1.4%, other 9.8% (2021 est.)). The country consists of a cluster of mountain valleys whose streams unite to form the Valira River.

Andorra has traditionally had a strong affinity with the region of Catalonia in northern Spain. Andorra’s official language is Catalan (Spanish and French are also spoken); her institutions are based in Catalan law, and a large proportion of the Spanish immigrants (or their descendants) in Andorra are Catalan. Most Andorrans are Roman Catholic; Andorra is part of the diocese of Urgel/Spain. Almost nine-tenths of the population is classified as urban, and half of residents are foreign nationals, mainly from Spain, France, and Portugal.

⁶ The Chapter (basically) refers to / cites from *The Britannica Dictionary* [that chapter last updated on 19 August 2022]; and the *(The) World Factbook*, Washington, DC: Central Intelligence Agency [subject page last updated: 23 August 2022], unless stated otherwise.



pic: <https://www.cia.gov/the-world-factbook/countries/andorra/map>

Because of the lack of customs duties and low or nonexistent taxes, Andorra has become an important international centre of the retail trade that has attracted millions of shoppers from all over Europe with her duty-free imported consumer goods. Furthermore, Andorra has become a popular tourist destination, accounting for the major part of her GDP, visited by over 8 million people each year (pre-pandemic). The Andorran financial sector is one of the main pillars of the Andorran economy, representing 20 percent of the country's GDP and over 5 percent of her workforce.⁷

Historically, the co-princes (the French president and the bishop of Urgel) represented Andorra internationally and jointly headed the government through their delegates. The elected members of Andorra's unicameral legislature, the 28-member General Council of the Valleys, were responsible for internal administration and functioned as both an informal legislature and a cabinet headed by a prime minister. The 1993 constitution, approved by Andorran voters in a referendum, changed this structure and transferred most of the powers of the co-princes to the General Council, which became a true national parliament elected by universal suffrage. Every four years, the General Council elects an Executive Council president who heads the government and who then chooses cabinet members.

Andorra's Government type is thus described as a parliamentary democracy (since March 1993). The 1993 Constitution marked an important stage in the development of Andorra's system of government and her legal, organizational, and institutional arrangements. For a country this size, it seems - in general - well equipped to tackle corruption and money-laundering.⁸

⁷ for further details see: www.afa.ad

⁸ Comp.: GRECO, *Joint First and Second Evaluation Rounds – Evaluation Report on Andorra*, page 3

The Executive branch is represented by (1) the (function of) Head of State, which is co-filled by the Co-prince Emmanuel MACRON from France (since 14 May 2017); represented by Patrick STROZDA (since 14 May 2017); and Episcopal Co-prince Archbishop Joan-Enric VIVES i SICILIA from Spain (since 12 May 2003); represented by Josep Maria MAURI (since 20 July 2012); and (2) the Head of government, Mr. Xaviar Espot ZAMORA (since 16 May 2019).

The Legislative branch is constituted by the unicameral General Council of the Valleys or *Consell General de les Valls* (a minimum of 28 seats; 14 members directly elected in two-seat constituencies (7 parishes) by simple majority vote and 14 directly elected in a single national constituency by proportional representation vote; members serve 4-year terms).

Andorra has a mixed legal system of civil and customary law with the influence of canon law. The judiciary is independent from the executive branch. The Supreme Court consists of a court president and eight judges, organized into civil, criminal, and administrative chambers. Four magistrates make up the Constitutional Court. The Tribunal of Judges and the Tribunal of the Courts are lower courts. Regulations and enforcement actions can be appealed in the national court system.⁹

The country's Real GDP (purchasing power parity) is estimated at USD 3,329.9 k, the real GDP *per capita* at an USD 42,047.7 (both in 2021); it is thus above the European average and above the levels of her neighbours, France and Spain.¹⁰

On UNDP's Human Development Index (HDI), Andorra's current value (i.e. as of 2019) is 0.868 – which puts the country in the ‘very high’ human development category – positioning it at 36 out of 189 countries and territories.¹¹

3. ANDORRA – the (general) international and cooperative ecosystem

The Principality of Andorra has established diplomatic relations with 149 states/jurisdictions. Although not a member of the EU, the country enjoys a special relationship – starting around 1991 – with the Union that is governed by various customs and cooperation agreements. Against that backdrop, Andorra has used the Euro (€) as her *de facto* primary currency since 2002. It was in July of 2011 that Andorra concluded a monetary agreement with the EU which made the Euro her official currency, although the Andorran government was not granted the power to issue her own € banknotes. Yet, Andorra has been conferred the right to mint € coins starting 01 July 2013.

Andorra is a full member of / Party to, *inter alia*, the United Nations (UN) (as per 28 July 1993); the United Nations Educational, Scientific and Cultural Organization (UNESCO); the World Health Organization (WHO); the International Telecommunication Union (ITU); the World Intellectual Property Organization (WIPO); the World Tourism Organization (UNWTO); the (UN's) Food and Agriculture Organization (FAO); the International Civil Aviation Organization (ICAO); the Organization for the Prohibition of Chemical Weapons (OPCW); the International Criminal Court (ICC); the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO); the United Nations Conference on Trade and Development (UNCTAD); the World Meteorological Organization

⁹ US Department of State, *2022 Investment Climate Statements: Andorra*, page 7

¹⁰ The World Bank, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=AD>

¹¹ <https://hdr.undp.org/sites/default/files/Country-Profiles/AND.pdf>

(WMO); the World Customs Organization (WCO); the Council of Europe (CoE)¹²; the International Monetary Fund (IMF); the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM); the Organisation Internationale de la Francophonie; the World Organisation for Animal Health (WOAH/OIE); the Bureau International des Expositions (BIE); and the Hague Conference on Private Law.

Andorra also is a Participating State to the Organization for Security and Cooperation in Europe (OSCE); joined the International Criminal Police Organization (INTERPOL); the Secretaría General Iberoamericana (SEGIB); is a member to the International Committee of the Red Cross (ICRC); and an Observer [“only”] to the World Trade Organization (WTO).¹³

4. ANDORRA – the (inter)national anti-corruption (AC) realm

As outlined in the US Department of State’s *2022 Investment Climate Statement on Andorra*, the country’s laws penalize such (criminal) offences as corruption, money laundering, drug trafficking, hostage taking, sale of illegal arms, prostitution, terrorism, as well as the financing of terrorism. With respect to the latter, additional amendments were added in 2008, 2014, 2015, and 2016 to the Criminal Code and the Criminal Procedure Code that modified and introduced money laundering and terrorism financing provisions.

By the *Decret de funcionament de la Unitat de Prevenció i Lluita contra la Corrupció* of 16 January 2008, Andorra created the Unit for the Prevention and the Fight against Corruption (UPLC)¹⁴ to centralize and coordinate actions that might concern local administrations, national bodies, and entities with an international scope. That Decree was revised, and the UPLC’s scope of responsibilities et al. significantly reformed (“...una reforma profunda del seu contingut, ...”) in order to bring it up to modern and contemporary standards (“... per impulsar l’aprovació d’una norma reglamentària, moderna i actualitzada, ...”) by a new Decree, i.e. *Decret d’aprovació del Reglament regulador de la Unitat de Prevenció i Lluita contra la Corrupció* of 04 November 2015.¹⁵ Pursuant to that Decree, UPLC is – along with other entities – also responsible for implementing the recommendations made by the Council of Europe’s Group of States against Corruption (GRECO).^{16, 17} However, it needs to be recalled that neither UPLC (nor any other relevant subject matter institution in Andorra) fulfill the requirement of ‘necessary independence’ as stipulated in various international frameworks and standards.¹⁸ It rather seems fair to argue that the UPLC is merely a 2-pax¹⁹ international liaison and an internal coordination function based within the Andorran Ministry of Justice.

As far as solid statistical data and surveys on the ‘corruption subject’ are concerned, reliable (national and international) sources are rare (to say the least). Andorra does not feature on any of the main targeted (international) anti-corruption indices, such as (the

¹² Andorra is its 33rd Member since 10 November 1994

¹³ <https://www.exteriors.ad/en/multilateral-affairs-and-cooperation/andorra-and-international-organizations> (*et alia*)

¹⁴ <https://www.interior.ad/unitat-de-prevencio-i-lluita-contra-la-corrupcio>

¹⁵ BOPA – *Bulletí Oficial del Principat d’Andorra* Núm. 74 of 04 Nov. 2015

¹⁶ comp.: US Department of State, *2022 Investment Climate Statements: Andorra*, page 15

¹⁷ see below

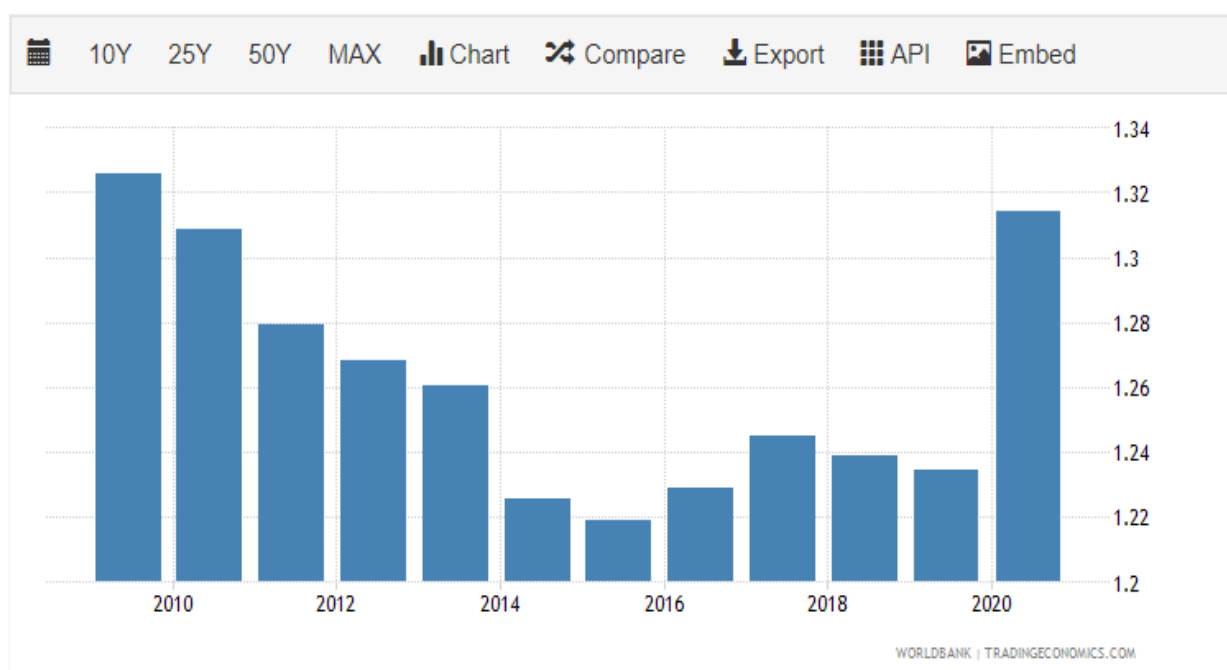
¹⁸ such as: Art 20 of the Council of Europe Criminal Law Convention on Corruption; Principle 3 of the Council of Europe’s Twenty Guiding Principles for the Fight against Corruption; Art 3 and 36, resp., of the United Nations Convention against Corruption; and the EPAC (CoE *European Partners against Corruption*) / EACN (the EU’s anti-corruption contact-point network) *Anti-Corruption Authority Standards*

¹⁹ comp.: BOPA - *Bulletí Oficial del Principat d’Andorra* Núm. 16 of 26 Feb. 2020

most referred to / cited) Transparency International's Corruption Perceptions Index (TI's CPI)²⁰; the Index of Public Integrity²¹ by the European Research Centre for Anti-Corruption and State-Building; on the World Bank's Country Policy and Institutional Assessment on transparency, accountability, and corruption in the public sector rating (WB's CPIA)²²; or on the Global Corruption Index²³ by Global Risk Profile, a leading Swiss company specializing in third-party risk management related services.

However, the World Bank collection of governance indicators, compiled from officially recognized sources,²⁴ contain, among many others, relevant data on the area 'Control of Corruption'. For that indicator, data for Andorra is provided from 1996 to 2020. For the latter (and most current) year of analysis, the estimate for Andorra was reported at a 1.3144 score (-2.5 weak; +2.5 strong). The average value for Andorra during the aforementioned period was 1.28 points with a minimum of 1.14 points in 2004 and a maximum of 1.38 points in 1998. For comparison, the world average in 2020 – based on 192 countries/jurisdictions – is -0.03 points, France currently scores at 1.3, Spain at 0.7.²⁵

World Bank governance indicators – Andorra's 'Control of Corruption' results:



Source/chart/pic: <https://tradingeconomics.com/andorra/control-of-corruption-estimate-wb-data.html>

²⁰ <https://www.transparency.org/en/cpi/2021>

²¹ <https://corruptionrisk.org/>

²² <https://data.worldbank.org/indicator/IQ.CPA.TRAN.XQ>

²³ <https://risk-indexes.com/global-corruption-index/>

²⁴ <https://databank.worldbank.org/source/worldwide-governance-indicators>

²⁵ *ibid*

Longer historical series



Source/chart/pic: https://www.theglobaleconomy.com/Andorra/wb_corruption/

While Andorra has – in the international arena – ratified the Council of Europe’s Criminal Law Convention on Corruption²⁶ and its Additional Protocol²⁷, respectively, and has joined the CoE’s Group of States against Corruption (GRECO)²⁸ by 28 January 2005 – hence, falling under the mandate and scrutiny of GRECO’s peer evaluation mechanism^{29, 30} –, the Principality is a Signatory only³¹ to the Council’s Civil Law Convention on Corruption.

More troubling, Andorra is among the very few countries³² that have neither signed nor ratified yet the most influential and universal anti-corruption instrument, the United Nations Convention against Corruption (UNCAC).³³ What is more, the country has not yet become a Party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“OECD Bribery Convention”), effectively targeting the “supply-side of corruption”, either.³⁴ Apart from their legal provisions, both conventions feature important multilateral, inter-state processes such as peer review mechanisms, joint implementation review groups (IRG), diplomatic/thematic dialogue fora, and cross-country data collection (just to name a few).

Finally, none of the Principality’s anti-corruption authorities, in particular Andorra’s Unit for the Prevention and the Fight against Corruption, have joined the (wider) European network of (public sector) anti-corruption authorities³⁵ EPAC/EACN.³⁶ Given the fact that membership to these professional European network(s) comes without any major

²⁶ effective by 01 August 2008

²⁷ effective by 01 June 2015

²⁸ *Le Groupe d’Etats contre la Corruption*

²⁹ <https://www.coe.int/en/web/greco/about-greco/how-does-greco-work>

³⁰ see below

³¹ thus, not legally bound by the [Civil Law] Convention’s provisions

³² Out of 193 UN Member States (MS), 189 are Party to the Convention. As a consequence, UNCAC has (almost) global and universal outreach and applicability.

³³ <https://www.unodc.org/unodc/en/corruption/ratification-status.html>

³⁴ <https://www.oecd.org/daf/anti-bribery/wgbratificationstatus.pdf>

³⁵ as of Art 6 and 36 UNCAC

³⁶ The CoE *European Partners Against Corruption* and the EU *European Anti-corruption contact-point network*, respectively (<https://www.epac-eacn.org/>)

obligations and is free of fees, there seem to be hardly any rational reason for non-membership.

In line with Andorra's membership to GRECO, the country is subject to the Group's (peer) evaluation mechanism and therefore underwent the First, Second, Third and Fourth Evaluation Round(s).³⁷ In view of its findings, the most current (i.e. 4th Round) evaluation report on "Corruption prevention in respect of members of parliament, judges and prosecutors" addressed fourteen recommendations³⁸ to Andorra, out of which – according to the latest official GRECO Interim Compliance Report³⁹, adopted on 03 Dec. 2021 –

- the following recommendations have been (only) partly implemented:

“ii. that a code of conduct, accompanied by explanatory comments and/or concrete examples, be adopted for the members of the General Council and that it be brought to the knowledge of the public;

iii. introducing an obligation to declare any conflict between a General Councillor's specific private interests and a matter examined in parliamentary proceedings (plenary session and in committee), irrespective of whether such a conflict could also be identified under a system of public declaration of interests and activities;

iv. (i) that a system for the public declaration of General Councillors' assets and interests containing quantitative data on financial and business interests (income, assets and significant debt items) be introduced and (ii) that consideration be given to including information on the parliamentarian's spouse and dependent family members (on the understanding that this information will not necessarily be made public);

v. that measures be taken to ensure the appropriate supervision and enforcement of the future obligations concerning disclosure and the standards of conduct of members of parliament;

vi. (i) that training and awareness-raising measures be introduced for members of parliament with regard to the ethical conduct expected of them and the issuance of declarations of interests and (ii) that members of parliament be able to benefit from confidential advice on any issue of ethics or professional conduct;

x. (i) that training on various topics relating to ethics and integrity continue to be provided on a regular basis for judges, and (ii) that the possibility for judges to obtain confidential advice on these subjects be placed on a permanent and institutional footing;

xiii. (i) that training on various topics relating to ethics and integrity continue to be provided on a regular basis for prosecutors, and (ii) that the possibility for prosecutors to obtain confidential advice on these subjects be placed on a permanent and institutional footing“;

whereas

- recommendation vii, i.e. *“that the composition of the High Council of Justice be modified to ensure that there is appropriate representation of judges and prosecutors elected by their peers in its membership”*,

remains not implemented.

While many recommendations also of previous Rounds 1, 2, and 3, resp., have been dealt with in a satisfactory manner, one key and most important issue apparently persists to remain unresolved, i.e. the comprehensive and *lege artis* protection of persons who report

³⁷ <https://www.coe.int/en/web/greco/evaluations>

³⁸ <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680763068>

³⁹ <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a4c8e4>

breaches of (relevant) laws (so called “whistleblowers”) or – as it was outlined and required⁴⁰ in the GRECO Evaluation Report (1st Round) on Andorra already in December 2006 “*that arrangements be made to protect public officials who report suspected corruption in good faith from possible reprisals*”.⁴¹

Recalling that Andorra is not yet a Party to some of the major international instruments, it is noteworthy though that such provisions and legislation are not only required, *inter alia*, under Art 33 and Art 13/2 of the UNCAC, Art 9 of the CoE Civil Law Convention on Corruption, by the 2019 EU Whistleblower Directive⁴², various pieces of national legislation of different countries, but have they become a *lege artis* standard in the (international) compliance arena of the corporate business world.

In this context, it is acknowledged that Andorra’s *Autoritat Financera Andorrana* (AFA, the Andorran Financial Authority), which is the country’s “prudential supervisor of the financial, insurance and reinsurance system”⁴³, “*guarantees the confidentiality of the person who reports potential administrative infringements committed within the entity, unless a legal provision in force requires disclosure [...]*”⁴⁴ and, for that matter, even offers a link and a subject document for download under the headline “Formularis Whistleblowing”.⁴⁵

However, none of these means and channels allow for anonymous communication and the anonymous reporting of infringements and breaches of the law. Conversely, they explicitly call for the *dades identificatives del confident*⁴⁶, the reporting person’s name(s) and whereabouts. As such, they do not fulfill the aforementioned obligatory requirements for safeguards and protection.

5. ANDORRA – the (inter)national anti-money laundering (AML) realm

With reference to the US Department of State’s *2022 Investment Climate Statement on Andorra*, relevant laws passed by the Andorran General Council to accompany the economic openness include the law of Companies (October 2007), the Law of Business Accounting (December 2007), and the Law of Foreign Investment (April 2008 and June 2012).

The OECD removed Andorra – along with the Principalities of Liechtenstein and Monaco, resp. - from its list of “uncooperative tax havens” in 2009 after the country signed the Paris Declaration, formally committing to sharing fiscal information outlined by the agreement.⁴⁷ Also, by 16 June 2014 the Principality became a Signatory to an OECD Declaration that commits countries to end bank secrecy for tax purposes.⁴⁸ The decision to join that *Declaration on Automatic Exchange of Information in Tax Matters*⁴⁹ obliged

⁴⁰ addressing and referring to the public sector

⁴¹ GRECO, *Joint First and Second Evaluation Rounds – Evaluation Report on Andorra*, page 39

⁴² DIRECTIVE (EU) 2019/1937 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2019 on the protection of persons who report breaches of Union law

⁴³ https://www.afa.ad/en/coneix-lafa/qui-som?set_language=en

⁴⁴ <https://www.afa.ad/en/entitats-supervisades/reporting-potential-infringements>

⁴⁵ <https://www.afa.ad/en/assets/formularis-whistleblowing>

⁴⁶ <https://www.afa.ad/en/assets/formularis-whistleblowing/2021-07-20-form-comun-infrac.docx/view>

⁴⁷ <https://www.oecd.org/countries/monaco/list-of-unco-operative-tax-havens.htm>; also: US Department of State, *2022 Investment Climate Statements: Andorra*, pages 4, 7, 12

⁴⁸ <https://www.oecd.org/tax/andorra-commits-to-automatic-exchange-of-information-in-tax-matters.htm>

⁴⁹ <https://www.oecd.org/mcm/MCM-2014-Declaration-Tax.pdf>

Andorra to implement a new single global standard on automatic exchange of information⁵⁰ being developed by the OECD.⁵¹

With the approval of the Law 19/2016, of 30 November 2016, on automatic exchange of information on tax matters, Andorra is in a position to exchange financial information with Signatories of the “Common Reporting Standard” (CRS), developed by the G20 and approved by the OECD Council on 15 July 2014.⁵² Further, from 2011 to 2019 Andorra’s General Council approved direct corporate, non-resident, capital gains, and personal income taxes. At 10 percent, well below the European average, Andorra’s corporate tax is more competitive than rates in neighboring Spain or France.⁵³

Although not a member of the European Union, Andorra is a member of the European Customs Union and is subject to basically all EU free trade regulations and arrangements regarding industrial products. In March 2022, Andorra approved a sanctions package in line with EU sanctions against designated Russian and Belarusian individuals and entities.⁵⁴

The Andorran financial sector is one of the main pillars of the Andorran economy, representing 20 percent of the country’s GDP and over 5 percent of her workforce. Created in 1989, and redefined with more responsibilities in 2003, the Andorran Financial Authority (AFA) is the supervisory and regulatory body of the Andorran financial system and the insurance sector. The AFA is a public entity with its own legal status. It has the power to carry out all necessary actions to ensure the correct development of its supervision and control functions, disciplinary and punitive powers, treasury and public debt management services, financial agency, international relations, advice, and studies.⁵⁵

In addition, the Andorran Financial Intelligence Unit (UIFAND)⁵⁶ was established in 2000 as – per self-definition - an ‘independent organ’ to deal with the tasks of promoting and coordinating measures to combat money laundering, terror financing, and the proliferation of weapons.⁵⁷

UIFAND also is representing Andorra in the international Egmont Group, a global body, facilitating and prompting the exchange of information, knowledge and cooperation amongst member financial intelligence units (FIUs).⁵⁸ Moreover, the Egmont Group provides FIUs with a secure platform to exchange expertise and financial intelligence to combat money laundering, terrorist financing, and associated predicate offenses. Finally, Andorra’s relevant institutions also partake as member(s) in the INTERPOL/StAR Global Focal Point Network, an international partnership initiative on asset recovery.⁵⁹

⁵⁰ <https://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-of-financial-account-information.htm>

⁵¹ <https://www.oecd.org/countries/monaco/jurisdictions-committed-to-improving-transparency-and-establishing-effective-exchange-of-information-in-tax-matters.htm>

⁵² <https://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-of-financial-account-information.htm>

⁵³ US Department of State, *2022 Investment Climate Statements: Andorra*, pages 4, 7, 12

⁵⁴ *ibid.*

⁵⁵ for further details see: www.afa.ad

⁵⁶ for details see: www.uifand.ad

⁵⁷ *ibid.*

⁵⁸ <https://egmontgroup.org/>

⁵⁹ <https://star.worldbank.org/sites/star/files/networks-16-reduced-maps.pdf>

Andorra's *Autoritat Financera Andorrana* (AFA) published the following statistical data on the country's financial system in its latest, i.e. 2021, report:⁶⁰

Scope of the financial system at 31 December 2021



Banking entities	Number	CIS Management Companies*	Number
Without foreign participation	4	Owned by andorran banking entities	5
With foreign participation	1	Not owned by andorran banking entities	2
TOTAL	5	TOTAL	7

Investment firms*	Number	Insurance**	Number
Financial Investment companies	1	Andorran entities***	14
Financial Investment agencies	1	Foreign entities	15
Asset management companies	4	TOTAL	29
Investment advisors	5		
TOTAL	11		

* This does not include 5 financial agents who act exclusively for investment firms and 5 financial agent who act exclusively for a Collective Investment Schemes (CIS) Management Company.
** This does not include 83 insurance intermediaries.
*** Of which 6 banca assurance

Source/chart/pic: https://www.afa.ad/en/assets/dades-estadistiques/afa_dades-estadistiques_2021_eng_v1.pdf, page 4

The financial sector in Andorra

Main figures of the financial sector



Structure of the Andorran financial sector - Total Assets	2021	% of Total	2020	% of Total
<i>(in thousands of euros)</i>				
Banks	15.893.338	93,3%	14.501.681	92,9%
Insurance companies	1.101.488	6,5%	1.055.685	6,8%
o/w Bancassurance (Andorran)	798.817	4,7%	800.560	5,1%
o/w Non-Bancassurance (Andorran)	205.342	1,2%	193.145	1,2%
o/w Branches of foreign companies	97.329	0,6%	61.980	0,4%
Other financial institutions	44.802	0,3%	49.265	0,3%
o/w Investment firms	10.541	0,1%	9.040	0,1%
o/w CIS Management companies	34.260	0,2%	40.225	0,3%
TOTAL ASSETS	17.039.627	100,0%	15.606.631	100,0%

Main aggregate figures for the banking system - Consolidated	2021	2020
<i>(in thousands of euros)</i>		
Total assets	15.893.338	14.501.681
Total risk-weighted assets	7.012.609	6.781.457
Total capital	1.269.056	1.323.520
Total assets under management (AuMs)	61.376.535	51.649.642
Total revenues	532.827	526.739
o/w net interest income	106.459	100.123
o/w fees and commissions	313.535	291.098
Total net profit	97.878	84.482
o/w attributable to owners of the parent	97.419	83.609

Note: Total assets of banking entities shown as per prudential reporting. Total assets of the other entities shown according to audited accounting statements (not prudential statements). Total assets of Branches of Foreign Companies do not include all companies data at this time because financial statements have not yet been reported to the AFA due to specific. These companies that are not included represent the 12,6% and the 14,1% of the total Gross Written Premiums volumes of 2020 and 2021 financial data respectively.

Source/chart/pic: https://www.afa.ad/en/assets/dades-estadistiques/afa_dades-estadistiques_2021_eng_v1.pdf, page 5

⁶⁰ https://www.afa.ad/en/assets/dades-estadistiques/afa_dades-estadistiques_2021_eng_v1.pdf

Andorra was confronted with various (both alleged as well as adjudicated) banking and financial scandals, in particular between 2002 and 2018. Some of those made it even into the notorious “Panama papers”⁶¹ and the likewise notorious “Pandora papers”, respectively.

As, *inter alia*, investigated and disclosed by the International Consortium of Investigative Journalists (ICIJ), based upon a massive document leak, this data revealed a small agency created by the *Banc Agricol i Comercial D’Andorra SA*, which is commonly known as ANDBANK and is one of the biggest banks in the Principality, liaising with lawyers in Panama to set up structures that eventually contributed to bringing forward and establishing a huge international tax evasion scheme and money laundering architecture.⁶² The documents also reveal the role that Andorra has played in the past as an attractive tax haven for (too often) murky fortunes and revenues, “*aiding those accruing wealth with few questions asked until 2017*”.⁶³

Over the course of two years, more than 600 reporters from 117 countries have worked on the Pandora Papers, an international journalistic investigation also coordinated by the ICIJ, and set up to analyze 11.9 million internal files from 14 offshore service providers. Prior to the investigation, the names of some of these firms were already under the scrutiny of several national tax authorities for their role in fomenting tax fraud and money laundering schemes around the world. Five decades of records, between the 1970s and 2020, have made it possible to reconstruct the financial dealings of politicians, billionaires, criminals and elite athletes in countries and territories that afford anonymity and low tax rates to foreign capital.⁶⁴ Overall, names that showed up in the context of the revelations⁶⁵ included, among others, the (then) Manchester City coach Pep Guardiola; Chinese entrepreneur Gao Ping, whose business illegally transferred about € 70 million from Andorra to China⁶⁶; Luis Carlos Fernandes Afonso, financial director of the Petros Foundation, linked to Brazil’s Petrobras oil company and also linked to the country’s largest ever corruption scandal known as “lava Jato” (car wash)⁶⁷; Carlos Fernando Costa, the former president of Petros; Jose Regojo Velasco, a Portuguese who sold the Massimo Dutti clothing business to Spanish giant Inditex in 2012⁶⁸; and the Malaysian financier, Jho Low, who created with the help of the US law firm Baker McKenzie the embezzlement of more than \$ 4.5 billion from a Malaysian economic development fund⁶⁹, a scheme commonly referred to as the “1MDB scandal”.

⁶¹ see, e.g., OBERMAYER, B. & OBERMAIER, F. (2017), *The Panama Papers – Breaking the Story of How the Rich & Powerful Hide Their Money*

⁶² El PAÍS (05 October 2021), *Pandora Papers - AFSI, the obscure Andorran firm that handled hundreds of offshore companies for its clients*; OBERMAYER, B. & OBERMAIER, F. (2017), *The Panama Papers – Breaking the Story of How the Rich & Powerful Hide Their Money*, pages 135-147

⁶³ El PAÍS (05 October 2021), *Pandora Papers - AFSI, the obscure Andorran firm that handled hundreds of offshore companies for its clients*

⁶⁴ paragraph cited *grosso modo* from El PAÍS (03 October 2021), *The Pandora Papers: Secret files from 14 law firms reveal more than 700 offshore companies linked to Spain*

⁶⁵ (If/where applicable:) the presumption of innocence prevails.

⁶⁶ El PAÍS (05 October 2021), *Pandora Papers - AFSI, the obscure Andorran firm that handled hundreds of offshore companies for its clients*

⁶⁷ *ibid.*

⁶⁸ *ibid.*

⁶⁹ El PAÍS (03 October 2021), *The Pandora Papers: Secret files from 14 law firms reveal more than 700 offshore companies linked to Spain*

Andorra's ability to properly regulate its banking sector was drawn into question⁷⁰ also when, in 2015, one of its largest banks, BANCO PRIVATE ANDORRA (BPA) was issued with a (so-called) 'Section 311' notice from FinCEN, the US financial crime enforcement network⁷¹ (the latter actually an agency of the US Department of the Treasury).⁷² BPA was apparently not given an opportunity to formally respond to the allegations and the bank and its Spanish subsidiary, BANCO MADRID, were later nationalized by the Andorran and Spanish authorities. The Andorran Bank's assets were subsequently sold by the Andorran government for a fraction of their value to a US private equity fund⁷³, regardless of the fact that FinCEN withdrew its subject '311-notice' less than a year after the designation.⁷⁴ Court proceedings brought by BPA's shareholders against the Andorran and Spanish authorities have demonstrated that the instances of money laundering alleged by FinCEN had already been reported to the Andorran banking regulator in line with Andorran AML procedures and that obviously no wrongdoing had been committed by the bank^{75, 76} or its employees.⁷⁷ The scandal could end up costing hundreds of millions of Euros to the Andorran taxpayer as the Government may be forced to compensate the bank's shareholders for the losses incurred as a result of the alleged mishandling of the issue.^{78, 79}

According to an estimate by the European Commission, EU citizens alone divert the equivalent of 10% of Europe's gross domestic product (GDP) through such corporate vehicles, amounting to €46 billion a year in lost revenue – that is eight times the annual budget of, e.g., the Education Ministry in Spain. The OECD estimates that at least € 9.7 trillion is stashed offshore worldwide.⁸⁰

As one of the consequences, Andorra was on the OECD's "grey list" of non-cooperative tax havens until 2009. While some of Andorra's bankruptcy and solvency legal instruments date back to 1996 and were further complemented with pieces of legislation from, *inter alia*, 1997, 2008, 2010, 2013, resp., and in 2015 with Law 8/2015, outlining urgent measures allowing Government intervention of the Banking sector in a crisis – some stakeholders would call the latter law "the *lex BPA*" –, more modern legislation was passed only on 20 December 2018 with Law 35/2018 on the solvency, liquidity, and prudential supervision of banking entities and investment firms.⁸¹

Law 35/2018 intended to *"to implement, clearly and coherently, all the legislative changes needed to incorporate [various EU and other] directive(s) and regulation(s) into the Andorran legal system [in order to] bring the Principality of Andorra's legislation up to date on the matter. [...] [Further,] the purpose of this Law is to strengthen the resilience of the Andorran banking and financial sector to place it in a better position to face*

⁷⁰ <https://www.economist.com/finance-and-economics/2016/02/25/whoops-apocalypse>

⁷¹ <https://www.fincen.gov/>

⁷² https://www.fincen.gov/sites/default/files/shared/BPA_NOF.pdf

⁷³ <https://www.reuters.com/article/spain-andorra-idUKL5N170761>

⁷⁴ <https://www.economist.com/finance-and-economics/2016/02/25/whoops-apocalypse>

⁷⁵ https://www.elconfidencial.com/empresas/2019-01-08/banco-madrid-blanqueo-dinero_1745774/

⁷⁶ https://elpais.com/economia/2017/07/28/actualidad/1501267951_097551.html

⁷⁷ <https://www.lavanguardia.com/vida/20181121/453082062872/absuelven-a-exempleado-de-bpa-de-ayudar-a-blanquear-al-mafioso-ruso-petrov.html>

⁷⁸ <https://www.prnewswire.co.uk/news-releases/bpas-majority-shareholders-sue-andorran-authorities-for-3646-million-euros-in-damages-582654561.html>

⁷⁹ <https://www.elmundo.es/economia/2022/01/05/61d5d97dfc6c83c5298b458c.html>

⁸⁰ quoted in El PAÍS (03 October 2021), *The Pandora Papers: Secret files from 14 law firms reveal more than 700 offshore companies linked to Spain*

⁸¹ https://www.afa.ad/en/assets/normativa/crd_iv/law-on-solvency_eng_def.pdf

economic crises and ensure that banking entities continue to fund economic activities and economic growth with adequate own resources. From the point of view of liquidity and stable funding, the aim of the Law is to ensure that entities have adequate liquidity buffers to deal with potential stresses in the markets and a balance sheet structure that does not rely heavily on short-term funding“.⁸² The (then) Minister of Finance, Jordi Cinca, was reported saying about that piece of legislation, “*Not approving this would have sent a very negative message to the world.*”⁸³

Taking note of the fact that Andorra’s General Council approved the ratification of the Monetary Agreement between the Principality and the European Union already on 24 November 2011 and, hence, was called to subsequently implement within her legal system, among others, a certain number of EU directives, such as Directive 2013/36/EU of the European Parliament and the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, and also Regulation (EU) 575/2013 of the European Parliament and the Council, of 26 June 2013, on the prudential requirements for credit institutions and investment firms, amending Regulation (EU) 648/2012, it seems fair to argue that it took the Andorran authorities quite a considerable amount of time to provide necessary regulations in such a sensitive and important substance area.

As noted recently also by the IMF about financial policies, building on latest measures may strengthen the banking sector further as Andorran banks still face significant risks despite emerging from the pandemic with solid balance sheets. Banks, with assets worth 600 percent of GDP and very large assets under management off balance-sheet, are systemically important to the Andorran economy. They reportedly emerged from the crisis in a strong position, well capitalized, highly liquid and with a declining nonperforming loans ratio.⁸⁴

However, as in many other small countries with large banking sectors, and against the backdrop of a very tightly knit social fabric where “everyone knows everyone”, risks can be significant. The private banking model and the internationalization strategy have resulted in higher cost-to-income ratios and overreliance on foreign funding, particularly non-resident deposits that can become less stable. Large exposures and related party lending are said to create additional risks. The Andorran Financial Authority (AFA) adopted measures encouraging banks to reduce their related party exposure to less than 15 percent of capital and transposing into its legal framework the EU regulation limiting large exposures to less than 25 percent of the bank’s capital. Yet, enforcement remains critical to keep risks at bay.⁸⁵

When it comes to anti-money laundering (AML) and countering the financing of terrorism (CFT), the (40) Financial Action Task Force (FATF) Recommendations⁸⁶ are *the* global benchmark and the most broadly accepted standard. The FATF⁸⁷ – by way of self-definition

⁸² Preamble of Law 35/2018

⁸³ <https://www.theguardian.com/world/2016/dec/02/andorra-to-renounce-banking-secrecy-as-it-sheds-tax-haven-status>

⁸⁴ IMF (2022), *Principality of Andorra. Staff Concluding Statement of the 2022* (with minor linguistic alterations)

⁸⁵ *ibid.*

⁸⁶ For the full list of recommendations: FATF (2012), *INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION - The FATF Recommendations*

⁸⁷ <https://www.fatf-gafi.org/home/>

- is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. As a policy-making body, the FATF works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas, with more than 200 countries and jurisdictions *de facto* committed to implementing them.⁸⁸ It is important to note, though, that while the FATF currently comprises 37 member jurisdictions and 2 regional organizations, representing most major financial centres in all parts of the globe, along with FATF Observers, FATF Associate Members, and FATF Observer organizations, Andorra is *not* a fully-fledged member jurisdiction of the Financial Action Task Force.

However, as the Principality is a Member of the Council of Europe and partakes in the work of its *Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism* (MONEYVAL), which is a permanent monitoring body of the CoE entrusted with the task of assessing compliance with the principal international standards in the aforementioned thematic areas and the effectiveness of their implementation, as well as making recommendations to national authorities in respect of necessary improvements to their systems, Andorra is also evaluated on a regular basis *via-à-vis* the 40 FATF recommendation.

The most current report on Andorra (officially: *The 3rd Enhanced Follow-up Report and Compliance rating on Andorra*) was adopted by the MONEYVAL Committee at its 4th Intersessional Consultation in Strasbourg/France, in November 2021.⁸⁹

Overall, in light of some progress made by Andorra since her fifth-round mutual evaluation report, which was adopted already in September 2017, and her subsequent enhanced follow-up reports, the Principality's technical compliance with the FATF recommendations has been re-rated as follows:

Table 2. Technical compliance with re-ratings, December 2021

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

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

Source/chart/pic: MONEYVAL(2021)31, *Andorra - 3rd Enhanced Follow-up Report & Technical Compliance Re-Rating*, November 2021, page 8

The three FATF recommendations in which Andorra ranks in the second lowest level of technical compliance on AML, CFT (and CPF) are:

➤ Recommendation 15: New technologies

Countries and financial institutions should identify and assess the money laundering or terrorist financing risks that may arise in relation to (a) the development of new products and new business practices, including new delivery mechanisms, and (b) the use of new or developing technologies for both new and pre-existing products. In the case of financial institutions, such a

⁸⁸ for more details see: <https://www.fatf-gafi.org/about/membersandobservers/>

⁸⁹ MONEYVAL(2021)31, *Andorra - 3rd Enhanced Follow-up Report & Technical Compliance Re-Rating*, November 2021

risk assessment should take place prior to the launch of the new products, business practices or the use of new or developing technologies. They should take appropriate measures to manage and mitigate those risks. To manage and mitigate the risks emerging from virtual assets, countries should ensure that virtual asset service providers are regulated for AML/CFT purposes, and licensed or registered and subject to effective systems for monitoring and ensuring compliance with the relevant measures called for in the FATF Recommendations.

- **Recommendation 31: Powers of law enforcement and investigative authorities**
When conducting investigations of money laundering, associated predicate offences and terrorist financing, competent authorities should be able to obtain access to all necessary documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by financial institutions, DNFBPs and other natural or legal persons, for the search of persons and premises, for taking witness statements, and for the seizure and obtaining of evidence. Countries should ensure that competent authorities conducting investigations are able to use a wide range of investigative techniques suitable for the investigation of money laundering, associated predicate offences and terrorist financing. These investigative techniques include: undercover operations, intercepting communications, accessing computer systems and controlled delivery. In addition, countries should have effective mechanisms in place to identify, in a timely manner, whether natural or legal persons hold or control accounts. They should also have mechanisms to ensure that competent authorities have a process to identify assets without prior notification to the owner. When conducting investigations of money laundering, associated predicate offences and terrorist financing, competent authorities should be able to ask for all relevant information held by the FIU.

- **Recommendation 36: International instruments⁹⁰**
Countries should take immediate steps to become party to and implement fully the Vienna Convention, 1988; the Palermo Convention, 2000; the United Nations Convention against Corruption, 2003; and the Terrorist Financing Convention, 1999. Where applicable, countries are also encouraged to ratify and implement other relevant international conventions, such as the Council of Europe Convention on Cybercrime, 2001; the Inter-American Convention against Terrorism, 2002; and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005.⁹¹

Overall and given these results, Andorra will remain in the “enhanced follow-up” (scrutiny) mode⁹² and will continue to inform MONEYVAL on progress to strengthen her implementation of AML/CFT measures. *In concreto*, Andorra is expected to report back to the CoE’s *Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism* by the end of 2022.⁹³

Against a larger perspective, a final argument on Andorra’s banking and financial sector might also provide food for thought (if not concern): The Principality of Andorra has no central bank of her own yet runs a system of fractional reserve banking (FRB)⁹⁴. FRB is the system of banking operating in almost all countries worldwide, under which banks that

⁹⁰ Please note that the full and official name(s) of the mentioned international instruments may differ from the enumeration in the quoted FATF text.

⁹¹ Out of those instruments, Andorra has ratified / is Party to the Vienna Convention 1988 (full name: *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*); the Palermo Convention (full name: *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, UNTOC); the Terrorist Financing Convention (full name: *United Nations International Convention for the Suppression of the Financing of Terrorism*); and the Council of Europe Convention on Cybercrime.

⁹² Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up involves a more intensive process of follow-up.

⁹³ Andorra has only recently (i.e. by 21 September 2022) acceded to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*; however, not yet to the other two UNTOC Protocols: *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime* and the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime*, respectively.

⁹⁴ comp.: BRITANNICA Concise Encyclopedia (2006) – Revised and Expanded Version, page 663; The Corporate Finance Institute, <https://corporatefinanceinstitute.com/resources/knowledge/finance/fractional-banking/>

take deposits from the public are required to hold a proportion of their deposit liabilities in liquid assets as a reserve, and are at liberty to lend the remainder to borrowers; in short: banks borrow short and lend long. So far so fair.

However, banks may find themselves in a shortfall situation or experience an unexpected bank run, when depositors wish to withdraw more funds than the reserves held by the bank. In such an event, the bank experiencing the liquidity shortfall may borrow short-term funds in the interbank lending market or, in exceptional situations, the central bank may provide funds to cover the short-term shortfall as lender of last resort (LOLR).⁹⁵

As far as the “regular” Euro area is concerned, the European Central Bank (ECB) and the 19 national central banks share the role of lender of last resort. So, what is the national central banks’ role therein?

*“The national central banks in the euro area offer the last safety net for banks that cannot get the funding they need elsewhere. This safety net is called emergency liquidity assistance, or ELA. In the euro area, ELA loans are provided by the national central bank of the country in which the struggling bank is based. That national central bank also bears any costs and risks that may arise.”*⁹⁶

And what is the ECB’s role?

*“While national central banks are responsible for providing ELA, their lender-of-last-resort activities are checked and monitored by the ECB. The ECB’s Governing Council may restrict or object to emergency assistance if two-thirds of its members agree to do so. They may only object, however, if they believe ELA would interfere with the ECB’s monetary policy or with the Eurosystem’s objectives and tasks.”*⁹⁷

In the case of Andorra⁹⁸, though, there was (and apparently still is) no central bank and therefore no one to effectively act as LOLR - unless the ECB, France, Spain (or any other party) takes over and steps in.

Still in February of 2019, the (then) Head of Government of Andorra, Antoni Martí, at the last official visit of his mandate, met with the (then) President of the European Commission, Jean-Claude Juncker, in Brussels. The country’s Financial Authority (AFA) subsequently reported, *“During the meeting, relevant aspects of the negotiation for Andorra were discussed, such as the institutional framework, the situation of public companies [...] and financial services. In this sense, the head of government has expressed to the president of the Commission the need of Andorra to access a lender of last resort as a previous step to assume the free circulation of financial services”* (sic).⁹⁹

Finally, in a report by the ASSOCIACIÓ DE BANCS ANDORRANS on *The Role of Banking in Andorra’s Socio-Economic Growth*¹⁰⁰ it reads on the Association’s website: *“... in order to*

⁹⁵ comp.: The European Central Bank, <https://www.ecb.europa.eu/ecb/educational/explainers/tell-me-more/html/what-is-a-lender-of-last-resort.en.html>;

⁹⁶ The European Central Bank, <https://www.ecb.europa.eu/ecb/educational/explainers/tell-me-more/html/what-is-a-lender-of-last-resort.en.html>

⁹⁷ ibid

⁹⁸ The argument was already brought up by, inter alia, Tim Worstall in his opinion piece in FORBES on 29 March 2015, <https://www.forbes.com/sites/timworstall/2015/03/29/andorras-fascinating-experiment-frb-without-lolr/?sh=7a4a1d973ec7>

⁹⁹ <https://www.afa.ad/en/press-room/comunicats-de-premsa/marti-insists-to-juncker-on-finding-a-lender-of-last-resort-within-europe>

¹⁰⁰ ANDORRAN BANKING – ASSOCIACIÓ DE BANCS ANDORRANS (2021), *The Role of Banking in Andorra’s Socio-Economic Growth – Andorran Banking Observatory*, 3rd Report – February 2021

*maintain the sector's stability and competitiveness, [...] there is a need to ensure **that the European Central Bank becomes the system's lender of last resort.***"^{101, 102}

6. Conclusions

- While Andorra has in recent years, updated and upgraded her legislation in both thematic spheres of anti-corruption and anti-money laundering, resp., and has also become member to at least some of the relevant international organizations and fora, the Principality is among the very few countries that have not yet ratified the most influential and universal anti-corruption instrument, the United Nations Convention against Corruption (UNCAC). Also, the country has not yet become Party to the OECD Bribery Convention and the Council of Europe's Civil Law Convention against Corruption, respectively. It is hard to imagine any rational reasons for such denial/defiance as basically all other European countries (and beyond) have joined these important international instruments.
- On a similar note, the Principality has not yet ratified some of the more important AML/CFT instruments and is not yet a fully-fledged member to the Financial Action Task Force (FATF). However, as Andorra is a Party to the Council of Europe and partakes in its relevant Committee (MONEYVAL), she is regularly evaluated against the 40 FATF recommendations. As the country is (still) not compliant with some of the recommendations – with three of them ranking in the second lowest level of technical adherence – Andorra will remain in “enhanced follow-up” scrutiny mode and is called to report back to MONEYVAL on progress achieved.
- Andorra lacks comprehensive and *lege artis* legislation on the protection of persons who report breaches of (relevant) laws (so called “whistleblowers”) (as it was outlined and required in GRECO's 1st Round Evaluation Report on Andorra already in December 2006 (!)). Even on the understanding that Andorra is not yet a Party to some of the major international instruments, such provisions and safeguards are required by, *inter alia*, the 2019 EU Whistleblower Directive, and have become a *de facto* standard in the (international) compliance arena of the corporate business world. Some of the means offered, e.g., by the country's Financial Authority (AFA) do not fulfill the aforementioned requirements and standards.
- Data revealed by the Panama papers and Pandora papers shined a light on the role that Andorra has played in the past as an attractive tax haven for (too often) murky fortunes and revenues. As a general consequence, the country was on the OECD's “grey list” of non-cooperative tax havens until 2009. Given those developments and recalling the fact that Andorra's General Council approved the ratification of the Monetary Agreement with the European Union already in November of 2011, it seems fair to argue that it took the Andorran authorities quite a considerable amount of time to provide necessary regulations in such sensitive and important substance areas. Against a similar backdrop, some of the country's banking and financial scandals – alleged or adjudicated – might have been avoided had such legislation been in place at an earlier

¹⁰¹ https://www.andorranbanking.ad/en/aba_news/andorran-banking-highlights-the-role-of-the-banking-sector-in-the-countrys-socio-economic-development/

¹⁰² emphasis in the original

point in time. To further exemplify, until it is resolved, the BPA case has the lasting potential to cast a shadow over the Andorran authorities and their ability/willingness to judiciously manage its banking sector and AML mechanisms.

- Hardly any of Andorra's thematic oversight authorities, such as the AFA, the UPLC, or the UIFAND, fulfill the requirements of *de facto* 'necessary independence' as stipulated in various international frameworks and standards. Such independence becomes even more important in a society that is – not the least by the country's sheer demographic "size" and composure – very tightly knit and where "everyone seems to know everyone".
- The Principality has no central bank of her own yet runs a system of fractional reserve banking. Andorra, thus, runs a considerable risk of being left without a supreme banking (back-up) entity acting as lender of last resort, in cases of a shortfall situation, unexpected bank runs, liquidity shortfalls, or other major financial crises. That challenge (to say the least) is broadly recognized since years, however, apparently could not be resolved yet.
- *Summa summarum* and while it is acknowledged that significant improvements have been achieved in recent years, such defiance(s) vis-à-vis broadly recognized and ratified international and regional instruments; such gaps in legislation and compliance with international standards and recommendations; the lack of *lege artis* whistleblower protection regulations; the delayed adoption and implementation of required legislation; the missing factual independence of thematic oversight bodies; and the absence of a clearly defined, reliable, and responsible lender of last resort in the banking system; they all, among other factors, have the clear and concrete potential to negatively affect the political credibility and economic attractiveness of the country as a business location and as a financial hub and banking centre.

*"Corruption can enable elites in one country to hold whole political classes in other countries to ransom, exert illegitimate influence over another state, sow insecurity and instability, and undermine government institutions. This kind of corruption is not aimed at economic benefit: rather, it often relies on a willingness to forgo economic gains in favour of influence, favourable political outcomes, and an ability to spread political norms and practices."*¹⁰³

¹⁰³ Transparency International (2019), *Corruption as Statecraft – Using Corrupt Practices as Foreign Policy Tools*, page 1

*“ ... a war of the law.
Experts at the Centre for the Analysis of Terrorism have described
this new type of warfare, known as ‘lawfare’,
which consists of the using legal system (the law) against an enemy,
or an adversary designated as such,
in order to delegitimize such an adversary,
causing maximum damage and forcing it to comply using coercion.”¹⁰⁴*

*“The ethic of honesty has been overwhelmed
by the mass production of ignorance.”¹⁰⁵*

¹⁰⁴ Pierucci, F. (cum Aron, M.) (2019), *The American Trap – My Battle to Expose America’s Secret Economic War against the Rest of the World*, page 301

¹⁰⁵ Davies, N. (2009), *Flat Earth News*, page 28

7. List of Acronyms

(A)C	.....	(anti-)corruption
ACA	.....	Anti-corruption authority
AFA	.....	Andorran Financial Authority
a/m	.....	above mentioned, aforementioned
AML	.....	Anti-money-laundering
BIE	.....	Bureau International des Expositions
c	.....	compliant
CEO	.....	Chief Executive Officer
CFT	.....	Countering the financing of terrorism
CIA	.....	Central Intelligence Agency (of the USA)
CoE	.....	Council of Europe
comp.	.....	compare
CPI	.....	Corruption Perception Index (TI's)
CPIA	.....	Country Policy and Institutional Assessment (by the WB)
CPF	.....	Countering the financing of proliferation of WMD (weapons of mass destruction)
CRS	.....	Common Reporting Standards
CTPTO	.....	Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization
DNFBP	.....	Designated Non-Financial Business and Professions
EACN	.....	European Anti-corruption contact-point network (of the EU)
ECB	.....	European Central Bank
e.g.	.....	<i>exempli gratia</i> , for example
ELA	.....	emergency liquidity assistance
EPAC	.....	European Partners Against Corruption Network
est.	.....	estimated
et al.	.....	<i>et alia, and others</i>
etc.	.....	<i>et cetera</i>
EU	.....	European Union
FAO	.....	Food and Agriculture Organization (of the UN)
FATF	.....	Financial Action Task Force
FCPA	.....	Foreign Corrupt Practices Act (of the US)
FDI	.....	foreign direct investment
FI	.....	Financial institutions
FinCEN	.....	Financial Crimes Enforcement Network (of the US Department of the Treasury)
FIU	.....	Financial intelligence unit
FRB	.....	Fractional reserve banking
G-77	.....	Group of 77 at the United Nations
GDP	.....	Gross Domestic Product
GRECO	.....	Group of States against Corruption (of the Council of Europe)

HDI	.....	Human Development Index (by UNDP)
HR	.....	Human Resources
IACA	.....	International Anti-Corruption Academy
ICAO	.....	International Civil Aviation Organization
ICC	.....	International Criminal Court
ICCROM	.....	International Centre for the Study of the Preservation and Restoration of Cultural Property
ICRC	.....	International Committee of the Red Cross
ICIJ	.....	International Consortium of Investigative Journalists
i.e.	.....	<i>id est</i> , that is / that means
IMF	.....	International Monetary Fund
INTERPOL	.....	International Criminal Police Organization
IO	.....	International Organization
IRG	.....	(UNCAC's) Implementation Review Group
ITU	.....	International Telecommunication Union
LC	.....	Largely compliant
LOLR	.....	Lender of last resort
ML	.....	Money laundering
MONEYVAL	.....	(Council of Europe) Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MS	.....	Member State [to an IO]
NC	.....	non-compliant
OECD	.....	Organisation for Economic Co-operation & Development
OIE	.....	World Organisation for Animal Health
OPCW	.....	Organization for the Prohibition of Chemical Weapons
OSCE	.....	Organization for Security and Co-operation in Europe
PC	.....	Partially compliant
pic.	.....	picture/photo
resp.	.....	respectively
SAR	.....	suspicious activity report
SDG	.....	Sustainable Development Goal
SEGIB	.....	Secretaría General Iberoamericana
StAR	.....	Stolen Asset Recovery Initiative (by the WB & UNODC)
TC	.....	Technical compliance
TF	.....	Terrorist financing
TFS	.....	Targeted financial sanctions
TI	.....	Transparency International
UIFAND	.....	(Andorra's) Unitat d'Intelligència Fiancera d'Andorra [FIU]
UKBA	.....	United Kingdom Bribery Act
UN	.....	United Nations
UNCAC	.....	United Nations Convention against Corruption

UNCTAD	.....	United Nations Conference on Trade and Development
UNDP	.....	United Nations Development Programme
UNESCO	.....	United Nations Educational, Scientific and Cultural Organization
UNGA	.....	United Nations General Assembly
UNNY	.....	United Nations [Headquarters in] New York
UNODC	.....	United Nations Office on Drugs and Crime
UNTOC	.....	United Nations Transnational Organized Crime Convention
UNWTO	.....	United Nations World Tourism Organization
US(A)	.....	United States of America
USD, US\$, \$	.....	United States Dollar
vs.	.....	versus
WB	.....	(The) World Bank (Group)
WCO	.....	World Customs Organization
WHO	.....	World Health Organization
WIPO	.....	World Intellectual Property Organization
WMD	.....	Weapons of Mass Destruction
WMO	.....	World Meteorological Organization
WOAH	.....	World Organisation for Animal Health
WTO	.....	World Trade Organization

*„Moneyland may not have an army, or a flag, or border,
or any of the attributes of statehood, but it does have a language:
the language of euphemism. [...] - on a sliding scale of increasing illegality -
‘fiscal friction’, ‘succession planning’, ‘tax neutrality’,
‘commissions’, ‘facilitation payments’.
After a while, you will find yourself speaking this way yourself.”¹⁰⁶*

¹⁰⁶ BULLOUGH, O. (2018), *Moneyland – Why Thieves & Crooks Now Rule the World & How to Take it Back*, page 48

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¹⁰⁷ Please note that single (internet) articles may be referenced in subject footnotes only.

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