

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report**  
**Phase 1**  
**Legal and Regulatory Framework**

**ANDORRA**





# **Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Andorra 2011**

PHASE 1

August 2011  
(reflecting the legal and regulatory framework  
as at June 2011)



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## About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once adopted by the Global Forum.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency).





## Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Andorra. The international standard, which is set out in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information (EOI) partners.

2. The economy of the Principality of Andorra (Andorra) is heavily dependent on tourism, in particular from its neighbouring countries, Spain and France. Andorra's per capita gross domestic product (GDP) of USD 44 900 (2008) ranks among the highest in the world. Its tax system has until recently been almost exclusively based on various indirect taxes. On 1 April 2011, a 10% tax on local-source income on non-resident companies and individuals came into force. Further, in 2010 a corporation tax as well as a tax on income from economic activities was adopted. These two latter taxes will apply from the year following the entry into force of law introducing a value added tax (which is currently before the Parliament).

3. In March 2009, Andorra committed to the internationally agreed standard for exchange of information (EOI) in tax matters. In September the same year, the Andorran Parliament passed a law which *inter alia* lifted the domestic bank secrecy for EOI purposes. The Law on the Exchange of Information in Tax Matters on Request entered into force on 21 September the same year. Andorra has since then actively sought to extend its network of EOI arrangements: since September 2009 it has signed 18 TIEAs providing – with one exception – for EOI to the standard, of which 13 are currently in force and Andorra has completed its process for ratification of 4 of the remaining 5 TIEAs. Andorran authorities have informed the Global Forum that they are in advanced stages of negotiation of TIEAs with four other jurisdictions, including OECD and G20 members.

4. Andorran law requires that ownership information is maintained for all Andorran companies, partnerships and foundations. This is in particular thanks to the strict ownership and registration requirements for these entities,

as well as anti-money laundering legislation requiring a range of service providers to conduct customer due diligence. However, there is a general lack of sanctions for not maintaining ownership information, other than some ownership information held in accordance with AML and accounting obligations.

5. Andorran law does not allow nominee ownership. Foreign companies which are centrally managed and controlled within Andorra through a branch, are required to have information available on those persons who own 10% or more in the company.

6. Andorran company and accounting law requires all commercial entities, including financial institutions, to keep accounting records, including underlying documentation. This information has to be held for at least six years by the entity or its successor or liquidator. The effectiveness of these obligations is supported by a system of sanctions.

7. In respect of banks and other financial institutions, the combination of banking, accounting and AML legislation imposes appropriate obligations to ensure that all records pertaining to customers' accounts as well as related financial and transaction information are maintained and available to the authorities.

8. Andorra's competent authority, the Minister of Finance, has the necessary powers to access accounting information held by companies, partnerships, foundations and foreign branches. The competent authority can also access the information, including ownership information, held in public registers and held by public bodies. Further, it can access information regarding founders and beneficiaries of foundations. However, Andorran legislation does not provide the competent authority with powers to access ownership information held by the entities themselves or by non-government third parties, except ownership information held by banks and other financial institutions. Further, there are no sanctions for such entities or their officers if they do not keep the ownership information they are required to maintain.

9. Until very recently, Andorran legislation suffered from a serious shortcoming in that it required that all EOI requests include the name and address of the taxpayer. Only the TIEAs with Germany and Liechtenstein overrode this requirement as the Protocols to these two agreements explicitly provide that the identity of the person under investigation can be established by information other than name. On 1 June 2011, the Andorran Government amended the relevant legislation which now allows for identification of the taxpayer also through "any other kind of information necessary to determine the identity of the person concerned so that no confusion can arise".

10. Andorra's response to the determinations, factors and recommendations in this report, as well as the application of the legal framework to the practices of its competent authority, will be considered in detail in the Phase 2 Peer Review of Andorra, which is scheduled for the second half of 2013.

## Introduction

### Information and methodology used for the peer review of Andorra

11. The assessment of the legal and regulatory framework of Andorra was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on information available to the assessment team including the laws, regulations, notices and exchange of information mechanisms in force or effect as of June 2011, Andorra's responses to the Phase 1 questionnaire and supplementary questions, information supplied by partner jurisdictions, and other relevant sources.

12. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Andorra's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that: (i) the element is in place; (ii) the element is in place, but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations on how certain aspects of the system could be strengthened where relevant. A summary of the findings against those elements is set out on page 63 of this report.

13. The assessment was conducted by a team, which consisted of two expert assessors and one representative of the Global Forum Secretariat: Ms. Sylvia Moses, Commissioner of Inland Revenue, British Virgin Islands Inland Revenue Department; Mr. Juan Pablo Barzola, Tax Advisor, Argentina Administracion Federal de Ingresos Publicos; and Mr. Beat Gisler from the Global Forum Secretariat. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Andorra.

## Overview of Andorra

14. Andorra is a landlocked country in south-western Europe, located in the eastern Pyrenees mountains and bordered by Spain and France. It is the sixth smallest nation in Europe having an area of 468 km<sup>2</sup> (181 miles<sup>2</sup>) with a population in 2010 of approximately 85 000 inhabitants, only 36.7% of whom are Andorran citizens: 36.5% are Spanish, 13.0% Portuguese and 6.6% French citizens who are allowed to reside in the country under a quota system.<sup>1</sup> Only Andorran citizens have the right to vote and to hold political office. The official language is Andorran Catalan.

15. While not a member of the European Union, in 2002 the Euro was adopted as Andorran currency. Andorra's 2008 Gross Domestic Product (GDP) was USD 4.22 billion (EUR 2.89 billion<sup>2</sup>).<sup>3</sup> It is one of the wealthiest countries in the world with a per capita income of USD 44 900 (EUR 30 737) in 2008.<sup>4</sup> It is prosperous mainly because of its tourism industry which contributes over 80% of Andorra's GDP.<sup>5</sup> After several years of considerable growth, the economy experienced a contraction in 2007-2010. In 2009, real estate, renting and business services accounted for 19.1% of GDP; wholesale and retail trade had an 18% share; and finance was responsible for 15.7%.<sup>6</sup> Andorra's main trading partners are France, Germany and Spain which together account for more than 80% of trade.<sup>7</sup> Also, Andorran authorities advise that in 2009 and 2010 France and Spain accounted for more than 80% of all foreign investment (FDI).

16. Andorra limits foreign investment mainly due to concerns about the impact it would have on its small economy. The Foreign Investment Act of 2008 increased the maximum possible foreign ownership from 33% to 49%. The following exceptions apply:

- for 235 designated economic sectors, including industrial, e-commerce, and education and training there is no limitation on foreign capital;

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1. All data from CIA World Fact Book on Andorra (<https://www.cia.gov/library/publications/the-world-factbook/geos/an.html>), accessed 16 March.
  2. USD 1 = EUR 0.68457 as at 25 April 2011.
  3. <https://www.cia.gov/library/publications/the-world-factbook/geos/an.html>, accessed 16 March 2011.
  4. <https://www.cia.gov/library/publications/the-world-factbook/geos/an.html>, accessed 16 March 2011.
  5. <https://www.cia.gov/library/publications/the-world-factbook/geos/an.html>, accessed 16 March 2011.
  6. [www.estandardsforum.org/system/briefs/227/original/brief-Andorra.pdf?1293052938](http://www.estandardsforum.org/system/briefs/227/original/brief-Andorra.pdf?1293052938), accessed 16 March 2011.
  7. Figures for year 2000. [www.nationsencyclopedia.com/Europe/Andorra-FOREIGN-TRADE.html#ixzz1GwcWk31Y](http://www.nationsencyclopedia.com/Europe/Andorra-FOREIGN-TRADE.html#ixzz1GwcWk31Y).

- investments of non-Andorran nationals are considered Andorran capital and they can exercise business activities if they can certify twenty years of effective and uninterrupted residence in Andorra, except for French, Spanish and Portuguese nationals for whom the requirement is 10 years for all activities other than liberal professions<sup>8</sup>; and
- subject to prior authorisation by the Andorran Government, foreign ownership of entities operating in the Andorran financial system can reach 100% of the entities' share capital or voting rights.

### ***General information on the legal and tax system***

#### *Legal system*

17. Andorra is a member of the UN and the Council of Europe but not the European Union. In 1990, it signed a customs union with the EU and in 2002, the Euro was adopted as Andorran currency. Previously, the Spanish peseta and the French franc were both legal tender. Andorra is treated as an EU member for trade in manufactured goods and as a non-EU member for trade in agricultural products.

18. Between 1278 and 1993, Andorra was governed under a co-principality arrangement with the head of state and the head of government being the French President and the Spanish Bishop of Urgel. In 1993, the country adopted its first Constitution and became a parliamentary democracy. The French President and the Spanish Bishop of Urgel however remain the heads of state as Co-Princes. Some of their functions include sanctioning and passing of laws, calling general elections; and calling referendums on topical matters when requested to do so by the Head of Government and the majority of the Andorran Parliament (*Consell General* – General Council). At the local level, Andorra is divided into 7 self-governed parishes, subject to the Andorran Constitution, the law and traditions (Art. 79 Constitution).

19. The Prime Minister of Andorra is the head of government (Executive Council) elected from and by the General Council, a unicameral legislature with 28 members who are elected by popular vote for a four-year term.

20. The judicial system comprises the following courts (Constitution, chapters VII and VIII):

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8. “Liberal profession is understood as all activities that to be practised require, because of their nature or because of legal requirements, the corresponding specialised studies degree, granted by the General Council or by Bodies dependent thereof.” (Andorra Development and Investment, [www.adi.ad/en/node/381](http://www.adi.ad/en/node/381), accessed 27 April 2011)

- the Constitutional Tribunal, which interprets the Constitution, at the highest level;
- the High Court of Justice, which is the senior court and has three divisions: the Civil Court, the Criminal Court, and the Administrative Court;
- the District Court (*Tribunal de Corts*), which tries major offences in the first instance; and
- the Magistracy (*Batllia of Andorra*), which hears civil, administrative and criminal cases in the first instance.

21. The Andorran legal system is based on Roman law, with its civil code based on the French and Spanish civil codes. There is no judicial review of legislative acts. The *Constitution* of Andorra is the supreme law of the Principality of Andorra. It was adopted on 2 February 1993 and given assent by the Andorran people in a referendum on 14 March 1993. Treaties and international agreements take effect from the moment of their publication in the Official Gazette of the Principality of Andorra and override contradicting domestic legislation (Art. 3(4) Constitution). Domestic legislation consists of acts which are adopted by the Andorran Parliament. The Parliament may delegate the exercise of the legislative function to the Government, by means of a law. The law of delegation determines the matter delegated, the principles and directives under which the corresponding legislative regulations of the Government are to be issued, as well as the term of its exercise. A complete list of all the relevant legislation and regulations is set out in Annex 3.

### *Tax system*

22. Until recently, Andorra did not have any direct taxes (other than a withholding tax based on an agreement with the EU regarding taxation of savings, see below). However, as of April 2011, a 10% tax is levied on local-source income of non-resident companies and individuals (Non-resident Income Tax Act – Law 94/2010 of 29 December 2010). Further, Andorra has adopted legislation regarding a corporation tax (Corporation Tax Act – Law 95/2010 of 29 December 2010) as well as tax on income from economic activities (Business Tax Act – Law 96/2010 of 29 December 2010). Both laws came into force on 26 January 2011. However, these two laws will only apply once the Parliament has adopted legislation introducing a value-added tax, which will replace many of the present indirect taxes (*Disposició final sisena* of Law 95/2010 and 96/2010). Andorran tax systems rely on access to ownership information required to be registered in public registers and accounting based on Andorran accounting law.

23. The government's main source of revenue, representing more than 86% of the total in 2009, comes, with the exception of a capital gains tax on real estate

gains, from indirect taxes, particularly a tax on imports and consumption that is paid by final consumers, mostly tourists.<sup>9</sup> The Andorran tax administration consists of a Customs Department and a Tax Department within the Ministry of Finance responsible for import/export taxes and all other taxes respectively. These two departments are about to be merged into a single Tax Agency.

24. Andorra has entered into an agreement with the European Union on Savings Taxation which provides for measures equivalent to those laid down in Directive 2003/48/EC on Taxation of Savings Income in the Form of Interest Payments (Savings Directive – SD). As a result, since 1 July 2005, Andorra has imposed a withholding tax on the interest earned on savings accounts held by EU residents in Andorra. As of 1 July this tax will rise to 35%. Under the terms of the directive, 75% of the withholding tax is remitted to the relevant EU nation.

25. At present, Andorra levies a variety of indirect taxes both at central and local level. At the central level these include taxes on various goods and services, registration taxes and real estate taxes. At the local level, these include taxes on commercial, business and professional activities as well as real estate taxes.

26. In March 2009 Andorra committed to the internationally agreed standards for the exchange of information for tax purposes. At the same time it started negotiating tax information exchange agreements (TIEAs) and passed legislation to ease its bank secrecy.<sup>10</sup> Andorra is now signatory to 18 TIEAs which provide for exchange of information to the standard. Thirteen of these TIEAs are in force. A complete list of the TIEAs which have been concluded by Andorra is set out in Annex 2 to this report. TIEAs are signed by the Prime Minister or Minister for Foreign Affairs, and then by the Government submitted to the Parliament for approval according to Article 64(1) of the Andorran Constitution. Once the agreement is approved, the Head of State signs the instrument of ratification and the other contracting party is informed about the completion of the Andorran internal ratification procedures. Andorra's competent authority for exchange of information for tax purposes is the Minister of Finance.

### ***Overview of the financial sector and relevant professions***

27. The financial system is a primary source of economic activity, second only to tourism. The banking sector employs more than 1 500 individuals and manages assets that are equivalent to 500% of the country's GDP. The

9. [www.estadistica.ad/serveiestudis/publicacions/Publicacions/St&Po\\_historic/St&Po\\_2010\\_8.pdf](http://www.estadistica.ad/serveiestudis/publicacions/Publicacions/St&Po_historic/St&Po_2010_8.pdf).

10. [www.tax-news.com/news/Andorra\\_Announces\\_OECD\\_Cooperation\\_\\_\\_\\_35600.html](http://www.tax-news.com/news/Andorra_Announces_OECD_Cooperation____35600.html), accessed 16 March 2011.

financial sector was responsible for 15.7% of the GDP in 2010.<sup>11</sup> Collective investment schemes (CIS) and life insurance businesses are of increasing importance.<sup>12</sup> These two sectors are regulated in the Law regulating Andorran Collective Investment Undertakings of 12 June 2008 and the Law Regulating Insurance Companies of 11 May 1989.

28. Offshore financial activities are limited by legal restrictions on foreign capital in Andorran companies. Law 2/2008 on Foreign Investment permits foreign capital of up to 100% in certain sectors of the economy. Subject to prior authorisation by the Andorran Government, foreign ownership of entities operating in the Andorran financial system can reach 100% of the entities' share capital or voting rights.

29. On December 2010, the financial sector included 19 entities: 6 banks (5 bank groups), 7 financial companies managing collective investment schemes, 5 financial investment companies and 1 non-bank financial institution providing specialised loans. In addition there are two professional associations: l'Associació de Bancs Andorrans (ABA) and l'Associació d'entitats financeres d'inversió (ADEFI). In total, Andorran banking entities hold more than EUR 8.8 billion.<sup>13</sup>

30. The Andorran National Institute of Finance (*Institut Nacional Andorrà de Finances* – INAF) was founded in 1989 and is the financial regulatory authority. It supervises and controls financial entities, with the exception of insurance companies (that do not belong to banking groups), which are currently supervised by the Ministry of Finance. The Andorran Financial Intelligence Unit (FIU) or *Unitat d'Intel·ligència Financera* (UIF), created in 2000 (until 21 April 2009 known as UPB), is the Andorran anti money laundering and financing of terrorism regulator.

## Recent developments

31. Following the MONEYVAL report published in 2007<sup>14</sup>, Andorra made changes to its AML system. Law 28/2008 of 11 December 2008 amended the Andorran AML law of 29 December 2000. This legislation in particular introduced a definition of beneficial ownership in line with EU standards, requires financial institutions and designated non-financial businesses and professions to have updated information on the client and beneficial owners

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11. [www.estadistica.ad/serveiestudis/publicacions/Publicacions/St&Po\\_historic/St&Po\\_2010\\_8.pdf](http://www.estadistica.ad/serveiestudis/publicacions/Publicacions/St&Po_historic/St&Po_2010_8.pdf), accessed 16 March 2011.

12. [www.imf.org/external/pubs/ft/scr/2007/cr0769.pdf](http://www.imf.org/external/pubs/ft/scr/2007/cr0769.pdf).

13. [www.ccis.ad/ing/index.html](http://www.ccis.ad/ing/index.html), accessed 1 April 2011.

14. [www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2007\)14Rep-AND3\\_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2007)14Rep-AND3_en.pdf), accessed 16 March 2011.



and their activities, and to conduct full identification and verification of clients and beneficial owners. It also strengthened functional aspects of the FIU and specified how regulated entities must comply with the law.

32. A raft of changes to legislation has also been introduced in recent years, notably:

- 2010: Banking Act, Financial Institution Authorisation Act and Collective Investment Scheme Act;
- 2009: Foundation Register Regulation;
- 2008: Company Register Regulation, Foundation Act and Foreign Investment Act; and
- 2007: Companies Act and Accounting Act.

33. By decree of 23 February 2011 the Government introduced the EOI Regulations, specifying the requirements to be fulfilled for exchange of information in international tax matters, based on Law 3/2009 and the applicable bilateral agreements. The regulations came into force on 23 February 2011. An amended version was adopted 1 June and came into force 29 June 2011.

34. Andorran authorities have indicated that they are presently negotiating TIEAs with several jurisdictions, including OECD members and G20 members, three of which are at an advanced stage.<sup>15</sup> Negotiations are at an early stage with 6 jurisdictions.<sup>16</sup>

35. As of April 2011 Andorra applies a withholding tax on Andorran sourced income. Also, Andorra adopted two laws introducing a corporation tax and a business tax. However, these two laws are not applied yet.

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15. Australia, Italy and Poland.

16. Brazil, Czech Republic, South Korea. Ukraine, United Kingdom and Uruguay.



## Compliance with the Standards

### A. Availability of information

#### Overview

36. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as accounting information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of Andorra's legal and regulatory framework on availability of information.

37. Ownership of Andorran companies and partnerships is strongly regulated. With the exception of specific sectors, only Andorran citizens or long-term residents can have a majority ownership. All ownership – initial or subsequent – has to be notarised and registered with the Companies Register. Companies have to maintain a shareholders register. Andorran branches of foreign entities also have to be registered with the Companies Register and are subject to Andorran accounting law (Art. 5(4) Companies Act). They must in their annual accounts include the names of all persons who own 10% or more of the company. As of 9 May 2011, no partnerships or foreign branches are registered.

38. Bearer shares were abolished in 1983, with a 20 year transitional period. The Andorran Government has recently initiated proceedings to ensure full ownership information is available for the 18 companies that still have bearer shares issued before 1983. Nominee ownership is forbidden in Andorra.

39. Anti-money laundering obligations ensure the availability of information on all settlors and also on beneficiaries with a minimum of 25% interest in a trust established under foreign law (foreign trust) where Andorran residents act in a professional capacity as trustees or trust administrators. Andorra recently introduced the foundation concept in its legislation. The Foundation Act of 2008 regulates public (government) and private (non-profit) foundations whose purpose must be in the public interest and benefit generic groups of people.

40. With the exception of provisions of the anti-money laundering law, Andorran law does not provide any sanctions for non-compliance with rules regarding maintenance of ownership information for companies, partnerships or foundations. Nor does it include any sanctions regarding filing of such information to the Companies or Foundation Registers.

41. Companies, partnerships and foundations with commercial purposes are required to keep comprehensive accounting records, including underlying documentation, for a minimum of six years. Annual accounts have to be submitted to the Companies Register. All foundations are required to send annual accounting information to the supervisory authorities. However, Andorran legislation does not ensure that reliable accounting records or underlying documentation are kept for foreign trusts with Andorra-resident trustees or administrators.

42. In respect of banks and other financial institutions, the combination of banking, accounting and AML legislation imposes appropriate obligations to ensure that all records pertaining to customers' accounts as well as related financial and transaction information are available.

## A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

### *Companies (ToR<sup>17</sup> A.1.1)*

#### *Types of companies*

43. The Companies Act 20/2007 of 18 October 2007 is the central piece of legislation governing corporations in Andorra. This act provides for two types of companies:

17. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.*

- public limited company (*societat anònima* – SA); and
- private limited company (*societat de responsabilitat limitada* – SL)

44. Companies are defined as voluntary associations of individuals or legally constituted bodies which – based on a memorandum of association – contribute capital in order to co-operate in the carrying out of a business or professional activity. The capital of an SA is divided into shares, while that of an SL is divided into participations. The term “shares” is used for both in this report. Both types of companies can be incorporated by one or more individuals. They have their own legal personality, separate from that of their members. Members of a limited company are only liable up to the limit of their contributions or holdings in the company (Art. 19 Companies Act). The minimum capital to form an SA is EUR 60 000, and for an SL, EUR 3 000. (Art. 14 Companies Act).

45. To come into existence both types of companies need to be registered with the Company Register (*Registre de Societats Mercantils* – CR), supervised by the Ministry of Economy (Art. 101 Companies Act). As of 31 March 2011 there were 1 685 registered SAs and 5 209 registered SLs.<sup>18</sup>

46. A foreign entity operating a branch (*sucursal*)<sup>19</sup> within the territory of Andorra has to register that branch with the Companies Register (Art. 5(3) Companies Act). When registering, they have to provide documents certifying the existence of the foreign entity and the name of its officers and thereafter all modifications of this information must similarly be notified to the Companies Register. In addition, they have to provide information about the branch itself, such as address, activities and the persons representing the branch (Art. 5 law 20/2007). The branch is subject to Andorran legislation (Art. 5(4) Companies Act). As of 9 May 2011, no branches of foreign enterprises are registered in the Companies Register.<sup>20</sup>

### *Company ownership and identity information to be provided to government authorities*

#### Company Register

47. To come into existence, a company needs authorisation from the government, its Memorandum of Association has to be notarised by an Andorran

18. Andorra Company Register statistics as of 1 April 2011.

19. A branch (*sucursal*) is defined as an enterprise’s secondary establishment of some permanent character and autonomy in management through which an enterprise fully or partially runs its activities (Art. 5(1) Companies Act).

20. Statistics provided by Andorran authorities on 9 May 2011.

notary and it must be registered with the Company Register (CR) (Art. 7 Companies Act). The application for permission to incorporate the company has to include *inter alia* the notarised Memorandum of Association, proposed articles of association, the list of founding members and the identity of all the company officers. Once government permission to incorporate the company has been obtained (either explicitly or, after three months, tacitly), the company can be registered with the CR.

48. When registering with CR, the following information has to be provided:

- the public deed;
- list of founding members;
- number and value of shares or participations of each member;
- articles of association containing at least, name and address of the company, the corporate purpose, share or participation capital, number of shares or participation, duration, structure and powers of the governing body; and
- identity of the officers of the company.

49. Change of ownership in a company has to be registered in the Companies Register (Art. 10(e) and Art. 30 Companies Register Regulation). The change has to be registered within 15 days of the date of the corresponding notarised deed and must include the identity of the new shareholders (Art. 30 Companies Register Regulation). Likewise, any change to the officers of the company has to be registered with the Companies Register (Art. 10(c) and Art. 28 Companies Register Regulation).

50. Andorra also maintains a register of foreign investments. The Foreign Investment Register includes the investor's name and ID, the address as well as the number of shares, the amount of the investment, the name of the Notary Public and the number of the public deed for the investment (Art. 21 Foreign Investment Act and Foreign Investment Regulations of 8 October 2008).

51. Branches of foreign enterprises are subject to foreign investment legislation. Their establishment or expansion has to be notarised by an Andorran notary (Art. 5(2) Companies Act) and permission has to be acquired from the Government (Art. 9(3) Foreign Investment Act). At least one of the persons representing the branch has to be Andorran citizen or Andorran resident. When registering a branch of a foreign enterprise, the following documents have to be provided:

- a document certifying the existence of the foreign company;
- the articles of association; and
- the list of directors.

52. Andorran authorities advise that as a matter of practice and as a government authority, the Companies Register keeps registered information for an unlimited time.

### Tax authorities

53. Businesses have to be registered for various tax purposes (e.g. Art. 24 Non-resident Income Tax Act, Art. 47 Corporation Tax Act and Art. 27 Business Tax Act). However, no ownership or accounting information has to be provided as part of this registration. The Andorran tax systems rely on requirements to register ownership information in the Companies Register and accounting requirements in the accounting law.

### *Ownership and identity information held by companies*

54. Each company has to maintain a shareholder register (Arts. 20(1) and 21 Companies Act). The register has to contain the identities and addresses of the members, as well as property rights or charges related thereto. Transfer of company ownership has to be authenticated through notarisation by an Andorran notary and registered.

55. It is the duty of the company's administration to maintain the shareholder register (Art. 21(4) Companies Act). As the seat of the company has to be in Andorra (Art. 4 Companies Act), there is an obligation according to Andorran interpretation to keep the register within Andorra.

### *Nominees*

56. Nominee ownership is forbidden in Andorra (Art. 10 Parliamentary Decree of 10 October 1981). Breach of this prohibition can be sanctioned by a fine of pesetas 50 000 to 100 000 (EUR 300 to 600). This fine is doubled if the offence is repeated (Art. 11).

### *Ownership and identity information held by service providers*

57. Article 49 and 49<sup>bis</sup> AML Act 2008 require regulated entities to perform customer due diligence. These measures include establishing the purpose of the business relationship and customer identification including:

- for an individual (including an individual with the power to represent a legal person): identity, address and professional activity (an official identity with photograph is required, a copy of which must be kept); and
- for a legal person: an authenticated document showing name, legal form, registered office and the purpose of the entity.

58. The AML Act requires identification of both the customer and the beneficial owner(s) of the customer. Article 41(g) of the AML Act defines beneficial owners (or true right holders) as individuals who ultimately control the customer and/or individual on whose behalf a transaction or activity is being conducted. Regulated entities must identify those beneficial owners who, directly or indirectly own or control 25% of the shares or voting rights (in the case of a company) or the funds (in the case of other legal entities, contractual fiduciary arrangements and other fiduciary structures which administer and distribute funds).<sup>21</sup>

59. Information must be collected and maintained so that the customers can be correctly identified when establishing the business relationship or carrying out a relevant transaction (Art. 49(1)(e) AML Act). The extent to which information is collected has to be based on a risk assessment given the type of customer, business relationship, product or transaction. In low risk situations the customer and the beneficial owner may be verified after the first business transaction if this is necessary in order not to place obstacles to the carrying out of the transaction.

60. Regulated entities have to keep documents including information on the customer's identity, the nature and date of the transaction, the currency, the amount of the transaction, and the purpose and intention of the commercial relationship with the customer. They are required to ensure that documents, information and any other details requested from their customers in order to comply with the AML Act are accurate. Without prejudice to accounting rules, such information must be kept a minimum period of five years. (Art. 51 AML Act)

61. According to Article 45(1) of the AML Act, CDD obligations are applicable to “natural and legal persons bound by the obligations set out in this Law and belonging to any of the following categories: i) operative components of the financial system; ii) insurance companies authorised to operate in the life assurance sector; and iii) money remittance institutions (Art. 41 AML Act). The AML Act also covers “other natural and legal persons who, in the exercise of their professions or business activity, undertake, control or advise on transactions involving money, securities or other assets which could be used for money laundering or terrorism financing”. The following persons are mentioned in particular with regards to these activities:

- professional external accountants, tax advisers, auditors, economists and business agents (gestories);

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21. Based on the third EU AML/CFT Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:0036:EN:PDF>, accessed 25 April 2011.



- notaries, lawyers and members of other independent legal professions<sup>22</sup>; and
- suppliers of services to companies, contractual fiduciary arrangements (*fideicomisos*) or any other legal structure not referred to in any other section of this article.

62. Article 45 mentions in addition sellers of high value goods, gambling establishments and real estate agents carrying out activities related to buying and selling property.

63. Persons mentioned in the first two bullet points in the above list are exempted from AML obligations with regard to information they receive from or obtain on their clients when this information is gained in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings (Art. 45(2)).

#### *Information held by directors and officers*

64. As mentioned above, the company is obliged to maintain a shareholder register. It is the duty of the company's officers to ensure that the company complies with this obligation (Art. 49 Companies Act).<sup>23</sup>

#### *Foreign companies*

65. A foreign entity operating a branch within the territory of Andorra has to register that branch with the Companies Register (Art. 5(3) Companies Act) but there is no obligation to submit information regarding the owners of

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22. With regards to these professions the law specifically mentions their taking part in assisting the planning or execution of transactions for their customers in the framework of the following activities: (i) Buying and selling real property or business entities; (ii) managing of customer money, securities or other assets; (iii) opening or management of bank, savings or securities accounts; (iv) organisation of contributions necessary for the creation, operation or management of companies; and (v) creation, operation or management of companies, contractual fiduciary arrangements (*fideicomisos*) or similar structures; or when acting for their customers in financial or real estate transactions.
23. A previous requirement that at least one of the officers of a company had to be Andorran resident (Art. 46(3) Companies Act) was abolished as of January 2011 through Article 10 of the Law 93/2010 on Economic Promotions Measures and Social Activity, and Rationalization of Administrative Act.

the company. Further, there are no provisions in Andorran law that require a foreign incorporated company that is effectively managed in Andorra to register or otherwise provide ownership information. However, a company effectively managed in Andorra, giving rise to a branch, will be subject to Andorran accounting law (Art. 5(4) Companies Act). As such, in its annual accounts, it will have to include the name of all persons who own 10% or more of the company (General Accounting Plan of 2008 Chapter 2 Section 2 Nr.12). The General Accounting Plan is an integrated part of the Andorran accounting law. Non compliance with its provisions is subject to the sanctions in Chapter 5 of the Accounting Act.

## Conclusion

66. The establishment of Andorran companies is strongly regulated. Founding members and subsequent owners of a company have to be registered in a shareholder register kept by the company and this information has to be submitted to the Companies Register. Andorran law prohibits nominee ownership. The availability of information identifying owners of foreign companies with effective management in Andorra is required for persons with an ownership of 10% or more.

### *Bearer shares (ToR A.1.2)*

67. While Andorran law previously allowed bearer shares<sup>24</sup>, the current legislation requires that all shares be issued as nominal shares (Art. 15(3) Companies Act). Bearer shares were disallowed by the Companies Regulation of 1983. The regulation provided a 20 year transitional period by the end of which, or earlier if there is a transfer or change in the company's capital structure, bearer shares have to be transformed into nominal shares. Companies which still have bearer shares by the end of the 20 year period will be deprived of legal personality and deleted from the Companies Register. (Final Provision Companies Regulation 1983).

68. According to Andorran authorities, there remain only 18 companies with bearer shares with a total share capital of EUR 2.62 million. Andorran authorities advise that these are old companies with no economic activity and only two of them currently have government authorisation to conduct business.

69. Mid May 2011, the Andorran Government has contacted each company, directly where possible or (in 12 cases) via edict issued by the Minister of Economy and published in the Official Gazette, asking them to contact the Companies Register within two months in order to notify the Registrar

24. [www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2007\)14Rep-AND3\\_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2007)14Rep-AND3_en.pdf), p.142, accessed 16 March 2011.

of the identity of the holders of their bearer shares. If they do not comply, a preventive note will be entered in the Companies Register and the company will not be eligible to obtain a government authorisation to perform economic activities until that preventive note is removed. Andorran authorities inform that 5 out of the 18 companies already have contacted the Companies Register, including one of the two companies which currently has government authorisation to conduct business in order to inform that the company will be liquidated.

70. It should be noted that the financial intelligence unit (FIU), which is also the Andorran AML regulator, has established an agreement with the Foreign Investments Register, dated 7 April 2009, by virtue of which the FIU checks in its databases the potential existence of criminal records or any other information regarding foreign investors. In practice the FIU does not grant a favourable opinion on foreign investors that have issued bearer shares, except if the control structure and beneficial owners are clearly identified and verified.

71. While very few companies still have capital in bearer form and only two of these are authorised to conduct economic activity, it is recommended that the Andorran Government continue with its current program to obtain full ownership information on these companies or, alternatively, ensure they are unable to conduct business in Andorra. The success of this program will be considered further in Andorra's phase 2 review.

### ***Partnerships (ToR A.1.3)***

#### *Types of partnerships*

72. Andorra law does not recognise limited partnerships. It only recognises one type of partnership: *Societat colectiva*, SCR.<sup>25</sup> This is a general partnership regulated by the Companies Regulation 1983 (First Supplementary Provision of Companies Act of 2007). An SCR is defined as a voluntary association of two or more individuals or legally constituted bodies which – based on an agreement among them – contribute means in order to cooperate in the carrying out of a business or professional activity. The partners in an Andorran SCR are universally and jointly liable for the partnerships debts. Each partner has equal right to manage the business and has the right to conduct transactions on behalf of the business (Art. 13(1) Companies Regulation 1983).

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25. Even though, in Andorran terminology it is referred to as “company”, Art. 1(2) Companies Regulations 1983.

73. Only individuals of Andorran nationality or foreigners with at least 20 years of residence in the Principality can participate in a partnership. There is an exception for Spanish, French and Portuguese nationals where the requirement is 10 years of residence. However, this exception does not apply to liberal professions where the requirement for these nationals is 10 years of residence. Where two or more persons run a business together, all of them need a government authorisation and all of them are separately responsible for their liabilities, including tax liability.

74. The name of the officers and any other persons with power to represent the partnership must be registered in the Company Register (Art. 9(2) and Art. 14(4)).

75. While a few SCRs existed and were registered in the Companies Register in the past, they have been liquidated or transformed into SLs or SAs. As of 15 April 2011, no SCRs are registered.

76. Foreign partnerships establishing a branch in Andorra are subject to the same provisions as for companies, described earlier in this report.

#### *Ownership and identity information on partnerships to be provided to government authorities*

77. The creation of an SCR is regulated in Article 4(1) of the Companies Regulation 1983. As for companies, the creation requires a public deed authorised by a notary based on an authorisation by the Andorran Government. To obtain the said authorisation, the partners must *inter alia* present to the Government an application with copies of the projected Articles of Association. The authorising notary submits a copy of the deed to the Companies Register when registering the SCR. Legal personality will be acquired from the time of this registration. Amendments of the Articles of Association are subject to the same procedure. Both the application to the Government and the notarised deed have to include identity information on all the founding partners (Art. 4(1)).

78. Ownership in a SCR cannot be transferred without prior, unanimous agreement of all other partners (Art. 13(2) Companies Regulation 1983). Further transfers of ownership must be registered in the Companies Register (Art. 7(6) Companies Regulation 1983). Thus, information regarding the incorporators and subsequent owners of an SCR will have to be filed with the Companies Register.

79. Andorran tax legislation does not require an SCR to keep or provide ownership information as the tax systems rely on registrations the Companies Register.

*Ownership information held by service providers*

80. The CDD requirements of the Andorran AML Act, described for companies above, apply *ipso facto* in respect of services provided to partnerships.

*Trusts (ToR A.1.4)*

81. Andorran law does not recognise trusts and Andorra is not a party to the *Convention on the Law Applicable to Trusts and on Their Recognition 1985*.<sup>26</sup> However, there is no law prohibiting that an Andorran resident acts as a trustee, administrator or similar of a foreign trust. Nor is there any other legislation in Andorra specifically addressing matters related to trusts or trustees.

82. There are no trust law or tax law based obligations in Andorra requiring an Andorran resident trustee to hold information regarding settlor and beneficiaries of a foreign trust or to file such information with government authorities. However, the trustee may be under obligations imposed under the laws of the jurisdiction governing the trust. Further, an Andorran trustee would be subject to Andorran legislation to the extent that such legislation is applicable to a trustee relationship. Notably, there may be fiduciary obligations that are applicable.

83. Further, there are AML obligations requiring regulated entities to perform CDD when dealing with trusts. Regulated entities include natural or legal persons who in their professional capacity undertake, control or advise on transactions involving cash or securities movements which could be used for money laundering or terrorism financing (Article 45 AML Act).<sup>27</sup> Article 45(1) refers in particular to legal professionals involved in *inter alia* creation, operation or management of companies, contractual fiduciary arrangements (*fideicomisos*) or similar structures. When dealing with a foreign trust, entities with AML obligations have to *inter alia* identify the customer (e.g. the settlor)

26. [www.hcch.net/index\\_en.php?act=conventions.text&cid=59](http://www.hcch.net/index_en.php?act=conventions.text&cid=59), accessed 25 April 2011.

27. CDD obligations are on “financial parties under obligation”, *i.e.* operative components of the financial system, insurance companies authorised to operate in the life assurance sector and money remittance institutions (Art. 41 AML Act). The AML Act also covers “other natural and legal persons who, in the exercise of their professions or business activity, undertake, control or advise on transactions involving money, securities or other assets which could be used for money laundering or terrorism financing”. The following persons are mentioned in particular: (i) professional external accountants, tax advisers, auditors, economists and business agents; (ii) notaries, lawyers and members of other independent legal professions when they take part in assisting the planning or execution of transactions for their customers in certain circumstances; and suppliers of services to companies, contractual fiduciary arrangements or any other legal structure not referred to in any other section of this article.

and the beneficial owner on whose behalf a transaction or activity is being conducted. The beneficial owner is the individual or individuals who own or control more than 25% of the assets or funds of the trust (Art. 41 AML Act).

84. Trustees can be unregulated persons if they are acting in that capacity other than by way of their professional business. In those circumstances, the trust will still be subject to Andorra's AML/CFT framework when trustee: (i) opens an account or establish a relationship related to the trust with an Andorran bank or other licensed fiduciaries subject to the AML/CFT framework; or (ii) purchases or sells any real property for the trust via a lawyer or other professional who would also be subject to the AML/CFT framework. A potential narrow gap remains of those trusts which have a non-professional trustee and none of the aforementioned activities in Andorra. Andorra should monitor this gap to ensure it does not in any way hamper the effective exchange of information in tax matters. This will be considered further in Andorra's Phase 2 review.

### ***Foundations (ToR A.1.5)***

#### *Types of foundations*

85. The Foundation Act of 2008 introduced the foundation as a legal entity in Andorran law. It regulates both private and public sector foundations. Private foundations can be founded, *inter vivos* or *mortis causa*, by Andorran individuals or legally resident foreigners or by Andorran legal persons (Art. 2 Foundation Act). The initial assets have to be a minimum of EUR 100 000 (Art. 5(1)). At least two thirds of the total net annual income of a foundation has to be applied in accordance with the foundation's purpose within three years. Andorran public sector foundations are foundations where public and quasi-public entities provide more than 50% of the assets and at least one third of these assets come from an Andorran public or quasi-public entity.

86. Private foundations are non-profit entities, with assets or rights irrevocably attached to the fulfilment of the foundation's purposes (Art. 1(2) Foundation Act). The purposes of all foundations must be in the public interest and its activities must benefit generic groups of people (Art. 4). Neither foundations for personal interest nor family foundations can be established (Additional Provision Foundation Act). A private foundation can be formed for an indefinite or fixed duration.

87. A private foundation acquires legal personality on registration of the formation deed in the Foundations Registry (Art. 6 Foundation Act). The formation deed must *inter alia* include:

- identity of the founders;
- the foundational will;

- the foundation's constitution;
- the initial endowment; and
- identity of the members of the Foundation Council (Art. 7 Foundation Act).

88. Prior to registration, the founder of a private foundation has to obtain authorisation from the Government to register the foundation. The application to the Government has to include a draft of the foundation charter and an explanatory memorandum setting out *inter alia* the activities envisaged or the action programme, justifying its contribution to the public interest. Once the Government authorisation is obtained, either explicitly or tacitly after three months, the authorising notary sends the formation deed to the Foundation Register (Art. 3 Foundation Act).

89. The Foundation Council is the governing body of the foundation and has to have at least three members. Individuals acting as or on behalf of council members have to be Andorran citizens or foreigners legally resident in Andorra (Art. 12 Foundation Act). The president of the Foundation Council must be Andorran (Art. 13(1)). Foundations are supervised by a Foundation Protectorate which is operated by the Ministry of Justice. The Protectorates' task is *inter alia* to make sure that foundations act in accordance to their foundational purposes.

90. Andorran Authorities advise that as of 4 April 2011, 23 foundations are registered in the Foundations Register.

### *Information to be submitted to the Foundations Register*

91. The first registration of a foundation in the Foundation Register must *inter alia* include the following information (Art. 29 Foundation Regulation):

- identifying details<sup>28</sup> of the founders and the donors (where different from the founders);
- the purpose of the foundation;
- the registered office;
- the foundation charter;
- the initial endowment; and
- details of the members of the first foundation council.

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28. Name, surnames, age and civil status of the founders, if individuals; the trading or company name, if legal persons; with their respective nationality and address in both cases.

92. Appointment, replacement and suspension of foundation council members have to be registered including *inter alia* their details and identity including nationality, address and passport number and identity number (Arts. 21 and 32 Foundation Regulations). The register also has to show any powers of attorney which have been issued (Art. 34). Further, the liquidation of a foundation has to be registered, including the destination of the assets and rights resulting from it (Art. 38).

93. The Andorran authorities advise that as a matter of practice, the Foundation Register keeps information for an indefinite period of time.

#### *Information to be held by council members and service providers*

94. There are no specific provisions within Andorran foundation law directly requiring the council members to hold information about the foundation's founder(s) or the beneficiaries. However, the Andorran AML law requires foundations to keep records of the identity of all persons that receive funds from the foundation for five years (Additional Article AML Act). Further, as members of the governing organ of the foundation (Art. 12 Foundation Act), the council members have to be familiar with the foundation charter which *inter alia* has to mention the founder(s) and describe the beneficiaries or classes of beneficiaries (Art. 7). Also, foundations must keep their accounting in accordance with the nature of their activities and in such a way as to enable a follow-up of their operations and the preparation of the annual financial statements (Art. 22(1)). This would include keeping information that allows assessment of whether the foundation's means have been applied in accordance to the purpose of the foundation. They are required to keep as a minimum a journal (daybook) (Art. 22(2)).

95. Also, foundation council members are jointly and severally liable for loss and damage caused by actions contrary to law or the Foundation Charter, or by non-compliance with their obligations through guilt or negligence (Art. 15(1) Foundation Act). According to Andorran authorities, this results in the council members keeping underlying documents for the foundation's various transactions.

96. Further, Andorran AML obligations require financial institutions and other obliged entities to keep information identifying the beneficial owners of their customers. In addition, sufficient information has to be kept to prove that the means of the foundation have been applied according the purpose of the foundation. Thus, when dealing with a foundation, Andorran AML law requires council members acting in a professional capacity to perform CDD and *inter alia* identify the beneficiaries. For legal structures that administer and distribute funds, such as foundations, the beneficial owner is the individual or individuals who own or control more than 25% of the funds (Art. 41 AML Act).



## Conclusion

97. Foundation charters must identify the founders and foundation council members and this information must be submitted to authorities as part of registration. In terms of beneficiaries, the foundation charter has to describe the generic group of people who shall benefit from the foundation. In addition, all beneficiaries who have received payment must be identified and foundation council members (plus service providers) must identify those beneficiaries with at least a 25% interest in the foundation. Given the fact that the purpose of an Andorran foundation has to be in the public interest, benefiting generic groups of people, this gap is considered of limited concern. Andorra should monitor this to ensure it does not in any way hamper the effective exchange of information in tax matters. This will be considered further in Andorra's Phase 2 review.

### ***Enforcement provisions to ensure availability of information*** (ToR A.1.6)

#### *Company law*

98. There are no sanctions for companies or their officers for not maintaining a register of shareholders. Nor are there specific sanctions for companies or partnerships for not submitting changes in ownership to the Companies Register. Further, Andorran authorities advise that in cases where the Companies Register is aware of required information not being registered, it has no means to force registered entities to provide information to the Register.

#### *Foundation law*

99. Foundation council members are jointly and severally liable to the foundation for any loss or damage caused by actions contrary to law or to the foundation charter, or by non-compliance with their obligations through guilt and negligence (Art. 15 Foundation Act). This is very broad and would likely apply to a situation where the foundation failed to maintain or register information as required by law. However, there are no sanctions for non-compliance with formal requirements as such.

#### *AML law*

100. Non-compliance with AML CDD obligations is considered a “serious offense”. Such offences can be sanctioned with prohibition on carrying out certain types of financial or commercial activities and/or the temporary suspension between one and six months of directors of the entity or the professional in question and a fine between EUR 6 000 and EUR 60 000. A

repetition of such non-compliance is considered a “very serious offense” and can be sanctioned with the suspension of the directors of the entity or of the professional involved for up to three years and a fine of between EUR 60 000 and EUR 600 000 (Arts. 58 and 59 AML Act).

## Conclusion

101. The lack of enforcement provision in Andorran company and foundation law may lead to relevant information not being available in Andorra and it is recommended that Andorra remedy this. The effectiveness of Andorra’s provisions to provide ownership information and the associated enforcement provisions will be considered as part of the Phase 2 Peer Review.

### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
With the exception of obligations to maintain some information under AML law and accounting law, Andorra does not provide sanctions for non-compliance by companies, partnerships or foundations with obligations to maintain ownership information or to submit such information to government authorities.	In so far as they are not currently provided, effective sanctions should be introduced for legal and natural persons which fail to comply with requirements to maintain and file information on their owners.
There is no obligation requiring identification of beneficiaries with less than a 25% interest in those foreign trusts which have Andorran trustees or which are administered in Andorra.	Andorra should establish clear provisions in its laws to ensure availability of information on all beneficiaries of foreign trusts which are administered in Andorra or have an Andorran trustee.
Issuance of bearer shares was prohibited in 1983 and action is in progress to ensure the availability of full ownership information for the 18 remaining companies with bearer shares.	Andorra should progress its action to ensure availability of full ownership information for these 18 companies as quickly as possible.

## A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

102. A condition for exchange of information for tax purposes to be effective, is that reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner. This requires clear rules regarding the maintenance of accounting records. The obligations to maintain reliable accounting records are found in the laws governing the various types of entities covered by this report, and in the Accounting Act.

### ***General requirements (ToR A.2.1)***

#### *Company and accounting law*

103. All Andorran limited companies have to maintain accounting books and records that record all transactions chronologically, and have to create annual accounts (Art. 70 et seq. Companies Act). Accounting records include *inter alia* balance sheet; profit and loss account; and statements of income, asset and cash flow (Art. 71). An annual report, including annual accounts, has to be filed with the Companies Register (Art. 74).

104. Articles 70 and 71 of the Companies Act states that Andorran companies are under the obligation to keep and retain accounting records, prepare and sign their annual accounts, as well as the proposed distribution of profits. Further, they must submit these annual accounts to audit if two of the following circumstances prevail during two consecutive years:

- total assets exceed EUR 3 600 000;
- net sales exceed EUR 6 000 000; and
- the company has more than 25 employees (Art. 72).<sup>29</sup>

105. Foreign businesses with branches in Andorra have to keep books according to Andorran accounting law (Art. 5(4) Companies Act). They have to file annual accounts with the Companies Register that are prepared according to the laws of the country in which they are incorporated, provided these laws set an equivalent standard to that of the Andorran accounting law (Arts. 5(5) and 5(6)).

29. However, Andorran authorities advised that audit obligations established by the Companies Act will not apply until the Audit Law is in force.

106. The Accounting Act of 20 December 2007 introduced a general requirement to keep accounting records for all Andorran businesses irrespective of their legal form. The provisions of this act apply to companies, partnerships and business activities of foundations. The Act requires all businesses to keep accounting records according to their business activities and in accordance with the provisions of the act (Art. 1). The accounts must allow a chronological follow-up of all transactions and the periodical preparation of mandatory accounting documents (Art. 2).

107. The accounts must correctly explain the assets, financial position and profit of the business in accordance with recognised accounting principles (Art. 18 Accounting Act). Accounting records include a journal and the inventory and annual accounts. Annual accounts include *inter alia* a balance sheet with opening balances and year-end inventory as well as a profit and loss account (Art. 16). Annual accounts have to be submitted to the Companies Register (Art. 36(3)). The journal must register all daily business operations in chronological entries.

108. Detailed rules for accounting are described in the “General Accounting Plan” which is based on International Accounting Standards and International Financial Reporting Standards (IAS and IFRS). All operations must be recorded. Thus, accounting records will reflect (i) details of all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity or arrangement.

109. Accounts have to be kept in the offices of the company (Art. 11 Accounting Act) which has to be in Andorra (Art. 4 Companies Act).

110. There are sanctions for non-compliance with accounting obligations. Andorran accounting law makes a distinction between minor, serious and very serious breaches of accounting law (Arts. 41 to 44 Accounting Act as amended). The sanctions for these offences vary between fines from EUR 90 to 12 000 depending on the seriousness of the offence and the size of the enterprise. In addition, the business can be banned from public contracts for a period of three years (Art. 43(1)). Further, while in default to file annual accounts to the Companies Register, no other entries will be allowed to be made regarding the entity in question (Art. 43(2)).

### *Foundation law*

111. Andorran accounting law applies to foundations to the extent they are carrying out a business (Art. 1(2)(c) Accounting Act).

112. Further, Andorran foundation law includes accounting rules applicable to all foundations. These rules are not as detailed as the rules in the

Accounting Act. Nevertheless, all foundations must keep accounting records in accordance with the nature of their activities and in such a way as to enable follow-up of their operations and preparation of the annual financial statements. They must keep as a minimum a subsidiary journal (daybook), inventory book and annual statements. The annual financial statements must include a balance sheet and profit and loss account (Art. 23 Foundation Act). Accounts must be approved by the Foundation Council (Art. 23(3)) and submitted to the Foundation Protectorate (Art. 24(1)).

113. A foundation's annual financial statements have to be audited by an external auditor if either or both the total value of assets or the total amount of ordinary annual income exceeds EUR 1 million and EUR 500 000 respectively. The audit report must be submitted to the Protectorate (Art. 27 Foundation Act).

114. The registered office of a foundation has to be in Andorra (Art. 10(1) (d)). According to Andorran authorities, a foundation's accounting records have to be available at its registered office.

115. In case of non-compliance with the accounting and filing rules, the Foundation Protectorate may demand compliance with the obligation to keep accounting records. Also, obtaining subsidies and public aid is subject to the submission of the financial statements. (Art. 24 Foundation Act). If a foundation fails to submit its financial statements for two consecutive years, the Protectorate must ask the Ministry of Justice to order a temporary intervention. Such an intervention would include the Protectorate assuming provisional administration of the foundation (Art. 34).

### *Trusts*

116. No specific accounting rules exist for foreign trusts administered by Andorran trustees. However, business activities of the trust will be subject to Andorran accounting obligations if these activities are carried on in Andorra. Also, a professional Andorran trustee will be subject to the previously described Andorran accounting rules regarding his own business activities as a trustee (Art. 1 Accounting Act).

### *Tax law*

117. Andorran tax law does not currently contain any specific requirements to keep accounting records or underlying documents. However, the newly adopted tax acts refer to obligations under the Accounting Act (Art. 23 Non-resident Income Tax Act, Art. 11 Business Tax Act and Art. 54 Corporation Tax Act).

### *AML law*

118. Andorran AML law requires regulated entities to keep documents with *inter alia* information on the nature and date, the currency and the amount of transactions carried out for occasional customers, as well as information on the purpose and intention of the commercial relationship with their customer (Art. 51 AML Act). Non-compliance with these provisions is sanctioned as a serious infringement (Art. 58(2)(c)) with a prohibition on carrying out certain types of financial or commercial transactions and/or the temporary suspension of directors of the entity or the professional in question of between one and six months and a fine of between EUR 6 000 and EUR 60 000 (Art. 59(1)).

### Conclusion

119. Companies, partnerships and foundations are required to keep comprehensive accounting records and to submit annual accounts to the Companies Register. However, while Andorran law requires the potential subset of Andorra-resident administrators or trustees of foreign trusts who have obligations under the AML Law to keep financial transaction records, no further accounting records must be kept for those trusts with the exception of a foreign trust's business activities.

### *Underlying documentation (ToR A.2.2)*

120. Accounting records to be kept by companies, partnerships, branches of foreign entities (see Art. 5(4) Companies Act) and those foundations which run businesses include underlying documentation, such as documents, correspondence, documentation and receipts (Arts. 7 and 10 Accounting Act). Andorran authorities advise that, although it is not specifically stated, this also includes invoices and contracts. Further, under the AML legislation, regulated entities are under obligation to keep records and supporting evidence of transactions and CDD.

121. Foundations not running a business are not subject to Andorran accounting law. The Foundation Act does not include any particular provisions regarding underlying documents. However, some limited accounting records (inventory of assets and other accounting records corresponding to their activities) have to be kept according to Article 28 of the Associations Act which applies to Foundation (First additional provision AML Act). Further, the council members are jointly and severally liable for loss and damage caused by actions contrary to law or the Foundation Charter, or by non-compliance with their obligations through guilt or negligence. Therefore, they will endeavour to keep underlying documents for the foundation's accounts in case a complaint is made.

***The 5-year retention standard (ToR A.2.3)***

122. All businesses (including branches of foreign entities and foundations which conduct business) have to keep accounting records, including underlying documentation, for a minimum of six years. This obligation also applies to a successor or liquidator in the case of transfer or liquidation of a business (Art. 70 Companies Act and Arts. 7 and 8 Accounting Act). Non-compliance is considered a serious offense and it is sanctioned with a fine between EUR 601 and 2 000 (Arts. 41(2)(a) and 42(2) Accounting Act). In addition, the business can be banned from public contracts for a period of three years (Art. 43(1)).

123. As stated above, a foundation has to keep accounting records and underlying documentation for its business activities in accordance with the Accounting Act. Thus these accounting records have to be kept for six years. Also, the accounting records and underlying documentation a foundation has to keep according to the first additional provision in the AML Act, have to be kept for 5 years. Further, where the role of foundation council member is exercised as part of the council member's professional capacity, the AML requirements outlined below apply. The Foundation Act has no specific retention rules.

124. No specific accounting record retention requirements exists for foreign trusts with Andorran trustees or administrators.

125. Andorran authorities advise that, as government authorities and as a matter of practice, the Foundation Protectorate and the Companies Register keep information, including annual financial statements submitted by foundations, for an indefinite period of time.

126. Andorran AML law requires regulated entities to keep relevant documents for a minimum period of five years (Art. 51(1) AML Act). This includes documents with information on the customer's identity, the nature and date of the transaction, the currency, the amount of the transaction, and the purpose and intention of the commercial relationship with the customer (Art. 51(2)). Non-compliance with these provisions is considered a serious infringement (Art. 58(2)(c)). As such it can be sanctioned with a prohibition on carrying out certain types of financial or commercial transactions and/or the temporary suspension of directors of the entity or the professional in question of between one and six months and a fine of between EUR 6 000 and EUR 60 000 (Art. 59(1)).

## Conclusion

127. Andorran company and accounting law requires companies and partnerships to keep accounting records, including underlying documentation, for a minimum of six years. The same obligations apply to foundations for their business activities. The retention period for accounting records that have to be kept by foundations for non-business activities is five years. Any gap concerning foundations' accounting obligations is considered immaterial as private foundations have to be non-profit entities acting in the public interest and their activities must benefit generic groups of people. However, no specific retention requirements exist for any activity of a foreign trust with an Andorran trustee. Nevertheless, if the function of a trustee or administrator of a foreign trust is exercised in a professional capacity, records and documents regarding AML-relevant transactions have to be kept for a minimum of five years.

### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
Andorran legislation does not ensure that reliable accounting records or underlying documentation are kept for foreign trusts with an Andorran-resident administrator or trustee.	All administrators and trustees of foreign trusts should be required to maintain reliable accounting records for the trusts including underlying documentation. These records should be kept for a minimum of 5 years.

## A.3. Banking information

Banking information should be available for all account-holders.

### *Record-keeping requirements (ToR A.3.1)*

128. Financial institutions must keep records of all types of transactions and investment services and other services rendered by them in a way that allows to verify their compliance with the rules and regulations under the Banking Act – Law No. 14/2010 of 13 May 2010 (Art. 29(1)). The Act requires financial institutions to keep detailed records and accounts regarding transactions with and for clients (Art. 27(2)(b)). Further, financial institutions must produce annual accounts as defined in Article 16 Accounting Act (Art. 5).



This includes *inter alia* a balance sheet, a profit and loss account and a cash flow statement. The records have to be kept for at least five years (Art. 29(2)).

129. The AML Act states that “anonymous accounts and anonymous pass-books are prohibited” (Art. 49(4)).

130. Any breach of provisions in the Banking Act is subject to sanctions determined by the Financial System Disciplinary Regime Act of 27 November 1997 (Seventh additional provision Banking Act). According to this act, offences can be minor, serious or very serious and are sanctioned with fines between EUR 300 and 300 000 or 3% of the minimum required capital for the financial institution in question (Art. 18 Disciplinary Regime Act).

131. The Andorran AML Act requires regulated entities to identify each customer and their customer’s beneficial owners (Art. 49) and keep documents related to CDD as well to the nature and date of transactions, the currency, the amount of the transactions, and the purpose and intention of the commercial relationship with the customer (Art. 51). Non-compliance with these provisions is sanctioned as a serious infringement (Art. 58(2)(a)). It can be sanctioned with a prohibition on carrying out certain types of financial or commercial transactions and/or the temporary suspension of directors of the entity or the professional in question of between one and six months and a fine of between EUR 6 000 and EUR 60 000 (Art. 59(1)).

### Determination and factors underlying recommendations

Phase 1 determination
The element is in place.



## B. Access to information

### Overview

132. A variety of information may be needed in a tax inquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Andorra's legal and regulatory framework gives to the authorities access powers that cover relevant persons and information, and whether the rights and safeguards that are in place would be compatible with effective exchange of information.

133. Andorran legislation provides the competent authority, the Minister of Finance, with the necessary powers to access ownership and accounting information held by banks and other financial institutions. Ownership information can also be obtained from public registries, including the Companies Register, to which substantial ownership information regarding companies, partnerships and foundations has to be filed. However, there are no legal powers to directly access ownership information held by the entities themselves. The competent authority has the power to access accounting information held by all types of businesses or may obtain this from public registries. None of these access powers depend on the existence of a domestic tax interest.

134. Until recently, the Andorran competent authority's powers to access accounting information and information held by banks could only be exercised where the international request for information (EOI request) specified the name and address of the taxpayer who is the subject of the inquiry. However, on 1 June 2011 the Andorran Government amended the relevant legislation and this comes into force on publication of the amendment in the Official Gazette in June 2011. This legislation came into force after publication in the Official Gazette on 29 June 2011.

135. Where the competent authority acts on an international request for information, both the taxpayer and the information holder have – without any exception – to be notified and have the right to appeal to the competent authority as well as to the courts. To require in all cases that prior notification be given to the affected parties of the international request for information may unduly prevent or delay the effective exchange of information.

## B.1. Competent Authority’s ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

### *Bank, ownership and identity information (ToR B.1.1)*

#### *Bank information*

136. Article 4(4) of Law 3/2009 on Exchange of Information in Tax Matters on Request (EOI Act) provides the power to access – for the purpose of international exchange of information in tax matters (EOI) – all kinds of information held by financial entities. This provision came into force on 21 September 2009 and reads:

*If the requested State is the Principality of Andorra, the latter retains the authority to obtain and transmit, in reply to a prior request, the information available to the banking and financial entities with their headquarters or a legally authorised premises on its territory. Sending this information within the framework of the procedures regulated by this Law does not involve or constitute a breach of professional secrecy nor infringe the restrictions on information disclosure and, consequently, does not involve any kind of liability, of either a general or contractual nature. Its authority also includes requests for information to public bodies or registers.*

137. Thus the provision states that in the case of a request for exchange of information in tax matters, the government of Andorra has the authority to obtain and submit, in reply to such a request, information held by banks or other financial entities with their headquarters or branches in Andorra. The EOI Act specifically states that “any legal provisions of equal or lower standing that are affected by this Law are derogated, [...]”. As such, this law clearly overrides, for EOI purposes, any bank secrecy in Andorra.

138. With respect to joint bank accounts, the information provided will be that related to the person who is the subject of the request only, and each account holder is considered to have an equal interest in the account unless otherwise indicated (Art. 9(2) EOI Regulation). The practical implications of this for EOI will be considered during Andorra's Phase 2 review.

#### *Access to ownership information held in public registers*

139. Andorran authorities advise that the last sentence in Article 4(4) of the Andorran EOI Act (see text above) provides the Ministry of Finance with powers to access information held in any public register or by any central or local public body for the purpose of EOI. This includes *inter alia* information contained in the Companies Register, the Foreign Investment Register and the Foundations Register as well as information held by the Foundation Protectorate. Due to requirements to register detailed information on all initial and subsequent ownership with the aforementioned registers, this provides access to detailed ownership information for companies, partnerships and foundations.

#### *Access to ownership information held by relevant entities*

140. Article 4(4) of the EOI Act only refers to information held by financial institutions and public registers or bodies. Andorran authorities advise that there are no provisions in Andorran legislation that provide powers to directly access ownership information held by Andorran companies, partnerships, foundations, branches of foreign enterprises or persons who administer or act as trustees for foreign trusts. However, the Andorran competent authority has access to accounting information of all Andorran businesses irrespective of their legal form for EOI purposes (see section B.1.2, below) and will thus have access to the information regarding ownership provided in these accounts; *i.e.* information identifying those persons who own 10% or more of an entity. Further, Andorran authorities point out that there are strict rules that require Andorran entities to provide public registers with ownership information and that the Competent Authority will have access to information registered there.

#### *Name and address of the taxpayer*

141. The abovementioned powers to access bank and ownership information as well as the powers to access accounting information depend on the EOI request being 'valid'. The EOI Act states that, as a minimum, a request for information has to include "the identity of the person concerned in the request" (Art. 4(1)(a)). This requirement is further specified in Article 4(1) (a) of the EOI Regulation which previously stated that "the data relating to

the identity of the person concerned includes the names and surnames or business name, address or domicile, as well as any other kind of information necessary to determine the identity of the person concerned so that no confusion can arise” (emphasis added). Andorran authorities advised that this constituted an absolute requirement that both the name and the address of the taxpayer have to be provided by the requesting jurisdiction.<sup>30</sup> However, on 1 June 2011 the Andorran Government amended the relevant legislation.<sup>31</sup> Article 4(1)(a) of the EOI Regulation now requires that “the data relating to the identity of the person concerned includes the names and surnames or business name, address or domicile, or any other kind of information necessary to determine the identity of the person concerned so that no confusion can arise” (emphasis added). This provision is now in line with the international standard.

142. Andorran law does not include an absolute requirement to provide the name or address of the holder of the information. The EOI Regulation states that the name of the person believed to hold the information has to be provided “to the extent known” (Art. 4(f)).

### *Accounting records (ToR B.1.2)*

143. Accounting records are normally considered confidential (Art. 9 Accounting Act). However, they have to be disclosed to the Ministry of Finance and the INAF, to the extent this information is required by them in order to carry out the duties assigned to them (Art. 10). Andorran authorities confirm that this also applies to access by the Ministry of Finance in conduct of its role as competent authority for the purpose of EOI. Thus, the Andorran competent authority has access to accounting information of all Andorran businesses irrespective of their legal form for EOI purposes.

144. Not providing access to the information is considered to be a “serious accounting violation” (Art. 41(2)(b)) and can be sanctioned with a fine between EUR 600 and 2 000 (Art. 42(3)). In addition, the business can be banned from public contracts for a period of three years (Art. 43(1)).

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30. It should be noted here that the requirement to provide the name of the taxpayer did not apply to exchange of information with Germany and Liechtenstein as the Protocols to the TIEAs with these two jurisdictions state that the identity of the person under investigation can be established by information other than name.

31. This will come into force when the amendment is published in the Official Gazette in June 2011.

***Use of information gathering measures absent domestic tax interest (ToR B.1.3)***

145. The concept of domestic tax interest describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes.

146. Andorran law does not have any provisions limiting access to information to those circumstances where Andorra has an interest in the requested information for its own tax purposes.

***Compulsory powers (ToR B.1.4)***

147. The EOI Act provides the legal basis to access information which is held by financial entities, contained in public registers or held by public entities. If such holders of information do not provide documentation, data or information within the terms set out in the request, the following sanctions apply (Art. 10 EOI Act):

- in case of non-compliance with the first request: a fixed fine of EUR 300;
- in case of non-compliance with the second request: a fixed fine of EUR 1 500; and
- in case of non-compliance with the third request: a proportional fine of 2% of the business' turnover for last year (with a minimum of EUR 10 000 and a maximum of EUR 100 000), or, for persons who do not carry out economic activities, a fine of EUR 10 000. If the demand is wholly met before these sanction procedures end, the fine is EUR 5 000.

148. Refusing to provide accounting documentation on the terms provided in Articles 10 and 11 of the Accounting Act, is considered to be a serious violation (Art. 41(2)(b)) and can as such be sanctioned with a fine of between EUR 601 and 2 000. In addition, the business can be banned from public contracts for a period of three years (Art. 43(1)). If a business has been sanctioned for a “serious violation” and the same violation occurs the following accounting year, it can be sanctioned for a “very serious violation (Art. 41(3) (c)) with a fine between EUR 2 001 and 6 000 (Art. 42(3)).

149. There is no legislation in place that would allow Andorra's authorities to access information through search and seizure for the purposes of international administrative co-operation.

### *Secrecy provisions (ToR B.1.5)*

#### *Bank secrecy*

150. Andorran bank secrecy is legislated in the AML Act. Article 48(2) of this act states: “The managers, directors and employees of the financial parties under obligation must keep secret all information affecting their customers within the context of their activity. To this end, they must adopt all prudent and precautionary measures that are appropriate with a view to safeguarding customer confidentiality. A breach of the duty of professional privilege or secrecy in the employment context without legal cause is a crime in the terms defined in the Criminal Code.” However, the AML act includes exceptions for AML purposes. The aforementioned provision cannot be used as grounds to refuse FIU access to bank information (Art. 48(5)).

151. The Andorran EOI Act states that in order to respond to a request for exchange of information in tax matters based on an EOI agreement, the government of Andorra has the authority to obtain and submit, in response to the request, all kinds of information (including ownership information) held by banks or other financial entities with their headquarters or authorised establishments in Andorra regarding their customers (Art. 4(4) EOI Act). The EOI Act specifically states that “any legal provisions of equal or lower standing that are affected by this Law are derogated, [...]”. As such, this law clearly overrides, for EOI purposes, any bank secrecy in Andorra.

#### *Professional privileges*

152. Andorran law permits the authorities to decline an international request for information when it imposes the obligation to provide information that would disclose any trade, industrial or professional secret or trade process, or if disclosure of the information would be contrary to public policy (Art. 5(1)(c) EOI Act).

153. Article 5(2) of the EOI Regulations specifies that the competent authority for international tax matters is not obliged to obtain and provide information which could reveal confidential communications between a client and a lawyer or other admitted legal representative where such communications: (i) are produced for the purposes of seeking or providing legal advice; or (ii) are produced for the purposes of use in existing or contemplated legal proceedings

154. Andorran authorities advised that the above legal privilege is limited to legal representatives and does not apply to other professions such as tax advisors and accountants.



155. Legal privilege is also codified in Article 11 of the Criminal Procedure Act, which states that: “Lawyers have to respect professional secrecy, understood as a moral and legal principle that puts the obligation and the right not to reveal any essential fact or document that they have knowledge by reason of their function, and cannot be forced to testify about them.” It is not clear that this privilege defined in the Criminal Procedure Act is limited to information obtained in the course of providing legal advice or legal representation.

156. On the face of it, it is likely that the provision in the EOI Regulation concerning legal professional privilege, a more specific law which was enacted after the Criminal Procedure Code<sup>32</sup>, takes precedence over the Criminal Procedure Act provision. This is a question of implementation in practice which will be considered during the Phase 2 review of Andorra.

### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
While the competent authority can obtain information on the ownership of relevant entities from other government authorities, Andorran legislation does not provide the competent authority with powers to access ownership information held by third parties or by the entities themselves, except from banks and other financial institutions.	The competent authority should be granted the well-defined powers to obtain all relevant information in the possession or control of all persons within Andorra’s territorial jurisdiction for the purpose of exchange of information.

32. *Leges posteriores priores contrarias abrogant*: Subsequent laws repeal those before enacted to the contrary.

## B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

### *Not unduly prevent or delay exchange of information (ToR B.2.1)*

157. The *Terms of Reference* provides that rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

158. Once the Andorran competent authority has decided to act on an international request for information, the “person concerned and the person in possession of the information” have to be notified of that decision and the request. Andorran authorities advise that the person concerned includes both the taxpayer and the person to whom the information held by the information holder relates to (e.g. an account holder). In cases where these two are not identical, both have to be notified. Where the competent authority has the information in its possession, only the persons concerned have to be notified.

159. Further, Andorra’s TIEA with Liechtenstein (see Section C.4 of this report) specifically provides that rights and safeguards secured to persons by the laws or administrative practices of the requested party remain applicable in all cases. Further, provision in the protocol to the same agreement obliges the requesting jurisdiction to inform the taxpayers of its intention to make a request (see Section C.3). The compulsory notification from both requesting and requested jurisdiction without certain exceptions from prior notification has the potential to unduly prevent or delay effective exchange of information and also may undermine the chance of the success of the investigation conducted by the requesting jurisdiction. It is recommended that suitable exception from notification be provided.

160. Once notified, the persons concerned and the information holder have the right to appeal to: (1) the competent authority; then (2) the Magistrates’ Court; and finally (3) to the High Court. Each time the appellants have 13 days after notification of a decision in which they may appeal to the next authority. The appeal courts are also given 13 days to hear the parties involved and decide on the appeal. Thus, in a case where all appeals have been used, twelve weeks (six times two weeks) will pass from the date when the involved persons were notified of the initial decision by the competent authority to access

information to respond to an international request until the date when a formal notice to provide the information can be issued.

161. An appeal by any party does not suspend the information holder's obligation to provide information to the Ministry of Finance (Art. 9(1) EOI Regulation). However, the competent authority cannot exchange the information as long as an appeal is pending (Art. 8(6) EOI Act).

162. As Andorra's TIEAs are relatively new, these rights available to taxpayers as well as statutory deadlines and their effect on the effective exchange of information have not yet been tested in practice. This matter is a question of implementation in practice which will be considered during the Phase 2 review of Andorra.

### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendation	Recommendation
To require in all cases that prior notification be given to the affected parties of the international request for information may unduly prevent or delay the effective exchange of information in urgent cases.	It is recommended that certain exceptions from prior notification be permitted, <i>e.g.</i> in cases in which the information requested is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction.



## C. Exchanging information

### Overview

163. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Andorra, the legal authority to exchange information is derived from tax information exchange agreements after the same are ratified by the Parliament. These agreements hold the status of domestic law. This section of the report examines whether Andorra has a network of information exchange arrangements that would allow it to achieve the effective exchange of information in practice.

164. Since its endorsement of the internationally agreed standard for exchange of information for tax purposes in March 2009, Andorra has signed 18 Taxation Information Exchange Agreements (TIEAs), of which 13 are in force. With the exception of a threshold provision regarding the tax at stake as well as the lack of an exemption for rights and safeguards that unduly prevent or delay effective EOI in one agreement (with Liechtenstein), all agreements are in line with the internationally agreed standard for exchange of information in tax matters. Further, Andorra is actively working to expand its network of agreements, currently negotiating TIEAs with Australia, Italy and Poland as well as having initiated negotiations with a number of other jurisdictions. Andorra has not yet signed any DTCs. However, there are no provisions within its law preventing it to do so.

165. Andorra's international agreements have not been given full effect through domestic law as there are some limitations on the availability of information and on the authorities' powers to obtain necessary information for the purpose of information exchange.

166. Andorra is taking important steps to develop its information exchange network, including with its key economic partners and other relevant jurisdictions. It should continue to develop this network with all relevant partners, should ensure that negotiations commence and progress effectively, and should continue to work to bring concluded agreements into force as quickly as possible.

167. The Agreement between Andorra and the European Union on Savings Taxation, effectively applied since 1 July 2005, provides for measures equivalent to those laid down in Directive 2003/48/EC on Taxation of Savings Income in Form of Interest Payments (Savings Directive – SD). Andorra therefore applies a withholding tax on certain savings income to individuals resident in EU member states. Article 12 of the Agreement also provides that tax authorities of the Principality of Andorra and of EU Member States shall exchange information concerning the income covered by the Agreement on conduct constituting a crime of tax fraud or the like under the laws of the requested state.

### C.1. Exchange of information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

168. Andorra has TIEAs in force with the following 13 jurisdictions: Austria, Denmark, the Faroe Islands, Finland, France, Liechtenstein, Monaco, the Netherlands, Norway, Portugal, San Marino, Spain and Sweden. In addition it has signed TIEAs with 5 other jurisdictions: Argentina, Belgium, Germany, Greenland and Iceland. All of these agreements provide for exchange of information to the international standard. Given the fact that Andorra until recently did not have a direct tax system, it has not yet signed any DTCs. However, the legislation specifically relates to both TIEAs and DTCs (Art. 1 EOI Act).

169. Andorran authorities advise that three EOI requests have so far been received. Andorra has so far not sent any EOI requests. Its oldest agreements in force are the TIEAs with Austria, France, Monaco and San Marino which entered into force in December 2010.

#### *Foreseeably relevant standard (ToR C.1.1)*

170. The international standard for exchange of information provides that the competent authority of the contracting states shall exchange such information as is foreseeably relevant to secure the correct application of the provisions of the convention or of the domestic laws of the contracting states. The commentary to Article 26(1) of the OECD *Model Tax Convention* provides that the standard of “foreseeable relevance” is intended to provide for exchange of information in tax matters to the widest extent possible. It does not allow “fishing expeditions”.

171. Andorra’s TIEAs provide for the exchange of information that is foreseeably relevant for carrying out the provisions of the Convention or of the domestic tax laws of the Contracting States.

172. However, the agreement with Liechtenstein provides in Article 7(1) (d) that the requested State may decline a request if the amount of tax or duty in question does not exceed the threshold of EUR 25 000. Although this agreement allows an exception to this rule when the case is ‘deemed to be extremely serious by the applicant party’, there is no guidance as to what constitutes an ‘extremely serious’ case. It is also unclear how the requested party will determine the tax amount, as often the amount of tax involved can only be determined *after* information has been exchanged, and how this rule would be applied in a group of cases, where in each case the tax amount is less than the threshold but the overall tax effect might be large. As this agreement does allow an exception to the rule however, the practical effects of this rule are a matter to be examined in Andorra’s Phase 2 review. However, Andorra in its futures negotiations may wish to consider whether such a requirement is consistent with the international standard.

173. All of the TIEAs require the requesting jurisdiction to provide detailed information when making a request. The requested party may decline to provide the information if the request is not made in conformity with the agreement. These safeguards ensure that the “foreseeably relevant” requirement can be implemented by the jurisdictions.

***In respect of all persons (ToR C.1.2)***

174. For exchange of information to be effective it is necessary that a jurisdiction’s obligations to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

175. All of Andorra’s TIEAs contain an Article dealing with jurisdictional scope which is in line with Article 2 of the OECD Model TIEA. Therefore, all of Andorra’s agreements provide for exchange of information with respect to all persons.

***Obligation to exchange all types of information (ToR C.1.3)***

176. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD *Model Tax Convention* and the OECD *Model TIEA* which are primary authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or

persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

177. All TIEAs signed by Andorra include the provision contained in Article 5(4) of the OECD Model TIEA, which states that a contracting State may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

178. As previously described in Part B.1 of this report, Andorra can obtain and exchange bank information for the purpose of responding to requests made under a prescribed arrangement. However, there are some limitations in Andorra's laws with respect to access to ownership information.

#### ***Absence of domestic tax interest (ToR C.1.4)***

179. The concept of domestic tax interest describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

180. All of Andorra's TIEAs contain the wording of Article 5(4) of the OECD Model TIEA, obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest.

#### ***Absence of dual criminality principles (ToR C.1.5)***

181. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to the information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

182. None of the EOI agreements concluded by Andorra applies the dual criminality principle to restrict the exchange of information.

#### ***Exchange of information in both civil and criminal tax matters (ToR C.1.6)***

183. All of the EOI agreements concluded by Andorra provide for the exchange of information in both civil and criminal tax matters.



***Provide information in specific form requested (ToR C.1.7)***

184. All of Andorra’s TIEAs contain specific provisions stating that the competent authority of the requested Party shall provide information to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

***In force (ToR C.1.8)***

185. For effective exchange of information a jurisdiction must have exchange of information arrangements in force. Where exchange of information agreements have been signed, the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

186. Andorra has signed 18 TIEAs. Thirteen of these agreements are in force, with: Austria, Denmark, the Faroe Island, Finland, France, Liechtenstein, Monaco, the Netherlands, Norway, Portugal, San Marino, Spain and Sweden. On average it has taken slightly more than one year for the agreements to be ratified. The longest period between signing and ratification was 16 months (agreement with Portugal).

187. Not yet in force are the TIEAs with Argentina, Belgium, Germany, Greenland and Iceland. All these six agreements were signed on 22 April 2010 or later. Andorran authorities advise that Andorra has finalised the ratification process for all of these agreements, with the exception of the agreement with Germany which has been submitted to Parliament.

***Be given effect through domestic law (ToR C.1.9)***

188. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement. Andorra has through its EOI Act 2009 and its EOI Regulation 2011 enacted domestic legislation<sup>33</sup>, that:

- lifts bank secrecy in cases where information accessed by Andorran authorities for EOI purposes; and
- appoints the Minister of Finance as competent authority for exchange of information.

33. The EOI Act entered into force 21 December 2009. Its “Second Final Provision” states that “[t]his Law is applicable for information requests filed under the information exchange agreements or double taxation agreements granted after its entry into force and referring to the tax financial years beginning after the date of signature of the said instruments or tax obligations created from the same date.” All of Andorra’s TIEA’s are ratified post 2010 and thus the EOI Act applies to all of them.

189. However, as detailed in sections A.1, A.2 and B.1 of this report, there are some limitations in the availability of information in Andorra and access to information by Andorran authorities. Thus, Andorra cannot be considered to have given full effect to these arrangements through domestic law.

### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
Andorra's arrangements providing for international exchange of information have not been given full effect through domestic law as there are some limitations on the authorities' powers to obtain necessary information for the purpose of international information exchange.	Andorra should ensure that its domestic laws allow for effective exchange of information.
One of Andorra's 18 signed agreements does not provide for exchange of information to the international standard.	It is recommended that Andorra bring this arrangement up to the international standard.

## C.2. Exchange-of-information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

190. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations, in particular with those jurisdictions that have a reasonable expectation of requiring information in order to properly administer and enforce its tax laws, it may indicate a lack of commitment to implement the standards.

191. The assessment team noted that the Andorran economy is particularly dependent on banking and finance, and that this sector ranks high among the largest sectors of activity in Andorra accounting for 15.7 % of its

GDP in 2009.<sup>34</sup> In terms of foreign trade, Andorra's main trading partners are (in order) Spain, France, Germany and Italy. TIEAs are in force with Spain and France, about to be ratified with Germany and discussions are at an early stage with Italy. These four countries alone cover almost 88% of Andorra's total trade<sup>35</sup> and more than 90% of direct investments into the country<sup>36</sup>. In terms of Andorra's population, in 2005 only 36.7% of the 77 000 inhabitants were Andorran citizens. About 36.5% were Spanish, 13% Portuguese and 6.6% French.<sup>37</sup>

192. Before its March 2009 endorsement of the international standard for EOI, Andorra did not have any international agreement for the exchange of information in direct tax matters, with the exception of an agreement with the EU on savings taxation.<sup>38</sup> Since then, Andorra has signed 18 TIEAs, of which 13 are in force, with; Austria, Denmark, the Faroe Island, Finland, France, Liechtenstein, Monaco, the Netherlands, Norway, Portugal, San Marino, Spain and Sweden. Agreements have been signed with Argentina, Belgium, Germany, Greenland and Iceland. With the exception of the agreement with Germany, Andorra has finalised the ratification process for all of these eight agreements. Andorra's 18 signed agreements cover:

- 10 members of the European Union;
- 12 OECD members;
- 2 G20 members; and
- 16 members of the Global Forum.

193. In addition, Andorra is actively working to expand its TIEA network. It is in negotiations to establish TIEAs with Australia, Italy and Poland. Negotiations have also been initiated with a number of other countries including the United States.

34. [www.estandardsforum.org/system/briefs/227/original/brief-Andorra.pdf?1293052938](http://www.estandardsforum.org/system/briefs/227/original/brief-Andorra.pdf?1293052938), accessed 16 March 2011.

35. Figures for 2000. Source: [www.nationsencyclopedia.com/Europe/Andorra-FOREIGN-TRADE.html#ixzz1GwcWk31Y](http://www.nationsencyclopedia.com/Europe/Andorra-FOREIGN-TRADE.html#ixzz1GwcWk31Y), accessed 16 March 2011.

36. Figures for 2009 and 2010. Source: Andorran authorities.

37. [www.ceps.eu/ceps/download/1398](http://www.ceps.eu/ceps/download/1398), accessed 16 March 2011.

38. Article 12 of the Agreement between Andorra and the European Union on Savings Taxation provides that tax authorities of the Principality of Andorra and of EU Member States shall exchange information concerning the income covered by the Agreement on conduct constituting a crime of tax fraud or the like under the laws of the requested state.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	Andorra should continue to develop its EOI network with all relevant partners.

### C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

#### *Information received: disclosure, use and safeguards (ToR C.3.1)*

194. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, countries with tax systems generally impose strict confidentiality requirements on information collected for tax purposes. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

195. All agreements concluded by Andorra meet the standards for confidentiality including the restrictions on the disclosure of the information received and also use thereof by a contracting party. The agreements provide that any information received by a Contracting Party under the Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by the Contracting Party. The agreements also provide for the restriction on disclosure of information received and these provisions comply with the requirements of the international standards.

196. The confidentiality requirements of the global standard are implemented in Andorran law through Article 6 of the EOI Act which states that:

*Any information sent to the applicant State under this Law remains confidential, in the same way that the information obtained under the internal laws of that State can only be disclosed to persons and authorities, including courts and administrative bodies, concerned with the assessment or collection of the taxes defined in the information exchange agreement or relevant double taxation agreement, in respect of the proceedings relating to these taxes or for the claims or the determination of appeals relating to the same.*

*These persons or authorities shall use such information only for such purposes. Nevertheless, they may disclose this information in public court proceedings or in judicial decisions.*

197. Andorran authorities have indicated that this provision also applies to information received by Andorra.

198. In addition, provisions in Andorra's TIEAs override contradicting domestic legislation. Therefore Andorra's authorities are required to keep confidential all information received as part of a request or as part of a response to a request regardless of any provisions in other laws.

### ***All other information exchanged (ToR C.3.2)***

199. The confidentiality provisions in Andorra's agreements use the standard language of Article 8 of the OECD *Model TIEA* or language comparable to that Article and do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

### **Determination and factors underlying recommendations**

Phase 1 determination
The element is in place.

#### C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

##### *Exceptions to requirement to provide information (ToR C.4.1)*

200. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

201. All of the agreements concluded by Andorra incorporate wording modelled on Article 7 paragraphs 2 and 3 of the OECD *Model TIEA*, providing that requested jurisdictions are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney-client privilege/legal privilege or information the disclosure of which would be contrary to public policy. All of Andorra's agreements are therefore to the standard in this respect.

202. As previously described in B.1, it is not clear that the attorney-client privilege defined in the Criminal Procedure Act is limited to information obtained in the course of providing legal advice or legal representation. However, on the face of it, the provision in the EOI Regulation concerning legal professional privilege, a more specific law which was enacted after the Criminal Procedure Code, takes precedence over the Criminal Procedure Act provision. This is a question of implementation in practice which will be considered during the Phase 2 review of Andorra.

203. The 2002 *Model TIEA* states in Article 1 that “the rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information”. This provision is included in all of Andorra's TIEAs with the exception of the agreement with Liechtenstein. In this agreement, the last part of the sentence “to the extent that [...]” is omitted. The absence of this additional provision has the potential to prevent or delay the exchange of information by Andorra due to broad rights available to taxpayers under Article 8 EOI Act, as discussed in Part B of this report. Therefore, also in this respect, the agreement with Liechtenstein may not be to the standard.

*Notification of taxpayers*

204. The Protocol in Andorra’s agreement with Liechtenstein contains a provision stating that:

With respect to Article 5 paragraph 1, it is understood that the taxpayer is to be informed about the intention to make a request for information.

205. This obliges the requesting jurisdiction to inform the taxpayer of their intention to make a request. There is no exception from notification in the TIEA. Further, the notification must be made in civil as well as in criminal cases. In the absence of an exception, there is a possibility of jeopardising the success of investigations, and to this extent this agreement is not to the standard, and accordingly, Andorra is advised to provide for exceptions in all of its agreements.

**Determination and factors underlying recommendations**

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
The absence of exceptions to the requirement in the TIEAs with Liechtenstein to notify taxpayers has the potential to prevent or delay the exchange of information by Andorra.	It is recommended that the TIEA with Liechtenstein be updated to allow exceptions to the requirement to notify taxpayers

**C.5. Timeliness of responses to requests for information**

The jurisdiction should provide information under its network of agreements in a timely manner.

***Responses within 90 days (ToR C.5.1)***

206. In order for exchange of information to be effective, the information needs to be provided in a timeframe which allows tax authorities to apply it to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

207. There are no provisions in Andorra’s agreements pertaining to the timeliness of responses or the timeframe within which responses should be provided. As such, there appear to be no legal restrictions on the ability of

the competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. Further, Art. 4(2) of the EOI Act provides for the competent authority to confirm receipt of the request and to carry out all necessary actions to provide the requested information as promptly as possible.

208. As noted above, the TIEA with Liechtenstein’s has a protocol which inter alia provide that “it is understood that the taxpayer is to be informed about the intention to make a request for information”. Further, there are broad rights available to the taxpayer and the holder of information. This has the potential to prevent or delay effective exchange of information (see Part B.1 of this report). This issue will be the subject of analysis in the Phase 2 review of Andorra’s exchange of information practices.

### ***Organisational process and resources (ToR C.5.2)***

209. Andorra enacted Law 3/2009 on the exchange of information on tax matters upon request and passed the corresponding Regulation to implement Law 3/2009 on the exchange of information on tax matters upon request. This created a domestic framework for implementing the obligations arising out of the international exchange of information agreements signed by Andorra.

210. Article 3(a) of the EOI Act provides that the Minister of Finance is the competent authority for international administrative assistance pursuant to a DTC or TIEA. The Minister of Finance accepts requests from foreign competent authority. A review of Andorra’s organisational process and resources will be conducted in the context of its Phase 2 review.

### ***Absence of restrictive conditions on exchange of information (ToR C.5.3)***

211. There are no aspects of Andorra’s agreements or its laws that appear to impose additional restrictive conditions on the exchange of information.

## **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>



## Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	With the exception of obligations to maintain some information under AML law and accounting law, Andorra does not provide sanctions for non-compliance by companies, partnerships or foundations with obligations to maintain ownership information or to submit such information to government authorities.	In so far as they are not currently provided, effective sanctions should be introduced for legal and natural persons which fail to comply with requirements to maintain and file information on their owners.
	There is no obligation requiring identification of beneficiaries with less than a 25% interest in those foreign trusts which have Andorran trustees or which are administered in Andorra.	Andorra should establish clear provisions in its laws to ensure availability of information on all beneficiaries of foreign trusts which are administered in Andorra or have an Andorran trustee.
	Issuance of bearer shares was prohibited in 1983 and action is in progress to ensure the availability of full ownership information for the 18 remaining companies with bearer shares.	Andorra should progress its action to ensure availability of full ownership information for these 18 companies as quickly as possible.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Andorran legislation does not ensure that reliable accounting records or underlying documentation are kept for foreign trusts with an Andorran-resident administrator or trustee.	All administrators and trustees of foreign trusts should be required to maintain reliable accounting records for the trusts including underlying documentation. These records should be kept for a minimum of 5 years.
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
<b>The element is in place.</b>		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	While the competent authority can obtain information on the ownership of relevant entities from other government authorities, Andorran legislation does not provide the competent authority with powers to access ownership information held by third parties or by the entities themselves, except from banks and other financial institutions.	The competent authority should be granted the well-defined powers to obtain all relevant information in the possession or control of all persons within Andorra's territorial jurisdiction for the purpose of exchange of information.

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. (ToR B.2)		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	To require in all cases that prior notification be given to the affected parties of the international request for information may unduly prevent or delay the effective exchange of information in urgent cases.	It is recommended that certain exceptions from prior notification be permitted, e.g. in cases in which the information requested is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction.
Exchange of information mechanisms should allow for effective exchange of information. (ToR C.1)		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Andorra's arrangements providing for international exchange of information have not been given full effect through domestic law as there are some limitations on the authorities' powers to obtain necessary information for the purpose of international information exchange.	Andorra should ensure that its domestic laws allow for effective exchange of information.
	One of Andorra's 18 signed agreements does not provide for exchange of information to the international standard.	It is recommended that Andorra bring this arrangement up to the international standard.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. (ToR C.2)		
<b>The element is in place.</b>		Andorra should continue to develop its EOI network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. (ToR C.3)		
<b>The element is in place.</b>		

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
<b>The element is in place.</b>	The absence of exceptions to the requirement in the TIEAs with Liechtenstein to notify taxpayers has the potential to prevent or delay the exchange of information by Andorra.	It is recommended that the TIEA with Liechtenstein be updated to allow exceptions to the requirement to notify taxpayers.
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>		

## Annex 1: Jurisdiction’s Response to the Review Report<sup>39</sup>

Andorra sincerely appreciates the excellent work carried out by the assessment team in evaluating the Andorran legal and regulatory framework.

We acknowledge that the Andorran legal and regulatory framework still contains some deficiencies and the Andorran Government will give careful consideration to the recommendations for improvement included in this report, and will ensure that the OECD standards of exchange of information are complied with and applied correctly.

We would like to emphasize that the peer review of Andorra was given high priority in the Andorran Government. During the evaluation process Andorra had early elections and the entry of the new Government was on 16<sup>th</sup> May. Even so, on the 1<sup>st</sup> June it made necessary amendments to the Exchange of Information Regulation which was published on the 29<sup>th</sup> of June in the Andorran Official Gazette and entered into force the day after its publication.

During the last two years, Andorra has been strongly committed to a process of greater transparency. Following the Paris Declaration of 10<sup>th</sup> March 2009, the Principality implemented a process for adopting the OECD’s international standards for exchange of information and began a process of legislative reform to modify the bank secrecy legislation for exchange of information purposes in compliance with Article 26 of the OECD Convention.

A process was subsequently initiated to bring Andorra into line with other OECD countries.

On 7<sup>th</sup> September 2009 the General Council of Andorra adopted the Law 3/2009 for the Exchange of tax information upon prior request. Following the ratification of the law, between September 2009 and November 2010, the Government of Andorra has signed 18 bilateral agreements and, in order to expand its TIEAs network, is now actively working with Australia, Italy, Poland, South Korea and has initiated negotiations with other jurisdictions, members of the OECD and of the G20, such as the USA, the United Kingdom, Ukraine, the Czech Republic, Canada and Brazil.

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39. This Annex presents the jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.

It is important to remark that Andorra has already signed agreements with its most relevant partners which are: France, Spain and Portugal (all of them already in force) and is going to negotiate DTCs.

Furthermore Andorra is going to amend the Agreement signed with Liechtenstein within a short period of time to provide for exchange of information to the international standard.

We would like to point out that Andorran legislation does not recognise the concept of trust and the Foundation Act, in its Additional provision, states that “While there is no law which expressly regulates them, no foundations of personal interest or family foundations may be formed”. Andorran legislation on corporations only allows the creation of companies and legal entities under the Andorran legislation.

Regarding the abolished bearer shares it is important to note that from the remaining 17 companies only one has Government authorisation to conduct business. Mid-May this year, the Andorran Government contacted each company, directly where possible or (in 12 cases) via Edict issued by the Minister of Economy and published in the Official Gazette, asking them to contact the Companies Register within two months in order to notify the Register of the identity of the holders of the bearer shares. To ensure that they comply, on the 20<sup>th</sup> July a preventive note has been entered in the Companies Register and the companies are not eligible to obtain a Government authorisation to perform economic activities until that preventive note is removed.

We inform you that some of the recent actions of the Government have been related to further banking regulation, AML regulation and the signature of the Monetary Convention with the European Union last June.

Additionally to that explained above, during the next months the Andorran Government will focus on further adjustments, improvements and extensions of the Andorran legislation, further signing of MoUs by the supervisory body of the Andorran financial sector (INAF) with other countries, a greater economic openness with the application of the corporation tax as well as the tax on income from economic activities that will enter into force at the beginning of 2012. Also, a Value Added Tax Bill will be introduced to Parliament by September this year. The law is expected to enter into force in January 2013. This new legal framework will allow the Andorran Government to initiate negotiations of double tax conventions with its relevant partners.

This report demonstrates that Andorra is fully committed to the international standards for transparency and exchange of information and that the Andorran Government will continue to improve its legal framework while ensuring the level playing field.

## Annex 2: List of all Exchange-of-Information Mechanisms in Force

	Treaty partner	Type of EOI arrangement	Date signed	Date in force
1	Argentina	TIEA	26-10-2009	Not in force
2	Austria	TIEA	17-09-2009	10-12-2010
3	Belgium	TIEA	23-10-2009	Not in force
4	Denmark	TIEA	24-02-2010	13-02-2011
5	Faroe Islands	TIEA	24-02-2010	18-06-2011
6	Finland	TIEA	24-02-2010	12-02-2011
7	France	TIEA	22-09-2009	22-12-2010
8	Germany	TIEA	25-11-2010	Not in force
9	Greenland	TIEA	24-02-2010	Not in force
10	Iceland	TIEA	24-02-2010	Not in force
11	Liechtenstein	TIEA	18-09-2009	10-01-2011
12	Monaco	TIEA	18-09-2009	16-12-2010
13	Netherlands	TIEA	06-11-2009	01-01-2011
14	Norway	TIEA	24-02-2010	18-06-2011
15	Portugal	TIEA	30-11-2009	31-03-2011
16	San Marino	TIEA	21-09-2009	07-12-2010
17	Spain	TIEA	14-01-2010	10-02-2011
18	Sweden	TIEA	24-02-2010	11-02-2011

### **Annex 3: List of all Laws, Regulations and Other Relevant Material**

#### ***Company law***

Companies Act (Llei 20/2007)

Companies Register Regulation (Reglament 26.03.2008)

#### ***Partnership law***

Companies Regulation (Reglament 21.12.1983)

#### ***Taxation law***

Withholding Tax Act (Llei 94/2010)

Corporation Tax Act (Llei 95/2010)

Business Tax Act (Llei 96/2010)

#### ***Accounting law***

Accounting Act (Llei 30/2007)

General Accounting Plan (Decret 23.07.2008)

Accounting Register Regulation (Reglament 09.06 2010)

#### ***Foundation law***

Foundation Act (Llei 11/2008)

Foundation Register and Protectorate Regulation (Reglament 01.042009)



***AML and financial regulation law***

- Anti Money Laundering Act (Llei 28/2008)
- Anti Money Laundering Regulation (Reglament 13.05.2009)
- Bank Secrecy and AML Act (Llei 11.05.1995)
- Banking Act (Llei 14/2010)
- Collective Investment Scheme Act (Llei 10/2008)
- Financial Entities Authorisation Act (Llei 35/2010)
- Financial System Disciplinary Regime Act (Llei 27.11.1997)
- Foreign Investment Act (Llei 2/2008)
- Foreign Investment Regulation (Reglament 08.10.2008)
- Andorran National Institute of Finance (INAF) Act (Llei 14/2003)
- Investment Bank and CIS Management Act (Llei 13/2010)

***Information Exchange for Tax Purposes law***

- Exchange of Information Act (Llei 3/2009)
- Exchange of Information Regulation (Reglement 29.06.2011)

***Other legislation***

- Parliamentary Decree of 10 October 1981
- Andorran Constitution (1993)
- Economic promotion, etc. Act (Llei 93/2010)
- Penal Code (Llei 9/2005)
- Association Act (Llei 29.12.2000)
- Penal Procedure Act (Llei 10.12.1998)
- Public Finances Act (Llei 19.12.1996)

Andorran legislation is available at: [www.bopa.ad/bopa.nsf/home?OpenFrameSet](http://www.bopa.ad/bopa.nsf/home?OpenFrameSet) under “Tractats internacionals i Lleis”.

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The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

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# Global Forum on Transparency and Exchange of Information for Tax Purposes

## PEER REVIEWS, PHASE 1: ANDORRA

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. "Fishing expeditions" are not authorised, but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

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