GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

ANDORRA

OECD

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PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

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as at May 2014)

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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 120 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 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 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. 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.

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 and www.eoi-tax.org.

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Andorra as well as the practical implementation of that framework. 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. In 2012 Andorra gross domestic product (GDP) was EUR 2.5 billion with a GDP per capita of EUR 35 952. Its tax system has until recently been almost exclusively based on various indirect taxes. On 1 April 2011, a 10% tax on income on non-resident companies and individuals came into force. Further, Andorra adopted legislation regarding a corporation tax, a tax on income from economic activities which entered into force on 1 January 2012, and a value added tax which entered into force on 1 January 2013. A tax and customs agency was created in 2014.

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 22 TIEAs, of which 19 are in force. In November 2013, Andorra signed the OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters.

4. Andorran law requires that ownership information is maintained for all Andorran companies 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. The requirement to update ownership information of companies to the public authorities is reinforced by a system of sanctions which was introduced in 2013 and became effective in 2014. Even before the system of sanctions on companies was introduced, ownership information maintained with the authorities was generally reliable, and Andorra was able to exchange ownership and identity information with the requesting partners.

5. Andorran law does not allow nominee ownership, and Andorran courts have upheld this prohibition. Foreign companies which are centrally managed and controlled within Andorra through a branch, are required to have information available on those persons who own more than 10% 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. The availability of accounting records in practice is ensured through the monitoring that the tax authorities as well as the registrar of companies do when receiving annual accounts of entities. However, some accounting records are submitted in a simplified form. With regard to underlying documentation, there is no system in place to monitor their availability in practice.

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. The obligations for the banks and financial institutions to keep information are monitored by the Andorran Financial Services Authority and by the Financial Intelligence Unit.

8. Andorra's competent authority, the Minister of Finance, has the necessary powers to access accounting information held by companies, foundations and foreign branches, although in practice, the competent authority has never used these powers. 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.

9. Where the competent authority acts on an international request for information, domestic law provides that 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. Even though Andorra's EOI arrangements provide for information to be kept confidential, domestic legislation in Andorra allows the person under investigation in the requesting jurisdiction as well as the information holder to inspect the dossier kept by the Andorran competent authority, and there are no exceptions to the possibility of disclosure of the dossier (including the EOI request) if so indicated by a requesting jurisdiction.

10. During the period under review (July 2010-June 2013), Andorra received 29 requests for information from four partners. In 2011, Andorra created an EOI Unit within the Ministry of Finance and increased the resources by hiring new staff and improving the IT systems. The operational process has also improved with experience. Nevertheless, during the review period, the timeliness of response was generally slow and communication with partner jurisdictions was not always effective, including a lack of status updates in cases where a reply to an EOI request could not be provided within 90 days.

11. Andorra has been assigned a rating for each of the ten essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Andorra's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Andorra has been assigned the following ratings: Compliant for elements A.3, C.2 and C4, Largely Compliant for elements A.1, A.2, and C.1, Partially Compliant for elements B.1, B.2, C.3 and C5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Andorra is Partially Compliant.

12. A follow up report on the steps undertaken by Andorra to answer the recommendations made in this report should be provided to the PRG within twelve months after the adoption of this report.

Introduction

Information and methodology used for the peer review of Andorra

13. The assessment of the legal and regulatory framework of Andorra and the practical implementation of this framework 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 has been conducted in two stages: Phase 1 assessed Andorra's legal and regulatory framework for the exchange of information as at June 2011, while Phase 2, conducted in 2014 in relation to a three year period (July 2010 through June 2013), looked at the practical implementation of that framework, as well as any amendments made to the legal and regulatory framework since the Phase 1 review.

14. 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 May 2014. It reflects Andorra's responses to the Phase 2 questionnaire and supplementary questions, information supplied by partner jurisdictions, and other relevant sources, including information supplied during the on-site visit in Andorra la Vella in November 2013. During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance (including the EOI Unit), the Companies Register of the Ministry of Economy, the Ministry of Foreign Affairs, the Tax and Customs Agency, the Register of Foundations, the Andorran Financial Services Authority (INAF), the Financial Intelligence Unit (FIU), the Andorran Bar Association, the Andorran Chamber of Notaries, the Andorran Economists College. A list of all those interviewed during the onsite visit is attached to this report at Annex 4.

15. 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. In addition, to reflect the Phase 2 component, recommendations are made concerning Andorra's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. An overall rating is also assigned to reflect Andorra's overall level of compliance with the standards.

16. The Phase 1 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 Administracioón Federal de Ingresos Publicos; and Mr. Beat Gisler from the Global Forum Secretariat. During the Phase 2 review, the assessment team was composed of: Mrs. Manon Helie, from the Canada Revenue Agency, Mr. Juan Pablo Barzola, from the Argentina Administración Federal de Ingresos Publicos, Mrs. Mélanie Robert and Mr. Francesco Positano from the Global Forum Secretariat.

Overview of Andorra

17. 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^2 (181 $miles^2$) with a population in 2012 of 69 758 inhabitants, only 49.1% of whom are Andorran citizens: 24.6% are Spanish, 14.3% Portuguese and 3.9% French citizens who are allowed to reside in the country under a quota system. Only Andorran citizens have the right to vote and to hold political office. The official language is Catalan.

18. While not a member of the European Union, in 2002 the Euro was adopted as Andorran currency. Additionally, on 30 June 2011, Andorra signed a Monetary Agreement with the European Union, by which Andorra has the right to have the Euro as its official currency and to issue Andorran EURO coins. Andorra's 2012 Gross Domestic Product (GDP) was EUR 2.5 billion with a GDP per capita of EUR 35 952. After several years of considerable growth, the economy experienced a contraction in 2007-12. In 2012, the services sector accounted for 24.9% of GDP, the financial and insurance sector represented 16.1% of the GDP, the public administration, health and education

sector accounted for 12.4% of the GDP and real estate activities represented 8.9% of the GDP. Andorra's main trading partners are Spain, France and other EU countries, which together account for more than 90% of trade. Also, Andorran authorities advise that in 2011 and 2012 France and Spain accounted for more than 80% of all foreign direct investment.

19. Foreign investment in Andorra is regulated by the Foreign Investment Law 2012, which repealed the Foreign Investment Act 2008. Foreign investment is now generally unrestricted, while up to 2012, Andorra limited foreign ownership from 33% to 49%, although some exceptions applied.

20. Pursuant to the Foreign Investment Law 2012, any person making a foreign investment is obliged to inform the Register of Foreign Investments of its existence. A foreign investment is defined as the acquisition of assets located in Andorra by *(i)* persons non-resident in Andorra, not of Andorran nationality; *(ii)* legal entities of foreign nationality; *(iii)* Andorran companies with foreign holdings in their capital or voting rights, directly or indirectly, of a percentage equal to or over 50% (Foreign Investment Law, Art. 1). A direct investment is considered as the holding in Andorran companies or the formation or extension of branches or other types of permanent establishment (Foreign Investment Law, Art. 8). No prior authorisation from the Government is necessary, unless direct investments consist of acquiring holdings or rights in an Andorran company when, as a result of the acquisition, the acquirer holds directly or indirectly over 10% of the share capital or voting rights (Foreign Investment Law, Art. 10). Prior authorisation must also be obtained from the ministry competent in matters of foreign investment for direct investments consisting of opening or extending branches or other types of permanent establishment in any business activity which is to be developed.

21. Prior authorisation from the Government is also foreseen to ensure compliance with international agreements regarding prevention of money laundering and the financing of terrorism. Foreign investments will not be authorised when it is made by persons resident, domiciled or, in the case of legal entities, nationals of any of the countries considered non-co-operative in matters of money laundering and the financing of terrorism, as defined by the Financial Action Task Force (FATF) or the international body competent in the matter, or by individuals or legal entities on which the bodies in charge of the prevention of money laundering and the financing of terrorism report unfavourably (Foreign Investment Law, Art. 2).

General information on the legal and tax system

Legal system

22. Andorra is a member of the United Nations and the Council of Europe but not the European Union (EU). 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.

23. 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 Urgell. In 1993, the country adopted its first Constitution and became a parliamentary democracy. The French President and the Spanish Bishop of Urgell 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 (*Comuns*), subject to the Andorran Constitution, the law and traditions (Art. 79 Constitution).

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

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

- 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.

26. The Andorran legal system is mostly based on Roman law. 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

27. 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 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), tax on income from economic activities (Business Tax Act – Law 96/2010 of 29 December 2010) which entered into force on 1 January 2012, and, value added tax (Indirect General Tax Act 2012), in force since 1 January 2013. Andorran tax systems rely on access to ownership information required to be registered in public registers and accounting based on Andorran accounting law. Since 2013, accounting records have to be provided to the tax administration.

28. Government revenues are derived mainly from indirect taxes (70%) which come from collection of import and consumption taxes, being approximately a 70% of the total indirect taxes. Direct taxation represents 9.80% of the state's current revenues. From those, the most significant revenue comes from the corporate tax representing 49.05% and the non-resident income tax which represents 35.36%. Additionally, for year 2013 there was an extraordinary distribution of dividends of EUR 40 million from their public companies, which represents 12.64% of income.

29. On 8 January 2014, the Government of Andorra passed the Decree on the creation and operation of the Tax and Customs Agency, which joins both departments in one and will be in charge of management, liquidations, collection, inspection and ensuring application of the sanctions under the criteria of unity of actions. The Tax and Customs Agency will be responsible for the implementation of the tax system. This department will be staffed with 103 people and will be divided into four big action groups: General Affairs and Tax Collection, Management and Tax payer Assistance, Tax Inspection and Customs and Foreign trade. On 24 April 2014, Andorra passed Law 5/2014

introducing an income tax for individuals which will be effective from 1 January 2015.

30. 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). 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.

31. 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.

32. 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.[1] Andorra is now signatory to 22 TIEAs and the OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters which provide for exchange of information to the standard with 77 jurisdictions. Nineteen of these TIEAs are in force. A complete list of the agreements providing for exchange of information in tax matters which have been concluded by Andorra is set out in Annex 2 to this report. TIEAs are signed by the Head of Government (Prime Minister) or Minister for Foreign Affairs, and then submitted by the Government 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, or his authorised representative.

Overview of the financial sector and relevant professions

33. The financial system is a relevant source of economic activity, second only to tourism. On December 2012, the five Andorran financial groups, led by banking entities, employed more than 2 000 individuals and the financial sector was responsible for approximately 16.1% of the GDP. Additionally,

1. www.tax-news.com/news/Andorra_Announces_OECD_Cooperation____35600.html, accessed 16 March 2011.

on September 2013, assets under management (AuMs) of Andorran banking groups were EUR 39.3 billion and AuMs of Andorran banking entities on an individual basis were EUR 24.5 billion (on December 2010, those figures were up to EUR 27.5 billion and EUR 25.7 billion respectively). Since 2010, most of the increase in the AuMs managed by Andorran banking groups was driven by the increase of AUMs managed by financial and banking subsidiaries of the Andorran banks, which is the result of the international expansion undertaken by some Andorran banking groups, mainly through the acquisition of financial and banking subsidiaries. Collective investment schemes (CIS) and life insurance businesses are of increasing importance.[2] These two sectors are mainly regulated in the Law regulating Andorran Collective Investment Undertakings of 12 June 2008, the Law 7/2013, on the legal regime of the entities of the Andorran Financial System, the Law 8/2013 on the organisational requirements and functioning conditions of the entities of the Andorran Financial System and the Law Regulating Insurance Companies of 11 May 1989.

34. In order to establish a financial institution in Andorra it is necessary to obtain a prior authorisation from the INAF (Financial Entities Authorisation Act, Art. 3). Furthermore, foreign participation of more than 10% in an Andorran financial institution is subject to the prior authorisation of the Government pursuant to the Foreign Investment Law (Financial Entities Authorisation Act, Additional Provision Three). Direct investments in non-financial Andorran entities, to be made by foreign financial institutions, may not exceed, directly or indirectly, the percentage holding in the share capital established in the regulations governing the current financial system (Foreign Investment Law, Art. 10(4)). In this case, before the Ministry competent in matters of foreign investment takes a resolution, a report from INAF shall be obtained. (Foreign Investment Law, Art. 18(2)).

35. On January 2014, the financial sector was comprised of 5 banking groups (which include 6 banks), 7 asset management firms of collective investment schemes, 1 investment management firm, 2 brokerage firms, 3 asset management firms, 2 investment advisors and 1 non-banking entity carrying on lending operations. In addition there are two professional associations: l'Associació de Bancs Andorrans (ABA) and l'Associació d'entitats financeres d'inversió (ADEFI).

36. The Andorran Financial Services Authority (INAF) is a public entity with its own legal status and full capacity to operate either publicly or privately, independently from the central government. As the authority of the Andorran financial system, the INAF promotes and supervises the adequate functioning of the Andorran financial system. Among others, it

2. www.imf.org/external/pubs/ft/scr/2007/cr0769.pdf.

ensures the enforcement of laws and regulations to safeguard the stability of the Andorran financial system, promoting confidence in it. In this context, it carries out the necessary actions required for the exercise of its functions. The Andorran Financial Intelligence Unit (FIU) is an independent organisation created to foster and co-ordinate measures to prevent money laundering and terrorist funding. This unit was created in 2000 under the Law for International Cooperation on Criminal Matters and the Combat against the Laundering of Money or Securities arising from International Crime (AML Act).

Recent developments

37. Andorra and Luxembourg signed a Double Taxation Convention on 2 June 2014. On 18 June 2014, Andorra has become signatory to the OECD Declaration on Automatic Exchange of Information in Tax Matters of 6 May 2014. On 23 June 2014, the Government initiated the parliamentary procedures to pass "urgent modifications" to the EOI Act and the EOI Regulation providing for exceptions to prior notification and stronger confidentiality rules. This legislation was enacted by the Parliament on 26 June 2014.

Compliance with the Standards

A. Availability of Information

Overview

38. 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.

39. Ownership of Andorran companies is strongly regulated. 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 more than 10% of the company. Three branches of foreign companies are registered.

40. Bearer shares were abolished in 1983, with a 20 year transitional period. A provision in the Companies Act – effective since 26 February 2014 – was passed to eliminate the bearer shares that were issued prior to 1983 and Andorra should ensure that the new provision is effectively implemented. Nominee ownership is forbidden in Andorra.

41. 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.

42. Sanctions to ensure the availability of updated ownership and identity information of companies were introduced in 2014, when an amendment to the Companies Act entered into force. As these sanctions have only been recently introduced, their effectiveness could not be evaluated in practice, and Andorra should monitor that these enforcement measures are effective to ensure the availability of information in practice.

43. In practice, ownership information of relevant entities is generally available to the competent authority in the public registries. Even if up to 2014 there was no sanction for non-compliance with rules regarding maintenance of ownership information of companies nor the provision of updated ownership information to the Companies Register, the Andorran authorities have indicated that such information was in almost all cases submitted to the Companies Register within the time-limit provided in the law and it can be then expected that ownership information contained in the Companies Register was generally reliable. During the period under review (1 July 2010 – 30 June 2013), Andorra was requested to provide ownership and identity information in 15 cases and it provided the requested information in all cases where it has processed the EOI request.

44. Companies 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.

45. The availability of accounting records in practice is ensured through the monitoring that the Companies Register does when it receives annual accounts. Penalties are in place and have been initiated against companies that failed to submit their accounts as prescribed by law. Since 2013, some accounting records must also be submitted to the tax administration. However, there is no system in place to monitor the availability of underlying documentation. During the period under review (1 July 2010 – 30 June 2013), Andorra was asked to provide accounting information in 16 cases regarding companies and individuals. Andorra provided accounting information available with the authorities, which was generally sufficient to reply to the EOI requests which were processed.

46. 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. The banking sector is supervised by two authorities: the Andorran Financial Services Authority (INAF) with regard to the obligations established under the financial legislation, and the Financial Intelligence Unit (FIU) with regard to the compliance of financial institutions with AML obligation. Supervisory activity shows that information is available with banks in Andorra. During the period under review (July 2010-June 2013), Andorra was requested to provide banking information in 19 cases, and provided the information in all cases where the EOI request was processed (3 cases).

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[3] A.1.1)

Types of companies

47. The Companies Act 20/2007 of 18 October 2007 is the central piece of legislation governing corporations in Andorra. This law has been amended in 2013 by Law 28/2013 of 19 December 2013 which came into force in on 26 February 2014. The main changes introduced by this amendment relates to the introduction of sanctions on companies for not updating ownership change to the public authorities (see section A.1.6 below); the obligation on Andorran notaries to transmit information on ownership change to the public authorities; and the abolition of a prior government authorisation to form a company. The Companies Act provides for two types of companies:

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

48. 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

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

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).

49. To come into existence both types of companies need to be registered with the Companies Register (*Registre de Societats Mercantils*), supervised by the Ministry of Economy (Art. 101 Companies Act). As of 22 April 2014 there were 1 525 registered SAs and 6 114 registered SLs.

50. A foreign entity operating a branch (*sucursal*)[4] 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 22 April 2014, there were three branches of foreign companies registered in the Companies Register.

Company ownership and identity information to be provided to government authorities

Companies Register

51. A company is created through the execution of a public deed, authorised by an Andorran Notary, which must be registered with the Companies Register. The company acquires legal entity status with the registration of the certificate of incorporation in the Companies Registry (Companies Act, Art. 7). The Notary who authorises the public deed has the obligation to verify that the deed fulfils all legal requirements. He/she is also obliged to send a copy of the notarised deed to the Companies Registry within 15 days so that it may be registered. The deed of incorporation must include the contributions that each of the members makes and the number of shares or participations that they subscribe to in exchange (Companies Act, Art. 8(1)). Prior to 26 February 2014, when Law 28/2013 of 19 December 2013 amending the Companies Act entered into force, any person wishing to incorporate a company in Andorra had to obtain a prior authorisation from the government

4. 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).

before submitting an application to the Companies Register; other than the requirement to obtain the prior authorisation from the government, the procedures to form a company in Andorra are substantially the same.

52. When registering with the Companies Register, 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.

53. 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). In addition, amended Article 20 of the Companies Act, in force since 26 February 2014, requires that a copy of the share transfer deed must be submitted to the Companies Register by the Notary authorising the deed. The Companies Regulations issued on 16 April 2014 further establish that notaries must submit to the Companies Registry the information envisaged in Article 10 of the Regulations, which include, among others, data on changes in ownership, liquidation, and the establishment of branches by foreign companies. The regulations also require the principle of sequence of the registrations, which means that any new registration will not be made unless the previous ones have been updated. Prior to 26 February 2014, the registration of an ownership change in the Companies Register was done only through a certificate containing a statement recording the change in shareholder or shareholders and/ or ownership of the company shares or stock, the identity of the shareholders, and the shares or stock they prove to own. 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).

54. Before registering a legal entity or any other act, the Companies Register evaluates the legality of the documents received. The Companies Register decides whether to make the registration or not, and has to notify the person, within 15 calendar days (Companies Act, Art. 6 bis (1)). A refusal of registration has to be justified. Prior to 2014, a decision concerning the registration of an entry in the Companies Register was rendered within three months (Companies Register Regulation, Art. 19).

55. Up to 2014, there were no penalties for not updating ownership information to the Companies Register, although the practice shows that ownership information was generally available to the public authorities (see below). In any event, the amendments to the Companies Act in 26 February 2014 introduced sanctions if a company does not update ownership information to the Companies Register (see section A.1.6 below). According to the Transitory Provision contained in Law 28/2013 of 19 December 2013 amending the Companies Act, companies have a period of one year from 26 February 2014 to update the identity of their members and administrators, as well as their registered offices at the Companies Registry.

56. 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 (Foreign Investment Regulations of 28 August 2012).

57. 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 the notary must send a copy of the deed to the Companies Register within 15 days. No prior authorisation from the Government is necessary, unless direct investments consist of acquiring holdings or rights in an Andorran company when, as a result of the acquisition, the acquirer holds directly or indirectly over 10% of the share capital or voting rights (Foreign Investment Law, Art. 10). Prior authorisation must also be obtained from the ministry competent in matters of foreign investment for direct investments consisting of opening or extending branches or other types of permanent establishment in any business activity which is to be developed. 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.

58. 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

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

59. 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.

60. It is the duty of the company's administration to maintain the shareholder register (Art. 21 Companies Act). The administrators of the company must register the transferee in the Register of Shareholders at the request of the member or members. The company will only consider the person who is registered in this book as the shareholder or participant. 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

61. 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). Moreover, Law 28/2013 of 10 December 2013, amending Companies Act, sets out additional measures for the permanent identification of the real owner of shares. In this regard, a new clause in article 15(3) has been introduced, according to which "shares must be allocated to the real shareholder" and "[u]nder no circumstances can shares be issued in the name of anyone other than the actual shareholder."

Ownership and identity information held by service providers

62. Articles 49 and 49 bis AML Act 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.

63. 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. In the case of legal persons that take the form of a company, the AML Act establishes that regulated entities must identify those beneficial owners defined as "the individual or individuals who ultimately control the legal person through direct or indirect ownership or control of a sufficient percentage of its shares or voting rights", that is, the persons who directly or indirectly own or control 25% of the shares or voting rights.[5] The AML Act was amended in 2011 with Law 4/2011 which extended the concept of beneficial ownership to the "individual or individuals who, by any other means, exercise actual management control over the company".

64. 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 of these obligations 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, although the identification of the customer and of the beneficial owner must always be done prior to the first business transaction.

65. 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)

66. 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 was amended in 2013 with Law 28/2013, which extended the CDD obligations to "insurance intermediaries (*corredors d'assegurances*), natural or legal persons who, for remuneration, pursues mediation within the life insurance sector". The AML Act also covers "other

5. 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.

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". Among others, the following persons are mentioned in particular with regards to these activities:

- professional external accountants, tax advisers, auditors, economists and business agents (gestories);
- notaries, lawyers and members of other independent legal professions;[6] 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.

67. 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.

68. Persons mentioned in the first two bullet points in the above list are exempted from AML obligations to report suspicious transactions to the Financial Intelligence Unit (FIU) 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). The Andorran authorities have indicated that notaries will monitor that the actions undertaken through the notary comply with the law, will check the identity of the executors, and in so far as it is possible, they will make sure that the regulations applicable to all the business are fulfilled, that is, they will check that the required administrative, civil, fiscal, anti-money-laundering authorisations have been actually obtained. Notaries are supervised by the FIU for their compliance with AML obligations (see section A.1.6 below).

6. 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.

Information held by directors and officers

69. 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).[7]

Foreign companies

70. A foreign entity operating a branch within the territory of Andorra has to obtain the prior authorisation from the Andorran Government and has to register that branch with the Companies Register (Art. 5(3) Companies Act). Up to 2012, there was no obligation to submit information regarding the owners of the company. The Foreign Investment Law 2012 and particularly the Regulation on the implementation of that law require that the application to obtain a prior authorisation from the Government must disclose all the owners of the foreign company holding 10%, including the name of the beneficial owner of the 10% if different (Regulation on the implementation of the Foreign Investment Law, of 28 August 2012, Annex). A foreign company effectively managed in Andorra would give rise to a branch, and so it would 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 more than 10% of the company (General Accounting Plan of 2008 Chapter 2 Section 2 No.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

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. The deed to form a company, as well as any share transfer, must be notarised and the notary must submit a copy 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 more than 10%.

7. 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.

Availability of ownership and identity information in practice

71. Even though prior to 2014 there were no penalties in place for failing to submit ownership change to the authorities (see section A.1.6 below), the procedures to incorporate a company and to update ownership information indicate that full ownership and identity information of Andorran companies was generally available to the authorities. The Companies Register is maintained by the Ministry of Economy. It is open to the public and can be consulted by any Andorran resident submitting a justified request. Information is filed in a paper form and clearly details, among others, the identity of shareholders and their participation, the identity and functions of the management, and the head office of the company.

72. Prior to 2014, in order for a company to be incorporated in Andorra, the company had to obtain prior government permission granted by the Ministry of Economy. The company had to furnish certain documents validated by an Andorran notary, including the Memorandum of Association and the list of founding shareholders. The Ministry of Economy ensured that ownership of the company and the proposed objects of the company conform to Andorran laws, particularly with regard to foreign ownership. The Andorran authorities have indicated that in very few cases the Ministry of Economy rejected the prior authorisation.

73. Once the prior authorisation was granted, the company could apply for registration with the Companies Register. Until registered with the Companies Register, a company could not acquire legal personality. The Companies Register checked that the documents submitted for application (including Memorandum of Association and list of founding shareholders) conform to the Companies Act. The Andorran authorities have indicated that this decision in very few cases the Companies Register refused registration for incorporation or it asked for additional information. After registration, the company was incorporated as a separate entity.

74. Now, the prior authorisation to form a company is not needed. A company can be simply formed through the execution of a public deed, authorised by an Andorran notary, which must then be registered – together with the articles of association and the list of founding shareholders – with the Companies Register by the notary.

75. Even though prior to 2014 there were no penalties in place for not registering information on ownership change, the Andorran authorities have indicated that such information was in almost all cases submitted to the Companies Register within the time-limit provided in the law. Any new registration cannot be made until the previous one has been duly registered. The Andorran authorities have explained that this is because compliance culture in Andorra is high, and the obligation to register ownership change with the

authorities has been there for a long time. Any ownership change must be made through a public act notarised by an Andorran notary. Since May 2011, the Chamber of Notaries agreed that every notary would submit to the Companies Register any notarised document concerning a company, even where this is not required by law. Since 2014, the law requires the Notary authorising the deed to submit a copy of the share transfer deed to the Companies Register. Any new registration will not be made unless previous ones have been updated. According to the Chamber of Notaries, compliance culture is very high among the notaries. This is supported by the fact that there are currently only four notaries in Andorra who have been practicing this profession for many years. Notaries are bound by a code of conduct established by the Chamber of Notaries and are personally liable for negligence. During the review period ending in 2013, Andorra was able to exchange ownership and identity information which was retrieved from the Companies Register. While some oversight is inherent in Andorra's legal framework, particularly given the role of notaries, the absence of penalties in the past means that there has been no coherent, systematic oversight of the obligations to maintain information (see section A.1.6 below).

76. Andorran companies have an obligation to keep a register of shareholders, which must be kept in Andorra by the administrators of the company. The company will only consider the person who is registered in this book as the shareholder. There is no direct monitoring of the obligation to keep such a register of shareholders by the Companies Register, although they have an obligation to submit ownership and identity information to the Companies Register.

77. Full ownership information of companies is also available with Andorran notaries. The documents of incorporations of a company as well as any ownership change must always be notarised by an Andorran notary (Companies Act, Art. 20(1)). Any public act certified by a notary must take the form of a "protocol" (Law on Notaries, Art. 11) and must include: the name of the notary authorising the act, the name of the persons appearing in the act – executors and witnesses – their nationality, residence and domicile (Law on Notaries, Art. 6). The notary certifies the knowledge of the persons appearing in the act, and when they are not personally known, the notary shall state that he/she has identified them and by which means. The protocol of a notary is made up of all the public instruments (deeds, "escriptures" and records) that this notary has authorised during the years that he has exercised as a professional. Twenty-five years after their execution, the public instruments are moved to the General Archive of Protocols, which is under the custody of the Chamber of Notaries, and they are kept here for a further 100 years, after which they are moved to the National Archive. Only the persons with vested legal interests can obtain copies and certificates of public instruments, and the notary cannot transmit nor show this information to anyone else, unless obliged by law or ordered by a court (Law on Notaries,

Art. 14). For the purpose of complying with the Law on Notaries, notaries are subject to inspections by the Minister of Justice (see section A.1.6 below).

78. A branch of a foreign company that carries out business in Andorra or that is effectively managed in Andorra has to first obtain an investment permit issued by the Ministry of Economy and it can then register with the Companies Register after presentation of a public deed certified by an Andorran notary. As of April 2014 there were three foreign branches registered in Andorra. Since 2012, ownership information on the persons holding 10% of interest in the foreign company must be provided to the Government in order to apply for the investment permit (prior authorisation). Information on 10% of ownership is also provided to the Companies Register every year when branches of foreign companies have to submit the annual accounts. These branches have been created and registered in 2013 and 2014. The branches registered in 2013 will have to submit their accounts in 2014, and the branches created in 2014 will submit their accounts in 2015.

79. Nominee shareholding is explicitly forbidden in Andorra since 1981. Andorran courts have dealt with litigations concerning the legal entitlement of shares in several cases and established that the person whose name is in the register of shareholders of a company is to be considered the effective and beneficial owner of the shares, regardless of whether that person is holding the shares for someone else.

80. During the period under review (July 2010-June 2013), Andorra was requested to provide ownership and identity information in 15 cases. The information was provided in 13 cases. In two instances ownership and/or identity information was not provided because the request was not processed: in one case because the partner jurisdictions had closed the investigation; in the other case the exchange of information request was not processed due to it relating to taxable years prior to the entry into force of the international agreement (see section C.1.9 below). In two of the 13 cases the information sought did not exist in Andorra and this was communicated to the requesting partner. The information was always retrieved from public offices, mainly from the Companies Register.

Bearer shares *(ToR A.1.2)*

81. While Andorran law previously allowed bearer shares, 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. The Regulation provided that companies which still had bearer shares by the end of

the 20 year period should have been deprived of legal personality and deleted from the Companies Register. (Final Provision Companies Regulation 1983).

82. According to Andorran authorities, as of November 2013, there remained only 14 companies with bearer shares with a total share capital of EUR 545 000. Andorran authorities advise that these are old companies with no economic activity and only one of them currently has government authorisation to conduct business.

83. Mid May 2011, the Andorran Government identified 18 companies with bearer shares and 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 of the identity of the holders of their bearer shares. If they did not comply, a preventive note would be entered in the Companies Register and the company would not be eligible to obtain a government authorisation to perform economic activities until that preventive note was removed The Andorran authorities inform that 5 out of the 18 aforementioned companies have contacted the Companies Register, including one of the two companies which had government authorisation to conduct business in order to inform that the company will be liquidated.

84. Since May 2011, the efforts of the Andorran authorities to ensure availability of information of bearer shares companies have not been completely successful. The company with the business licence and which communicated with the Companies Register was liquidated. Three companies have regularised their position by converting the bearer shares into nominative shares and changing the company's articles of association to prohibit bearer shares. This means that 14 companies with unidentified bearer shares holders still exist.

85. In December 2013, the amendments to the Companies Act enacted through Law 28/2013 established a new provision to close down companies with bearer shares. According to the Fourth Transitory Provision of the amended Companies Act, any company that has issued bearer shares in the past will have three months from the entry into force of the provision (i.e. 26 February 2014) to convert the bearer shares into nominative shares. The law requires that at the end of the three-month period, the Minister of Economy will start the *ex officio* definitive cancellation of the companies that have not regularised their position by then. It also requires that, before starting the procedures for cancellation, the Minister of Economy will publish an informative notice on the Official Gazette to allow any interested persons to state whether they consider the cancellation to be appropriate within a period of not less than ten working days. Then, the law requires that the Ministry of Economy will order the publication of a notice in the Official Gazette to place the ex officio cancellation of the registration of the company on record.

The members and the administrators of the cancelled companies are jointly and severally liable and in an unlimited manner for any acts and contracts entered into by any of them in the name of the company from the date of the publication of the notice. On 26 May 2014, the Andorran Government issued a notice of cancellation of the 14 companies that did not regularise their position. Any interested person has 20 working days after the publication of the notice in the Official Gazette to approach the Government and state whether the cancellation is appropriate or not. The notice of the Government was published in the Official Gazette on 11 June, and so, if no one opposes it, the Government will officially cancel these companies on 9 July 2014.

86. 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 issues a binding negative opinion on foreign investors that have issued bearer shares, except if the control structure and beneficial owners are clearly identified and verified.

87. Andorra has taken some actions to ensure the availability of information concerning companies that issued bearer shares in the past, however, 14 companies still exist for which ownership information is not available. With the amendment to the Companies Act enacted in December 2013, the new provision on the elimination of bearer shares will be applicable on 26 May 2014, companies that do not convert their bearer shares into nominative shares should be cancelled ex officio. On 26 May 2014, the Government has started the cancellation process of all 14 companies that did not convert their bearer shares within the deadline. This process should be completed on 9 July 2014, and it is recommended that Andorra monitor that the cancellation process is implemented so that ownership information of all companies is available.

88. During the three-year period under review (1 July 2011 – 30 June 2013), Andorra did not receive any exchange of information requests on ownership information of companies that could issue bearer shares.

Partnerships *(ToR A.1.3)*

Types of partnerships

89. Andorra law does not recognise limited partnerships. It only recognises one type of partnership: *Societat colectiva*, SCR.[8] This is a general partnership regulated by the Companies Regulation 1983 (First Supplementary

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

Provision of Companies Act of 2007). However, the Andorran authorities have indicated that since 2007 no entity can be legally formed as an SCR. In fact, Article 1(3) of the Companies Act 2007 states that the only permitted types of companies are SA and SL, while prior to 2007 companies could also take the form of SCRs. The Andorran authorities have explained that the First Supplementary Provision of the Companies Act 2007 does not allow for the formation of new SCRs, but only provides that at the moment of the entry into force of that Act (22 November 2007), companies that were neither incorporated as an SA nor an SL were to be considered as SCRs and would be governed by the provisions of the Companies Regulation 1983. The Andorran authorities have explained that the First Supplementary Provision of the Companies Act 2007 has not been abrogated for the purpose of being able to cover possible existence of companies previously incorporated in the form of SCRs and which have not registered yet. The Andorran authorities have also stated that they have no evidence of the existence of SCRs.

While a few SCRs existed and were registered in the Companies Register prior to 1983, they have been liquidated or transformed into SLs or SAs. The Andorran authorities have indicated that since 1983, when the Companies Register was digitalised, no company has registered in the form of SCRs.

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

91. During the period under review, Andorra did not receive any exchange of information request concerning partnerships.

Trusts *(ToR A.1.4)*

92. 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*.[9] However, there is no law prohibiting that an Andorran resident acts as a trustee, administrator or similar of a foreign trust. The AML law addresses situations of contractual fiduciary arrangements or other fiduciaries structures.

93. 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. If the income of a foreign trust is generated in Andorra and therefore subject to tax in Andorra, and the beneficiaries are outside Andorra, then the trustee would be considered as joint and severally liable for the payment of the tax on the basis of the Non-Resident Income Tax Act (Art. 5). In such a case, the Andorran authorities have indicated that the trustee will be

9. www.hcch.net/index_en.php?act=conventions.text&cid=59, accessed 25 April 2011.

required to provide information on the settlors and the beneficiaries in order to determine the joint and several tax liability of the trustee, if any. In addition, 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.

94. 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). Article 45(1b) 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) 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). The AML Act has been amended in May 2011 to extend the definition of beneficial owner. According to Article 4l(g) of the AML Act, in the case of other legal entities, contractual fiduciary arrangements and other fiduciary structures that administer and distribute funds, a beneficial owner is:

- where the future beneficiaries have already been determined, the individual or individuals who control over 25% of the funds;
- where the future beneficiaries have yet to be determined, the class of persons in whose main interest the entity or legal arrangement is set up or operates;
- individual or individuals who, by any other means, exercise actual management control of the entity or legal arrangement".

95. 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.

96. In practice, the Andorran authorities have indicated that they are not aware of any Andorran resident being a trustee or administrator of a foreign trust. Regarding *fideicomisos*, the Andorran authorities have indicated that there is no law regulating this institution. *Fideicomisos* come from civil law tradition and are private contracts dealing with transfer of property or rights. The Andorran authorities as well as the representatives of the Chamber of Notaries have indicated that *fideicomisos* in Andorra are concluded by family members to transfer inheritance rights but these are very rarely, if ever, used in Andorra. On the basis of the supervisory activities carried out in relation to financial and non-financial regulated entities, the Financial Intelligence Unit also indicated that they have never come across a person supplying fiduciary services (see section A.1.6 below for an analysis of the supervisory activities of the Financial Intelligence Unit).

97. During the three-year period under review, Andorra did not receive any exchange of information request concerning trusts or *fidecomisos*.

Foundations *(ToR A.1.5)*

Types of foundations

98. 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.

99. 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.

100. 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).

101. 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).

102. 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.

103. Andorran Authorities advise that as of November 2013, 26 foundations were registered in the Foundations Register.

Information to be submitted to the Foundations Register

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

- identifying details[10] 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.

10. 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.

105. 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).

106. 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

107. 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)).

108. 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.

109. 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 and individual or individuals who, by any other means, exercise actual management control of the entity or legal arrangement (Art. 41 AML Act, as amended in 2011).

Conclusion and practice

110. 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 the beneficial owners, who with regard to beneficiaries of a foundations mean those with at least a 25% interest in the foundation, or who by any other means exercise actual management control of the entity or legal arrangement. Considering the types of foundations that can be formed in Andorra, it can be concluded that they are not relevant entities for this review. The purposes of both private and public foundations must be in the public interest and their activities must benefit generic groups of people; private foundations must also obtain a prior authorisation from the Government. The Andorran authorities have confirmed that foundations are only established in the public interest and are not misused.

111. The Andorran authorities supervise that foundations comply with the foundation's stated purposes. Each year, each foundation must submit financial statements, which must include a report of activities to the Foundation Protectorate (Foundation Act, Art. 23 and Foundation Regulations, Art. 63 and Art. 64). The annual report of activities must allow for knowledge and verification of compliance with the foundation's purposes and the regulations applicable, and must include at least: details of resources proceeding from other years and pending allocation; indicators of compliance with the foundational purposes; if necessary, details of companies in which there are holdings, giving the percentage holding; and any other relevant information relating to compliance with the foundation's purposes. In practice, the compliance rate with submission of these documents is very high.

112. The Foundation Protectorate conducts supervision on the basis of samples. It analyses the expenses of the foundations to ascertain whether the foundation has complied with the foundation's purposes. The Foundation Protectorate verifies the existence of the compulsory minimum capital. It also verifies that, over a period of three years, at least 2/3 of the financial resources are used for the purposes of the foundation, while 1/3 of the resources can be used for the purposes of the foundation at a later time. Income generated by a foundation can be used to increase the capital of the foundation. Administrative expenses cannot exceed 10% of the total

expenses. The Andorran authorities have indicated that they have never encountered a situation where a foundation was acting for purposes different to what was stated in its deed. As no risk was posed, the Foundation Protectorate did not conduct on-site inspections.

113. AML obligations apply to foundations. The Financial Intelligence Unit (FIU), in charge of supervising AML obligations of foundations, has conducted off-site control. No risk was posed by foundations and the FIU carried out no on-site inspection.

114. During the three-year period under review, Andorra did not receive any exchange of information request concerning foundations.

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

Company law

115. The availability of ownership and identity information is overseen by the commercial authorities, as this information has to be reported to the Companies Register at the time of registration of an entity and whenever a change occurs. Nevertheless, up to 2014, no penalties to enforce this system were in place. Enforcement provisions to ensure the availability of ownership information of Andorran companies have been introduced with Law 28/2013 of 19 December 2013 amending the Companies Act. These amendments entered into force on 26 February 2014. Ownership information is provided to the Companies Register at the time of the application for incorporation and it must be updated by the administrators within 15 days from the notarised act certifying the share transfer. The Companies Act establishes that the administrators commit an infringement if they do not present the documentation to update the information registered in the Companies Register as required by law (Companies Act, Art. 103(2)(f)). The administrators are also responsible for keeping the register of shareholders and must examine any irregularity in the management of the company (Companies Act, Art. 20, Art. 21, and Art. 49(1)). If they fail to fulfil these duties and this causes appraisable economic prejudice to the company, to members or to company creditors, they commit an infringement (Companies Act, Art. 103(2(b)). The administrators are also obliged to indemnify the company for the damages caused by their negligence (Companies Act, Art. 50(1)). The infringements committed by administrators make them jointly and severally liable for the payment of the sanctions envisaged in the law, except for those administrators not having intervened in the infringement, who can prove that they were unaware of its existence, or in the case of being aware of it, they did everything possible to prevent it (Companies Act, Art. 104(2)). The sanction for these infringements is a fine between EUR 1 000 and EUR 30 000, applied by the Ministry of

Economy. According to the Transitory Provision contained in Law 28/2013 of 19 December 2013 amending the Companies Act, companies have a period of one year from 26 February 2014 to update the identity of their members and administrators, as well as their registered offices at the Companies Registry.

116. The company is required to notarise certain acts, including the deed to incorporate the company (which lists the shareholders), as well as any ownership change. The Companies Act, as amended, establishes that if a company fails to do so, it commits an infringement that can be sanctioned with a fine between EUR 1 000 and EUR 30 000, applied by the Ministry of Economy (Companies Act, Art. 103(1)(a) and Art. 106(1)). If these acts are not notarised, the Companies Register would not accept their registration in the register. Law 28/2013 and the Companies Regulations of the amended Companies Act specify that, in addition to the reporting obligation on the administrators of the company, the notary must file with the Companies Register the notarised data regarding companies, including changes in ownership. The Companies Regulations also apply the principle of sequence of the registrations, by which new registration cannot be made until the previous ones have been updated (Art. 5 and 6). This principle was already established in the Companies Register Regulation 2008 (Art. 5).

117. These enforcement measures have been in force since 26 February 2014. Up to then, there were no sanctions for companies or their officers for not maintaining a register of shareholders. Nor were there specific sanctions for companies for not submitting changes in ownership to the Companies Register. In cases where the Companies Register was aware of required information not being registered, it had no means to force registered entities to provide information to the Register. The administrators of a company were still responsible for the damages caused to the company for their negligence (Companies Act. Art. 50(1)).

118. Up to 2014, as there was no penalty for failure to keep a company register, the Andorran authorities did not carry out inspection or enforce the submission of documents to the Companies Register. Despite the lack of sanctions for not registering ownership change, the Andorran authorities have indicated that such information was in almost all cases submitted to the Companies Register within the time-limit provided in the law. The Andorran authorities have explained that this is because compliance culture in Andorra is high, and the obligation to register ownership change with the authorities has been there for long time. In addition, any ownership change must be made through a public act notarised by an Andorran notary, and since May 2011, the Chamber of Notaries agreed that every notary would submit to the Companies Register any notarised document concerning a company, even where this is not required by law. According to the Chamber of Notaries, compliance culture is very high among the notaries. This is supported by

the fact that there are currently only four notaries in Andorra who have been practicing this profession for many years. Notaries are bound by a code of conduct established by the Chamber of Notaries and are personally liable for negligence. During the review period ending in 2013, Andorra was able to exchange ownership and identity information which was retrieved from the Companies Register. Since 2014, notaries have an obligation to submit information of any ownership change to the Companies Register.

119. With regard to a foreign company that carries out business in Andorra or that is effectively managed in Andorra, information on 10% of the ownership must be provided to the Government at in order to obtain an investment permit (prior authorisation) and to the Companies Register every year when submitting their annual accounts. There are three branches which have been created and registered in 2013 and 2014. The branches registered in 2013 will have to submit their accounts in 2014; the branches created in 2014 will submit their accounts in 2015.

120. With the enactment of Law 28/2013 of December 2013, Andorra established that companies that have issued bearer shares must convert their shares into nominal shares within three months after the entry into force of this provision (see section A.1.2 above).

Law on Notaries

121. As noted above in section A.1.1, notaries are responsible for certifying the act of any share transfer. Full ownership information of companies is then available with the notary who has certified the documents of incorporation and acts of ownership change. Changes in ownership are effective from the moment the notary has certified the change and it is entered in the register of shareholders of the company. Any act that has been authorised by a notary in contravention to the provisions of Law on Notaries is not considered a public act, although it will still produce effects as a private document. The notary incurs liability and shall indemnify the damages that were caused by his or her negligence (Law on Notaries, Art. 9). According to Article 1 of the Regulation of Notaries, the Minister of Justice must conduct at least one annual inspection of each notary and approach the Chamber of Notaries to verify compliance with the Law on Notaries, as well as inspect the General Archive of Protocols and the Central Registry of Last Will. According to the Andorran authorities, these inspections take place regularly. Since 2014, notaries have an obligation to submit information of any ownership change to the Companies Register. Notarial deeds may be challenged before the courts if they are contrary to the legal system or if they violate the interests of third parties. Notaries are subject to a code of conduct established under the Notaries Act and by the Chamber of Notaries itself, and they may be held

personally liable to compensate for any damages that have been caused by their negligence (Law on Notaries, Art. 9).

Foundation law

122. Foundations in Andorra must be in the public interest and benefit generic groups of people. Foundation charters must identify the founders and foundation council members and this information must be submitted to authorities as part of registration. 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. Pursuant to AML legislation all beneficiaries who have received payment must be identified and foundation council members, as well as service providers, must identify the beneficial owners (see below). In any event, as mentioned in section A.1.5 above, Andorran foundations are not relevant for the purposes of this review.

123. The Foundation Protectorate verifies that foundations comply with the purposes stated in the founding deed when receiving the financial statements by each foundation annually. The financial statements must include the annual report of activities. If a foundation fails to submit its financial statements for two consecutive years, and if there are signs of a serious deviation between the foundation's purposes and the activity carried out by that foundation, the Foundation Protectorate must ask the Ministry of Justice to order a temporary intervention (Foundation Act, Art. 24). Such an intervention would include the Protectorate assuming provisional administration of the foundation (Foundation Act, Art. 34) and may lead to liquidation. The Andorran authorities have indicated that the compliance rate for submission of the financial statements is very high and that there have been no situations where a foundation was acting for purposes different to what was stated in its deed (see section A.1.5 above for an analysis of the supervision carried out by the Foundation Protectorate).

AML law

124. 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 heads of the entity or the professional in question and a fine between EUR 6 001 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 60 001 and EUR 600 000 (Arts. 58 and 59 AML Act).

125. As mentioned in sections A.1.1, A.1.4 and A.1.5 above, AML obligations cover persons and activities such as professional external accountants, tax advisers, auditors, economists and business agents (gestories), notaries and other service providers, suppliers of services to companies and contractual fiduciary arrangements (*fideicomisos*), and foundations. The supervision of AML obligations is carried out by the Financial Intelligence Unit (FIU). The FIU is made of three main divisions – an operational, a supervisory and a legal division – counting eight persons in total.

126. The FIU adopts different approaches to supervise entities of the financial sector and service providers. In relation to entities of the financial sector, the FIU's monitoring system relies on three tiers: suspicious transactions reports and other information that entities directly sent to the FIU in compliance with article 46 of the AML Law; obligation on these entities to provide yearly external audits, which are analysed by the FIU to discover "red flags" and to determine whether on-site inspections are necessary; co-operation with the INAF with the purpose of safeguarding security and stability, and its legislative compliance (see also section A.3 below). In some cases not involving banks, the FIU, after analysing the audit reports submitted by entities of the financial sectors, requested complementary audits tending to the resolution of possible deficiencies detected.

127. With regard to non-financial regulated entities (e.g. service providers, lawyers, notaries, etc.), the FIU's monitoring system is based on a questionnaire that each service provider was requested to submit concerning his/her responsibilities in respect of AML obligations by July 2013. In total 355 questionnaires were received: 81 from real estate agencies, 154 from lawyers, 111 from economists/accountants, 5 from jewellers, and 4 from notaries. According to the Andorran authorities, this questionnaire aimed to obtain accurate knowledge of these regulated sectors. On the basis of the responses obtained, the FIU has commenced an inspection plan on the basis of a risk-approach. Between January and February 2014, 15 inspections were conducted in relation to non-financial service providers (5 real estate agencies, 5 lawyers, 3 economists/accountants, 2 jewelers). The Andorran authorities have indicated that they have never applied any sanctions on the non-financial regulated entities controlled as they have not come across any violations of AML provisions, or where this was the case, such violation was rapidly corrected.

128. On the basis of the supervisory activities carried out in relation to financial and non-financial regulated entities (see also section A.3 below), as

well as on the basis of the information received through exchange of information within the framework of co-operation, the FIU has indicated that it has never come across a person in Andorra supplying fiduciary services, including trusts and *fideicomisos*.

129. Regarding foundations, pursuant to AML legislation all beneficiaries who have received payment must be identified and foundation council members, as well as service providers, must identify the beneficial owners. The FIU has conducted off-site control and concluded that no risk was posed by foundations. No on-site inspection was carried out.

Conclusion

130. Amendments to the Companies Act introduced enforcement provisions to ensure the availability of ownership information of Andorran companies. These changes have been in force since 26 February 2014 and it was not possible to evaluate the effectiveness of these provisions in the course of this review which evaluates the three-year period July 2010-June 2013. It is noted that during the period under review, Andorra was nonetheless able to exchange ownership and identity information to requesting partners, and, even prior to the introduction of enforcement provisions, it can be assumed that ownership information available with the authorities was generally reliable. Although companies are required to register ownership information with the Companies Register, the penalties to enforce these obligations have only recently been put in place. While some oversight is inherent in Andorra's legal framework, particularly given the role of notaries, the absence of penalties in the past means that there has been no coherent, systematic oversight of the obligations to maintain information. It is recommended that Andorra ensures that its oversight of obligations to maintain ownership information is coherent, systematic and adequate and should monitor the enforcement of the new penalties.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
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. The materiality of this gap is nonetheless very limited as the AML supervisory authorities have never come across a person in Andorra providing fiduciary services, and, during the period under review, Andorra received no EOI requests for information on foreign trusts.	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.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
Although companies are required to register ownership information with the Companies Register, the penalties to enforce these obligations have only recently been put in place. While some oversight is inherent in Andorra's legal framework, particularly given the role of notaries, the absence of penalties in the past means that there has been no coherent, systematic oversight of the obligations to maintain information.	Andorra should ensure that its oversight of obligations to maintain ownership information is coherent, systematic and adequate and should monitor the enforcement of the new penalties.

A.2. Accounting records

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

131. 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

132. 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).

133. 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).[11]

134. 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)).

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

135. 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 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).

136. 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.

137. 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.

138. 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).

139. 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. Failing to submit the information requested pursuant to Art. 10 of the Accounting Act as well as to provide to the Companies Register annual accounts is a "serious" offence which can be punished with a fine ranging from EUR 601 to EUR 2 000 (Accounting Act, Art. 41(2)(d)). Failing to have compulsory accounting records available and appoint an auditor when mandatory are very serious offences which can be punished with a fine ranging from EUR 2 000 to EUR 6 000 (Accounting Act, Art. 41(3)). In addition, for "serious" and "very serious" offences, 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)).

Since 2014, with the entry into force of the amendments to the Companies Act introduced by Law 28/2013, failure to deposit the annual accounts also implies the joint and unlimited liability of the administrators with regard to company debts that occur from the moment that the obligation to deposit is breached (Law 28/2013, Additional Provision).

Foundation law

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

141. 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)).

142. 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).

143. 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.

144. 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

145. 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). The Andorran authorities have indicated that they are not aware of any Andorran resident being a trustee or administrator of a foreign trust. The FIU, which is also entrusted with supervision compliance with AML obligations concerning fiduciary services, has indicated that, during its supervisory activity, it has never come across a person supplying fiduciary services (see A.1.6 above). Andorra did not receive any request for accounting information related to trusts. It can be concluded that in practice, the lack of specific requirements for foreign trusts administered in Andorra to keep accounting records has not raised concerns in practice.

Tax law

146. 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). Since 2013, some accounting information must be provided to the tax administration. Taxpayers must submit tax declaration forms, which must include the income statement and the balance sheet. Taxpayers with revenues above EUR 600 000 and not subject to a special taxation regime must also attach the statement of changes in net assets.

AML law

147. 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 heads of the entity or the professional in question of between one and six months and a fine of between EUR 6 001 and EUR 60 000 (Art. 59(1)).

Conclusion

148. Companies and foundations are required to keep comprehensive accounting records and to submit annual accounts to the public registers (Companies Register and Foundation 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)

149. Accounting records to be kept by companies, 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.

150. 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)

151. 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)).

152. 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.

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

154. The Accounting Register Regulation requires the Companies Register to keep the annual accounts of a company for five years from the date of the deposit (Accounting Register Regulation, Art. 20). 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.

155. 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 heads of the entity or the professional in question of between one and six months and a fine of between EUR 6 001 and EUR 60 000 (Art. 59(1)).

Conclusion

156. Andorran company and accounting law requires companies 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.

The availability of accounting information in practice

157. Under the Accounting Act and the Companies Act, Andorran and foreign companies, as well as foundations carrying out a business, must submit annual accounts to the Companies Register and penalties apply if

they fail to do so. The penalty system provided in the Accounting Act was implemented from the accounting year beginning on 1 January 2010. For the accounting years 2010, 2011, and 2012 the compliance rate with the obligation to provide annual accounts to the Companies Register was as follow: 43% for 2010 (2 259 annual accounts deposited out of 5 283 entities), 62% for 2011 (4 117 annual accounts deposited out of 6 591 entities), and 61% for 2012 (4 400 annual accounts deposited out of about 7 200). The Ministry of Economy publicised the names of the non-complying entities in the public gazette giving them time to comply. Then, where the entity still did not comply, the Ministry of Economy has initiated 3 023 administrative sanctions ranging from EUR 601 to EUR 2 000. As of March 2014, after the initiation of the sanction, 374 companies eventually complied, the Ministry of Economy collected EUR 65 908, although these are provisional figures as the appeal period was not over yet. The Andorran authorities have indicated that for the accounting year 2013, the Ministry of Economy will also adopt additional sanctions, such as adding a notification in the Companies Register whereby no other entries will be allowed to be made regarding the entity in question until the accounts have been deposited.

158. Since 2013, some accounting information must also be provided to the tax administration. Taxpayers must submit tax declaration forms according to their size and status. Simplified or summarised declaration forms must be submitted by taxpayers with revenues below EUR 600 000 (forms 850A or 850B, 850C and 850D). Taxpayers with revenues above EUR 600 000 and not subject to a special taxation regime must submit full tax declaration pursuant to form 800. Regardless of their revenues, all taxpayers must attach to the declaration the income statement and the balance sheet, while taxpayers with revenues above EUR 600 000 and not subject to a special taxation regime must also include the statement of changes in net assets. In 2013 (in relation to the first six months of 2013), 65% of the taxpayers submitted tax returns in a simplified form, 25% in a summarised form, and 10% in full form. The tax administration received 7 412 tax returns, which represents about 92% of the total. The Andorran authorities have indicated that around 84% of the persons submitted tax returns on time. The tax administration applied administrative sanctions for non-compliance with tax obligations in respect to 257 persons, collecting a total amount of EUR 231 300. The Tax and Customs Agency has reviewed 29% of the tax declaration forms presented in 2013 and in 163 cases additional information was requested. Of these 163 dossiers, 94 correspond to mistakes and a lack of documentation submitted in the tax returns. One sanctioning procedure has been initiated for not presenting annual financial statement accounts (with sanctions that will range from EUR 150 to EUR 3 000).

159. The obligation on companies to keep accounting records is monitored by the authorities only upon reception of the accounting documents

submitted by companies. The Andorran authorities have indicated that underlying documentation is monitored by the employer or professional and must be preserved and be available to the Ministry of Finance during the period established by the Accounting Act. Nonetheless, the Andorran authorities have also indicated that the Ministry of Economy does not perform on-site inspections to ensure that accounting information is kept in accordance with the Accounting Act or the Companies Act. As such, there is no monitoring of the obligation on companies to keep underlying documentation, such as documents, correspondence, documentation, receipts, invoices and contracts. Article 10 of the Accounting Act empowers the Ministry of Finance to ask persons for the production of accounting records. Nonetheless, the Ministry of Finance has not used this power.

160. All foundations must submit their financial statements to the Foundation Protectorate. As mentioned above, those foundations carrying out business must also submit their annual accounts to the Companies Register. Around 28% of the foundations are required to submit audited financial statements. According to the Andorran authorities, the compliance rate is very high. The Foundation Protectorate has always found that the financial statements were submitted in accordance with the Foundation Regulations.

161. Foundations are supervised by the FIU in respect to their compliance with AML legislation, including their obligations to keep some underlying documentation. Nonetheless, as mentioned in section A.1.5 above, the Andorran authorities have estimated that foundations pose no high risk and therefore no on-site inspection has taken place.

162. During the period under review (1 July 2010-30 June 2013), Andorra was asked to provide accounting information in 16 cases regarding companies and individuals. Andorra provided an answer to the partners in most cases. In one case, the competent authority also provided some underlying documentation (such as import-export documents) which was obtained from the customs authorities. In two cases, the financial statements of a company could not be transmitted to the requesting partner because the information was not available in the Companies Register. The Andorran authorities have indicated that the companies did not deposit the accounting records, the Andorran customs did not record any import/export activity, and in both cases there was no evidence of business in Andorra. The competent authority concluded this through the information available with the Andorran authorities and on the basis of an inspection carried out by the customs agency. In one case, the company was already sanctioned and was under judicial procedure.

163. A peer indicated that, in two cases, it initially received financial statements and balance sheets in a summarised form, although complements to the information were subsequently provided and the peer was satisfied

with the answer received. These requests were answered with the information available with the Companies Register. The Andorran authorities have indicated that business run by individuals with annual turnover of less than EUR 150 000 are excluded from the obligation to submit accounting records to the authorities (although they still must submit a sworn statement of an annual turnover of less than EUR 150 000), as prescribed in the Supplementary Provision of the Accounting Act. Pursuant to this provision the Government has passed regulations to set up a simplified accounting system for businesses with an annual turnover of less than EUR 600 000 (Decree of the Minister of Economy of 15 February 2012). The Decree establishes that these companies are exonerated from the formulation of the cash flow statement and a statement of changes in equity. It also provides that the balance sheet and the profit and loss account can be formulated in a simplified way and simplified notes (Decree of the Minister of Finance of 15 February 2012, Chapter Four). These provisions on simplified accounts do not relieve the companies from the obligation to maintain accounting records and documentation as prescribed by the Accounting Act (see above) Andorra has indicated that in 2011, 67% of companies (2 745 out of a total of 4 117 deposited) were in simplified form. So, in practice, in two-thirds of the cases the accounting records available with the Companies Register are in a simplified form.

164. To conclude, the Andorran authorities carry out measures to ensure the availability of accounting records in practice when these records are submitted to the authorities, and has applied sanctions (or has initiated sanctioning measures) where appropriate. However, there is no monitoring system of underlying documentation. During the period under review, Andorra was able to exchange the requested accounting information, although it never provided underlying documentation such as invoices, means of payment, contact details, and transport documents. As such, it is not possible to assess whether underlying documentation is available in Andorra. With the recent introduction of a tax agency it is expected that monitoring of underlying documentation will be carried out by the tax authorities in the future in the context of tax auditing, which already started in 2014. A peer indicated that in a few cases it received accounting records in a summarised form, as this was the information available with the public registries and the competent authority did not seek information from the companies themselves. It is recommended that Andorra implements a monitoring system that in practice would ensure the availability of full accounting records, including underlying documentation.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place**, but certain aspects of the legal implementation of the element need improvement**.	
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. The materiality of this gap is nonetheless very limited as the AML supervisory authorities have never come across a person in Andorra providing fiduciary services, and, during the period under review, Andorra received no EOI requests for information on foreign trusts.	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.

Phase 2 rating	
Largely compliant.	
Factors underlying recommendations	**Recommendations**
The Companies Register oversees and enforces the availability of accounting information through the submission of annual accounts, which however do not include underlying documentation. As such, there is no system of oversight to ensure that underlying documentation is kept by all companies. In addition, annual accounts are submitted to the authorities in a simplified form in a number of cases.	Andorra should implement a system of oversight to ensure that all relevant entities in practice keep full accounting records, including underlying documentation.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

165. Up to 2013, financial institutions had an obligation to keep records of all types of transactions and investment services and other services rendered by them under the Banking Act – Law No.14/2010 of 13 May 2010 (Art. 29(1)). Since 2013, the Banking Act has been repealed and replaced with other financial legislation, most notably Law No.8/2013. Law No.8/2013 requires all financial institutions operating in Andorra to document in writing their contractual obligations with customers and to maintain records of all contractual documents and amendments (Art. 15). In addition, financial institutions must keep records of all type of transactions and services provided and at least, records of all orders and executions. These records must be kept for at least five years. These records must be sufficient to allow supervision in order to ensure enforcement of the requirements envisaged in the legislation, especially, in relation to the obligations of financial institutions with respect to their clients. In addition, Article 37 of Law 8/2013 and Communiqué No.163/05 require financial institutions providing investment services or ancillary services to keep records of any order related to transactions with financial instruments received from clients as well as records of any executed trade in a manner that would enable the INAF to reconstruct the individual transactions, irrespective of whether they were conducted within or outside a regulated market.

166. The AML Act, as modified in 2013 by Law 20/2013, states that "[a] nonymous accounts or anonymous passbooks or accounts and passbooks with fictitious names are prohibited" (Art. 49(4)).

167. Any breach of provisions in the Law 8/2013 described above is subject to sanctions determined by the Financial System Disciplinary Regime Act of 27 November 1997. According to this act, offences can be minor, serious or very serious. Minor offences are sanctioned with fines between EUR 300 and EUR 30 050, serious offences are sanctioned with fines between EUR 30 051 and EUR 150 253 or 1.5% of the minimum required capital for the financial institution, whichever is greater, and very serious offences are sanctioned with fines between EUR 150 253 and EUR 300 506 or 3% of the minimum required capital for the financial institution, whichever is greater (Disciplinary Regime Act, Art. 18).

168. 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 ban on certain types of financial or commercial transactions and/or the temporary suspension of heads of the entity or the professional in question of between one and six months and a fine of between EUR 6 001 and EUR 60 000 (Art. 59(1)). An annual independent expert report on AML compliance by financial institutions must be issued by an external auditor and submitted to the FIU and the INAF.

Availability of banking information in practice

169. The banking sector is supervised by two authorities: the INAF with regard to the obligations established under the financial legislation, and the FIU with regard to the compliance of financial institutions with AML obligation. The two authorities collaborate in many instances (such as in the authorisation process for new financial institutions in Andorra or in the authorisation processes linked to international activities of Andorran financial institutions, or the possibility of, carrying on joint on-site inspections to financial institutions.) and have concluded a Memorandum of Understanding in 2012 formalising such collaboration.

170. Supervisory activity by the INAF shows that relevant information is available with banks and other financial institutions and this information is kept and archived in Andorra. Within the INAF, supervisory activity is undertaken by the Services of Supervision and Control division, which counts 12 persons working in two different units: the on-site Supervision and Inspection unit, and the off-site Supervision and Inspection unit. Every year, the Supervision and Inspection unit conducts an on-site inspection of each of the five bank groups in Andorra The INAF also conducts on-site inspections of financial institutions other than banks based on a risk based approach. During the on-site visits, the on-site Supervision and Inspection Unit – among other controls – performs sample tests to ensure the identification of account holders and that transactional information is available. The sample tests cover newly opened accounts as well as older accounts. They also cover numbered accounts, for which the identity of the holder is known only to certain persons within the bank. There are no specific legal provisions in relation to numbered accounts, as the information and record keeping obligations established in financial regulation and AML legislation are identical for any type of accounts. The Andorran authorities have indicated that compliance with the banking legislation is satisfactory. No violation of the law concerned the lack of identity or transactional information, even in respect to numbered accounts. The off-site Supervision and Inspection Unit analyses the financial and prudential periodic reporting prepared by supervised entities and sent monthly, quarterly or annually to INAF, as well as audited annual accounts (long form reports that financial institutions are required to transmit yearly). According to the Andorran authorities, compliance in this respect is good.

171. Supervisory activity by the FIU for AML purposes also shows that relevant information is available with banks and other financial institutions in Andorra. The FIU is composed of eight persons, divided in an operational unit, a legal unit and a supervisory unit (made of two people). Monitoring is done off-site through analyses of suspicious transactions reported by financial institutions and of the audited annual accounts. On the basis of these analyses, the FIU determines the level of risk and decides which institutions should be monitored on-site. Between 2012 and 2014 (February), eight on-site inspections were carried out on entities of the financial sector. In 2012, two banks out of five bank groups in Andorra were monitored on-site by the FIU. During on-site inspections, a number of violations of the AML legislation were identified (e.g. not providing the FIU with requested information, not complying with a FIU technical communiqué), although none related to the lack of identity and transactional information of account holders. The enforcement actions taken by the UIF included economic sanctions and warnings to the party under obligation and reinforcement of the supervisory activity.

172. Among the activities of the FIU is the monitoring of foreign investments in Andorran companies according to the foreign investment authorisation process established in the foreign investment law. The FIU checks that a foreign investment does not pose a high risk for AML purposes. According to the Andorran authorities, if the control structure of the foreign investor cannot be determined (for example because the investor is an entity that can issue bearer shares), the FIU will block the foreign investment. The FIU gave a binding negative opinion to some foreign investments in 11 cases out of 581 in 2011, 7 out of 300 in 2012, and 15 out of 705 in 2013.

173. During the period under review (July 2010-June 2013), Andorra was requested to provide banking information in 19 cases. Andorra obtained and exchanged the information in 3 cases. Andorra refused to provide banking information on the basis that such information was not foreseeably relevant in 4 cases (see section C.1.1 below). In the remaining cases where banking information was not transmitted, there was a different interpretation of the entry into force provisions of the EOI treaty (6 cases, see section C.1.9 below) or the requesting jurisdiction had closed the investigation (6 cases).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

B. Access to Information

Overview

174. 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. It also assesses the effectiveness of this framework in practice.

175. 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 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.

176. Until June 2011, 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 Offical Gazette on 29 June 2011.

177. For the period under review, Andorra received 29 EOI requests from four jurisdictions. These requests covered a variety of information, including ownership and identity information, accounting information and banking information. The competent authority generally obtained the information requested, however, the access powers remained untested with regard to obtaining accounting information directly from relevant persons. The relevant information was almost always collected from public authorities holding the information, or from banks. With regard to banking information, it is unclear how the competent authority would apply its access powers to obtain information on joint bank accounts as there has been no practical experience.

178. Where the competent authority acts on an international request for information, domestic law provides that 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.

179. There has been three cases where a requesting jurisdiction asked for the information not to be disclosed to the person concerned by the request. In order to be able to answer the requests, Andorra has concluded a mutual agreement with that jurisdiction providing for exception to the prior notification for 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. The mutual agreement was based on the mutual assistance procedure provided for in the treaty. In these three cases Andorra was able to exchange information without prior notification. Although the exception to notification based on the mutual agreement has worked in practice and Andorra is ready to reach such agreement with other jurisdictions when necessary, it is currently applicable to only one treaty partner.

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).

180. The competent authority for Andorra is the Minister of Finance. The day-to-day tasks of the competent authority are carried out by the Exchange of Information Unit (the EOI Unit), which was created in 2011. The EOI Unit is part of the department of the International Relations of the Ministry of Finance and has been designated as the central liaison office to act as the

point of contact for competent authorities of other jurisdictions. The EOI Unit carries out all tasks in relation to exchange of information in the field of direct taxation, VAT and recovery of claims for requests made under bilateral agreements and for requests that will be made under the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters when it will enter into force.[12] In addition to handling EOI requests, the EOI Unit is also in charge of other international files such as the negotiations with the European Union for the revision of the agreement between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments, negotiations in relation to the application of the US Foreign Account Tax Compliance Act (FATCA), the implementation of the European legislation from the Monetary Agreement and approach to Europe. When it was created in 2011, the EOI Unit had two employees; since 2013, the staff counts five persons.

181. The competent authority is identified at the time of negotiations of an EOI agreement. The competent authority is identified on the Global Forum competent authority database.

182. The EOI Unit co-operates with other ministries and entities such as the Foreign Affairs, the Financial Intelligence Unit (FIU) and the Andorran Financial Services Authority (INAF), amongst other.

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

Bank information

183. 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

12. The OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters was signed by Andorra on 5 November 2013.

> any kind of liability, of either a general or contractual nature. Its authority also includes requests for information to public bodies or registers.

184. 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.

185. Article 9 ("Characteristics of the information to be delivered") of the "Regulation developing Law 3/2009 on exchange of information in tax matters with prior request" (EOI Regulation), effective since 1 June 2011, establishes that the persons in possession of the information are obliged to deliver the information in their control to the Ministry in charge of Finance, without prejudice to their right to appeal, in application of Law 3/2009.

186. 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 Andorran authorities have indicated that they should follow the principle that only the banking information of the concerned person would be given; with regard to a joint bank account, the information relating to the whole bank account would be provided only when the other person (usually a spouse) was also under investigation and so was included in the request. The Andorran authorities have indicated that a requesting partner should explain in a justified and reasonable manner the need to know the accounts and the identification of a joint account holder. For example, a requesting jurisdiction will have to argue that the joint account holder is also a person under investigation (on the basis of the information obtained from the account's operations of the other joint owner of the account), or that a justified interest in the information concerning the joint account holder exists in the investigation. The mere presumption, without any other justified base, does not set up sufficient arguments to affect the right to privacy from the joint owner of an account. If the requesting partner does not sufficiently justify the connection between the person under investigation and the other joint-account holder(s), the Andorran competent authority will reject the request for information.

187. In practice, the Andorran authorities have indicated that there has only been one case where information about joint owners of a bank account was requested from a partner jurisdiction. In this particular case, the Andorran competent authority requested the information to the bank relating to the whole joint bank account, and not just the person under investigation in

the requesting jurisdiction. The information was not provided to the requesting jurisdiction because the competent authority of the requesting jurisdiction informed Andorra that the tax investigation was closed. Andorra stated that if the investigation was not closed, it would not have exchanged the information relating to the joint account holder on the basis that it was not foreseeably relevant. However, it is unclear how Andorra would determine which information from joint bank accounts would be relevant for the requesting partner and which information would not. Andorra has no experience in exchanging information relating to joint bank accounts. It is recommended that Andorra monitors the ability of the competent authority to obtain and provide information from joint bank accounts so that it does not prevent effective exchange of information.

Access to ownership information held in public registers

188. 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 and foundations.

Access to ownership information held by relevant entities

189. 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 more than 10% 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

190. 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.[13] However, on 1 June 2011 the Andorran Government amended the relevant legislation.[14] 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.

191. 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)).

Collection of ownership and identity information in practice

192. When an EOI request is received, the competent authority first verifies whether the request is complete and valid. It then notifies the person concerned by the request and the person in possession of the information (when the information is held by a financial institution) where applicable (see section B.2 below).

193. Once the person concerned by the request and the holder of the information (if applicable) have been notified, the EOI Unit can start the collection process. The EOI Unit can collect the information before the end of the notification process, that is before the expiration of the period to appeal

13. 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.
14. This came into force in June 2011.

(13 days after the notification) or before the end of the appeal process (see Section B.2 below) but the EOI Unit cannot exchange the information before these deadlines have expired. In practice, when the information is available with public authorities, the EOI Unit, before the completion of the notification process, verifies whether the information exists in one of the databases it has direct access to and it requests the public agency to provide the information.

194. The EOI Unit has a direct access to the databases maintained by the Companies Register and the Business Register. The information that can be retrieved from these databases include information on registration of companies, business activities, and shareholders of Andorran companies. In addition, pursuant to Article 4(4) of the EOI Act, the EOI Unit has access on request to other public registers or by any government agencies, including the Andorran Social Security (CASS), Immigration Department. The EOI Unit can also ask for information from any other public agencies, including the Foreign Investments Register, the Foundations Register, the Foundations Register, the customs authorities, and the information on real estate held by the town halls (*Comuns*). The town halls are currently working towards the creation of a common real estate registry.

195. Regardless of whether the EOI Unit has direct access to the database or not, the process to collect information from public agencies is the same. The EOI Unit sends a request by email to the relevant agency to provide the information. The Andorran authorities have indicated that they do so in order to obtain the official version of the document (for examples, official certificates from the Companies Register). This request does not include any specific deadline as it is understood internally that a request from the EOI Unit is a priority. The EOI Unit generally receives the information from public agencies within two weeks. When it is not known which public agency would have the information, the EOI Unit will asks simultaneously various agencies that may have such information. This is the case, for example, with regard to information on real estate which may be available with the town halls, but the EOI Unit does not know which one of the seven town halls would have the information.

196. In cases where the other government agency did not reply within a week or two, the EOI Unit would follow up by phone or would go in person to discuss the issue with the person in charge in the other public agency. This has never happened in practice. Andorran authorities confirmed that they generally received the information requested from other government agencies within approximately one week, and always within two weeks. In some cases, when the information received was not sufficient to fully reply to the EOI request, the EOI Unit would request by email additional information from the same agency or another government agency. In practice, this has happened

on a few occasions. The answers to requests for additional information were provided within approximately a week.

197. During the period under review (July 2010-June 2013), Andorra was requested to provide ownership and identity information in 15 cases. The information was provided in 13 cases. In two instances ownership and/or identity information was not provided: in one case because the partner jurisdictions had closed the investigation; in one case because the exchange of information request related to taxable years prior to the entry into force of the international agreement (see section C.1.9 below). In two of the 13 cases the information sought did not exist in Andorra and so this was communicated to the requesting partner. The information was retrieved from the Companies Register, the Andorran Social Security (CASS), and the Immigration Department. In these cases, the public agencies provided an answer in one week on average.

198. Ownership and identity information is always retrieved from the public agencies that hold the information, as Andorran law limits the ability of the EOI Unit to collect ownership information from public registries and financial institutions, and does not allow it to obtain such information from entities, individuals, or third parties. Nevertheless, thus far, this limitation has not prevented the Andorran competent authority from obtaining and providing ownership and identity information to a requesting treaty partner.

199. In practice, the Andorran authorities have indicated that in two cases they asked the concerned persons to provide documentation which was useful to show the status of residency in Andorra of these persons. The information was provided, notwithstanding that the persons in possession of the information did not have any legal obligation to provide the information. In these cases, the EOI request was rejected on the basis that it was not foreseeably relevant, but the information collected from the persons showing their residency status was exchanged (see also section C.1.1 below). The Andorran authorities have indicated that, if needed, the competent authority will seek to obtain information directly from any entities, individuals, or third parties even if they do not have the legal powers to obtain such information.

Collection of bank information in practice

200. In Andorra, the EOI Unit approaches banks directly. The request for information to the bank is submitted when the notification procedure has been completed (see Section B.2 below).

201. The request to the bank to provide information is generally done in person during a meeting between a member of the EOI Unit and a representative of the bank. During this meeting, the letter requesting the bank to provide information is given to the bank representative. The letter does not

include any deadline to provide the information although it informs the bank that it has the right to appeal the exchange of information in the following 13 days after notification (see section B.2 below). Banks generally have provided the requested information within one or two weeks. In cases where the bank does not provide the requested information within two to three weeks, the EOI Unit would follow-up by phone, although this has never happened in practice.

202. During the period under review (July 2010 – June 2013), Andorra provided banking information in three cases. In all the cases where the EOI Unit approached banks to obtain banking information, the banks never refused to reply and provided an answer within one or two weeks. Andorra refused to provide banking information on the basis that such information was not foreseeably relevant in 4 cases (see section C.1.1 below). In the remaining cases where banking information was not transmitted, there was a different interpretation of the entry into force provisions of the EOI treaty (6 cases, see section C.1.9 below) or the requesting jurisdiction had closed the investigation (6 cases).

Accounting records *(ToR B.1.2)*

203. 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. However in practice, these powers have not been used by the competent authority (see below).

204. 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)).

Collection of accounting information in practice

205. Some accounting information in relation to companies and foundations is available with the public authorities. When accounting information was requested by a treaty partner, the EOI Unit has collected such information solely from public authorities.

206. Thus far, accounting information was collected from the Companies Register and the customs authorities. The Companies Register has accounting records of companies. With regard to small and medium size businesses, only simplified accounting records are available with the Companies Register (see section A.2 above). The customs authorities have some underlying documentation related to import-export.

207. Accounting information is also available with other public agencies, although in practice, the EOI Unit did not seek to collect information from them. The Foundations Protectorate has accounting information of foundations, irrespective of whether they are carrying out business. The banking supervision authority (INAF) has accounting records of banks and other financial institutions. Since 2013, legal entities and individuals carrying on a business are taxable in Andorra (on their worldwide income for resident of Andorra or on their business income in Andorra for non-resident). As such, these persons have to file an annual tax return, to which accounting records must be attached. The comprehensiveness of the accounting records to be provided to the tax authorities depends on the size and status of the business (see section A.2 above).

208. During the period under review, Andorra was asked to provide accounting information in 16 cases. Andorra provided an answer to the partners in most cases. In some instances, the information obtained by the EOI Unit from the Companies Register was initially not sufficient to answer the EOI request sent by a treaty partner, and additional information was later obtained from the Andorran customs. Nevertheless, in those cases, the EOI Unit was able to obtain further information at a later time and the peer was satisfied with the answer received. In two cases, a peer indicated that not all the accounting information requested was provided because it was not available with the public authorities. In both cases, Andorra indicated to the requesting partner that there was no evidence of business carried out in Andorra. The Andorran authorities reached this conclusion on the basis that the Companies Register did not have any information concerning these companies, the Andorran customs did not record any import/export activity, and an inspection carried out by the customs agency did not find evidence of any business being carried out in Andorra, or elsewhere.

209. The competent authority has never asked accounting information directly from companies. Andorra has indicated that this is because, after having provided a reply to the requesting jurisdiction, it has never received any request for complementary information and therefore assumed the data provided was sufficient and satisfied the request. Although the Minister of Finance has the legal authority to require companies to provide accounting information in order to fulfil his duties under the Act, including his role as

Competent Authority, the EOI unit has not used this power. In practice, it is unclear whether it would be able to do so.

210. To conclude, during the period under review, Andorra collected accounting information from public authorities only, as it assumed that the information provided was sufficient to satisfy the request. The peers were generally satisfied with the accounting information received, even though in a few cases the information was not transmitted because not available with the public authorities, or accounting records were transmitted, at least initially, in a summarised form. However, the competent authority has never used its access powers to obtain accounting information from companies or other persons and it is recommended that Andorra ensures that the competent authority fully exercises the access powers provided in the law when necessary.

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

211. 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.

212. 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)

213. 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.

214. 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)).

215. 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.

216. In practice, the Andorran authorities have only obtained information from public registers, other government agencies or financial institutions. No sanctions have been applied for refusal to provide the requested information during the period under review because in all cases the requested information was provided in due time. Although no fines were applied, some general guidelines on the application of fines exist, referring to such considerations as the importance of the offence and whether it is the first time or a repetitive offence.

Secrecy provisions *(ToR B.1.5)*

Bank secrecy

217. 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)).

218. 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.

219. Bank secrecy did not raise any issue, as there were no instances in which the bank refused to provide the requested information when requested.

Professional privileges

220. 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). The Andorran authorities have reported that there have been no instances in which trade, industrial or professional secret or trade process was invoked to refuse to provide information on request.

221. 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

222. 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.

223. 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.

224. 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,[15] takes precedence over the Criminal Procedure Act provision. In practice, Andorra's competent authority does not have experience collecting information from lawyers as it currently does not have the legal powers to obtain information from third parties other than financial institutions. A recommendation on this issue is made in respect of section B.1.1 and is reflected in the B.1 determination box below.

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

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
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.

Phase 2 rating	
Partially Compliant.	
Factors underlying recommendations	**Recommendations**
With respect to joint bank accounts, the law requires that 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. It is unclear how Andorra would determine which information from joint bank accounts would be relevant for the requesting partner and which information would not. Andorra has no experience in exchanging information relating to joint bank accounts.	Andorra should monitor the ability of the competent authority to obtain and provide information from joint bank accounts so that it does not prevent effective exchange of information.
During the period under review, the competent authority did not use its access powers to obtain accounting information from companies or other persons.	Andorra should ensure that the competent authority fully exercises its access powers when necessary.

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)

225. 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).

226. 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.

227. 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.

228. 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.

229. 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).

Notification procedure in practice

230. The notification procedure requires the summoning of the person concerned by the request and the information holder (in the case of a bank) to attend a meeting at the Ministry of Finance. The person is considered notified when he/she has attended this meeting at the Ministry of Finance, or when the person has failed to attend. From the date of the notification, the person has 13 days to appeal the exchange of information.

231. As soon as the Andorran competent authority has established that an EOI request is valid, the EOI Unit will send a letter to summon the person concerned by the request for a meeting at the Ministry of Finance within 10 days from the reception of the letter. This letter does not provide any information about the subject of this meeting. The person concerned can ask for another date, but this change will be accepted only if the meeting is held within the following week or so.

232. The meeting at the Ministry of Finance is considered the moment when the concerned person was notified. The person must sign a letter to confirm that he/she has attended the meeting. During the meeting, the person concerned is verbally informed that a foreign jurisdiction is requesting information. The person concerned by the request is informed of the name of the jurisdiction, the information requested and the years concerned. As stated in Article 6 of the EOI Regulation, however, from the moment that the concerned person is notified, it is possible to consult the dossier being processed by the competent authority (see section C.3 below).

233. The letter of summoning is sent with an acknowledgment of receipt. The address of the person is normally available in the General Administration database. If the person is not found, the letter will be sent to a relative, who will act as a representative of the concerned person. If no one is found, a notice will be left at the concerned persons' address communicating the summon at the Ministry of Finance. If within ten working days the concerned persons has not attended the Ministry of Finance, the summon will be published on the Official Gazette of the Principality of Andorra. The publication on the Official Gazette will establish a duty to attend the Ministry of Finance within ten working days of the publication to be "informed about an important matter in which the concerned person has an interest". If the concerned person does not attend a meeting at the Ministry of Finance within

ten working days following the publication in the Official Gazette, he/she will be considered as notified.

234. If the person to be notified lives abroad, the letter of summoning will be signed and sealed and a translation in English, French, or Spanish will be attached where appropriate. If the concerned person has a representative in Andorra, the letter will be sent to him/her. If the person abroad does not have any representative in Andorra, the EOI Unit will look up for the address abroad in the General Administration database. If the person abroad is not found, a summon will be published on the Official Gazette and he/she would be automatically considered notified after ten working days of the publication.

235. With regard to banking information, Andorra has to notify also the bank which holds the information. The bank is notified immediately after the person which is the subject of the request has been notified, that is two-three weeks after the initial letter of summoning to the Ministry of Finance was sent. The notification is done by a standard letter which is adapted and sent with acknowledgement of receipt. The letter informs the bank that the competent authority of a foreign jurisdiction has requested information on the basis of an international agreement and the date of the request. It also describes the information requested, indicating the identity of the account holder, and informs the bank that it has the right to appeal in the following 13 days after notification. The bank is considered as notified when it receives the letter. When banking information is sought, the notification process, which involves the person who is the subject of the request and the bank holding the information, may take – without appeal – up to four-five weeks.

236. Thus far, the person concerned by the request has always been notified by attending the meeting at the Ministry of Finance. In some cases, a new date was scheduled to accommodate the person concerned. There have been three cases where the person concerned by the request has initially objected to the exchange of information in the 13-day period. Nevertheless, in all these cases, the person subsequently accepted that the information be exchanged and there has been no judicial procedure. As such, Andorra has no experience with regard to the application of the complete appeal procedure and the timeline in practice. Andorran authorities have mentioned that it would be possible, in Andorra, to prioritise EOI cases over other cases in the judicial process but the total process, including all the appeals would be difficult to complete in less than six months. To the extent that Andorra introduces appropriate exceptions to notification, the risk of delays due to the appeal process would be minimised.

Exception to prior notification in practice

237. One partner has asked Andorra not to inform the person concerned by the request in three circumstances. In those cases, although no exception to prior notification is envisaged under the EOI Act, Andorra was able to avoid such notification on the basis of the interpretation of the treaty between the two jurisdiction and a mutual agreement signed by the respective Ministers of Finance. Article 1 of the agreement between the two jurisdictions establishes 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. Article 11 of their treaty provides for mutual agreement procedures or other written solutions in case of difficulties or doubts concerning the implementation or interpretation of the treaty.

238. With regard to the EOI requests where the treaty partner asked for an exception to prior notification, Andorra considered that the right of the partner to obtain the information based on Article 1 of the treaty was conflicting with the right to inform the person concerned by the request. On the basis of Article 11 of the treaty, the Ministers of Finance of the two jurisdictions signed a mutual agreement which establishes the conditions where the prior notification may not be served, that is when 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. According to the Andorran authorities, the exception to prior notification found in the mutual agreement is legally superior to the provisions of the EOI Act, because it is grounded on the application of Articles 1 and 11 of the treaty, and the hierarchy of law in Andorra prescribes that provisions of international agreements that conflict with domestic legislation prevail. On the basis of the mutual agreement, Andorra exchanged the information without notifying the persons concerned at any point in time.

239. Although the exception to prior notification provided in the mutual agreement between Andorra and one jurisdiction has worked in practice, the exception to prior notification is only applicable to one treaty partner. Andorra did not approach any other treaty partner to propose such a solution to the prior notification. Andorra has nonetheless indicated that it is ready to reach similar agreements with other jurisdictions if requested.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
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.

Phase 2 rating
Partially Compliant.

C. Exchanging Information

Overview

240. 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 take effect in the legal system and cannot be amended or repealed by 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.

241. Since its endorsement of the internationally agreed standard for exchange of information for tax purposes in March 2009, Andorra has signed 22 Taxation Information Exchange Agreements (TIEAs), of which 19 are in force. In addition, Andorra has signed the OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters which covers a total of 77 jurisdictions, 56 of which Andorra does not have a bilateral agreement with. It means that, once the MAC enters into force in respect of Andorra, Andorra will have a total of 78 EOI relationships, all of which 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. A Double Taxation Convention has been initialled with Luxembourg, and TIEAs have been initialled with Italy and South Korea. EOI treaty negotiations are ongoing with Brazil (TIEA), Bulgaria (TIEA), Colombia (TIEA), Hungary (TIEA), India (TIEA), Liechtenstein (DTC), Philippines (TIEA), Singapore (TIEA), South Africa (TIEA), Ukraine (TIEA) and United Kingdom (TIEA).

242. 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.

243. 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). 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.

244. Even though the EOI arrangements provide for information to be kept confidential, domestic legislation in Andorra allows the person under investigation in the requesting jurisdiction as well as the information holder to inspect the dossier kept by the Andorran competent authority, and there are no exceptions to the possibility of disclosure of the dossier (including the EOI request).

245. During the period under review (July 2010 – June 2013), Andorra received a total of 29 requests for information, from four jurisdictions. In 2011, Andorra created an EOI Unit within the Ministry of Finance. The resources were increased by hiring new staff and improving the IT systems. The operational process also improved with experience. Nevertheless, during the review period, the timeliness of response was generally slow and communication with partner jurisdictions was not always effective, including a lack of status updates in cases where a reply to an EOI request could not be provided within 90 days.

246. Information was not exchanged in nine cases as a result of divergence of interpretation between Andorra and partner jurisdictions in respect of the application period of the TIEAs to criminal tax matters. Andorra's application of the entry into effect provisions may represent an obstacle to give full effect to the TIEAs with two jurisdictions because the term "criminal tax matters" in those TIEAs is defined as involving intentional conduct before or after the entry into force of the agreement.

C.1. Exchange of information mechanisms

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

247. Andorra has TIEAs in force with the following 19 jurisdictions: Argentina, Australia, Austria, Denmark, the Faroe Islands, Finland, France, Germany, Greenland, Iceland, Liechtenstein, Monaco, the Netherlands, Norway, Poland, Portugal, San Marino, Spain and Sweden. In addition it has signed TIEAs with 3 other jurisdictions: Belgium, Czech Republic and Switzerland. Andorra has also signed the OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters (MAC) which covers a total of 77 jurisdictions, of which 56 that Andorra does not have a bilateral agreement with. In sum, once all these agreements are in force in respect of Andorra, Andorra will have a

total of 78 EOI relationships. All of these agreements but one (Liechtenstein) provide for exchange of information to the international standard. Andorra and Liechtenstein are nonetheless signatories to the MAC and their EOI relationship will be to the standard once this agreement will enter into force in both countries. Andorra and Liechtenstein are also currently revising their agreement in order to amend their TIEA under a DTC format to be in line with the international standard. The authority to sign international agreements for exchange of information specifically relates to both TIEAs and DTCs (Art. 1 EOI Act).

248. In addition, three agreements have already been initialled with Italy (TIEA), Korea (TIEA) and Luxembourg (DTC). Andorra also started to negotiate with Brazil (TIEA), Bulgaria (TIEA), Colombia (TIEA), Hungary (TIEA), India (TIEA), Liechtenstein (DTC), Philippines (TIEA), Singapore (TIEA), South Africa (TIEA), Ukraine (TIEA) and United Kingdom (TIEA).

249. During the period under review (July 2010-June 2013), Andorra received a total of 29 requests for information, from four jurisdictions. Andorra has so far not sent any EOI requests.

Foreseeably relevant standard *(ToR C.1.1)*

250. 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".

251. Andorra's EOI agreements 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.

252. 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. In practice, there has not been any exchange of information between these two jurisdictions during the review period. None of Andorra's agreements signed after the TIEA with Liechtenstein contains such provision.

253. 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.

Foreseeable relevance in practice

254. When an EOI request is received, Andorra's competent authority will assess the foreseeable relevance of the request by looking into the specific provisions of the EOI agreement. Andorra has developed a procedural manual to deal with the EOI requests received (see section C.5.2 below). The foreseeable relevance is assessed by the EOI Unit, and then signed off by the Minister of Finance.

255. In four cases the competent authority declined to provide the information on the basis that the EOI request was not foreseeably relevant: in two cases, Andorra explained the situation to the partner and accepted to receive clarifications in order to reconsider the request; in the other two cases, the competent authority asked for clarifications before declining the request.

256. In one case, the EOI request was rejected because the relation between the information sought and the investigation conducted in the requesting partner was not explained. Andorra is of the view that the foreseeable relevance was not clearly provided in the EOI request and so the competent authority carried out search to clarify the situation and found that there was no relation between the persons concerned (the persons from whom banking information was sought) and the company under investigation as none of these persons were shareholders, neither employees nor had access to the company's bank account. Andorra refused to provide this information, explaining the situation to the requesting partner. The partner was satisfied with the answer received.

257. In another case, a partner asked whether payments made by a company to an Andorran company were genuine. In the opinion of the competent authority, the connection between the company and some of the information requested was not entirely clear. Nevertheless, the competent authority provided information regarding the Andorran company, which was liquidated. Andorra explained why it could not provide the remaining of the information. The partner was satisfied with the answer received.

258. In two cases, before declining the request, Andorra sought clarification from the partner because the persons under investigations were residents of Andorra and not residents of the requesting jurisdiction as stated in the request. The partner was satisfied with the answer received.

In respect of all persons (ToR C.1.2)

259. 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.

260. 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. In practice, Andorra has exchanged information regarding both residents as well as non-residents of Andorra.

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

261. 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.

262. All EOI agreements 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.

263. 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.

264. In practice, the competent authority retrieved ownership and accounting information from the Companies Register and it obtained banking information in all the cases where the EOI request was processed.

Absence of domestic tax interest (ToR C.1.4)

265. 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.

266. All of Andorra's EOI agreements 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. In practice, no issue was raised in this respect.

Absence of dual criminality principles (ToR C.1.5)

267. 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.

268. None of the EOI agreements concluded by Andorra applies the dual criminality principle to restrict the exchange of information. In practice, no issue was raised in this respect

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

269. All of the EOI agreements concluded by Andorra provide for the exchange of information in both civil and criminal tax matters. In practice, no issue was raised in this respect.

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

270. According to the *Terms of Reference*, exchange of information mechanisms should allow for the provision of information in the specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent possible under a jurisdiction's domestic laws and practices.

271. All of Andorra's EOI agreements 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.

272. The Andorran's authorities have confirmed that they are ready to provide information in the specific form requested to the extent permitted under Andorra's laws and administrative practices. In addition, according to the comments received from Andorra's treaty partners, there was not any instances where Andorra was not in a position to provide the information in the specific form requested or in an acceptable format.

In force (ToR C.1.8)

273. 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.

274. Andorra has signed 22 TIEAs. Nineteen of these agreements are in force, with: Argentina, Australia, Austria, Denmark, the Faroe Islands, Finland, France, Germany, Greenland, Iceland, Liechtenstein, Monaco, the Netherlands, Norway, Poland, 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).

275. Andorra ratified the TIEAs with Belgium and Czech Republic. The TIEAs with Switzerland has not yet been ratified. The MAC, signed by Andorra in November 2013, has also not yet been ratified.

276. In Andorra, the official language is Catalan, but treaty negotiations generally take place in French, English or Spanish. Once the text of the treaty is agreed and initialled, it has to be translated into Catalan before signature. When the translation is completed, all official versions of the text are reviewed and then approbation for signature and ratification is required from the Council of Ministers.

277. This approbation also establishes the authority who will sign the agreement. Once signed, the treaty along with a legal report and explanations of the treaty, is transmitted to the Parliament for ratification. The treaty is then published in the official bulletin of the Parliament. In the 15 days of the Parliament's approval (in session), the Co-Princes of Andorra (the French President and the Spanish Bishop of Urgell) consent to the ratification through the publication in the official bulletin.

278. The Minister of Foreign Affairs prepares the instrument of ratification, obtains the signature of the Co-Princes and the Head of the Government (the Prime Minister), before transmitting to the other jurisdiction. The entry into force of the agreement is also published in the official bulletin.

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

279. 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,[16] 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.

280. However, as detailed in section 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.

281. Two peers have commented that Andorra had not provided information following requests that related to a period before the entry into force of the TIEA under which the requests were made. The requests concerned criminal tax matters, and a divergence of interpretation regarding the entry into force provision in the concerned TIEAs arose between these peers and Andorra. The following positions were taken: the peers argued that the entry into force provision in the TIEAs obliges Andorra to exchange information with respect to criminal tax matters in all cases, whether they relate to a taxable period after or before the entry into force of the TIEA. Andorra's interpret the entry into force provision for criminal tax matters in the relevant TIEAs as not retroactive. The Andorran authorities have also indicated that, regardless of this interpretation, the competent authority would exchange information produced before the entry into force of the agreement but relating to taxable periods after the entry into force of the agreement.

282. Andorra's Government interprets the entry into force provision for criminal tax matters in the relevant TIEAs as not retroactive since 2010. The Andorran authorities have indicated that when the first TIEAs were presented to the Parliament for approval, the Government explicitly indicated during the debates that the TIEAs signed by Andorra would not be retrospective. This statement was made at more than one occasion in the debates before the adoption of the TIEAs and it is reflected in the Official Journal of the Parliament.

16. 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.

During these debates it was often recalled that Andorran constitution guarantees the principle of non-retroactivity of the rules restricting individual rights or those are unfavourable in their effect or sanction. The TIEAs have been approved by the Parliament on this basis. The Andorran authorities have indicated that this interpretation is applicable to any TIEA already in force.

283. A form of non-retroactivity of exchange of information is also established by law. The Second Final Provision establishes that the EOI Act "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." As such, the ability of the competent authority to use its access powers granted by the EOI Act and exchange the collected information is limited to information related to tax years beginning after the date of signature of an EOI arrangement.

284. The international standard provides for exchange of past information which relates to a taxable period following the effective date,[17] but the *Terms of Reference* do not require that information must be provided that relates to a taxable period before the entry into force of an information exchange agreement. Accordingly, what applies in a particular case depends on the wording of the relevant provision of the agreement.

285. However, the Second Final Provision in the EOI Act may represent an obstacle to give full effect to the TIEAs that are in force with two jurisdictions – Monaco and San Marino. In these two TIEAs, the entry into force clause provides for a distinction between the entry into effect of criminal tax matters and other matters, and the term "criminal tax matters" is defined as "involving intentional conduct, *before or after the entry into force of the present Agreement*, which is liable to prosecution under the criminal laws of the applicant Party" [emphasis added]. As such, these TIEAs clearly provide for the exchange of information related to criminal tax matters referring to tax years before the entry into force of the TIEAs. Considering the Second Final Provision of the EOI Act, Andorra would not be in a position to exchange information in criminal tax matters retroactively, or would be in a position to do so only to the extent that the information refers to the tax years beginning after the dates of signature (18.9.2009 for Monaco and 21.9.2009 for San Marino). Even though in Andorra legislation international agreements prevail over conflicting domestic legislation, the TIEAs in these cases only establish an obligation on the parties to exchange the information, relating to previous

17. Information that came into existence before the entry into force of the agreement may be relevant for taxable periods that post-date the coming into force of the agreement and this information should be exchanged in accordance with the international standard.

years in criminal cases, but do not grant the powers to the competent authority to obtain such information. In any case, the interpretation given by the Andorran Government in relation to the effective dates of EOI agreements in force indicates that these TIEAs would not be applied retroactively. It is noted that there has been no exchange of information between Andorra and either of these jurisdictions. Yet, it is recommended that Andorra implements legislation that would give full effect to all its EOI treaties.

286. The Second Final Provision in the EOI Act may also constitute an impediment to give full effect to the provisions of the MAC, once in force in respect of Andorra. The entry into force provision of the MAC states that "for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, the provisions of this Convention, as amended by the 2010 Protocol, shall have effect from the date of entry into force in respect of a Party in relation to earlier taxable periods or charges to tax" (MAC, Art. 28(7)). This provision clearly obliges the parties to the MAC to exchange information that relates to taxable periods prior to the entry into force for criminal tax matters. Given the limits in Andorran legislation to obtain and exchange information referring to the tax financial years beginning after the date of signature (5.11.2013), it is recommended that Andorra, before ratifying the MAC, ensure that its legislation will give full effect to all the provisions of this EOI agreement.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
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. In addition, two TIEAs cannot be fully implemented due to a provision in Andorran legislation which restricts the ability of the competent authority to obtain and exchange information related to tax years beginning before the date of signature of an EOI arrangement.	Andorra should ensure that its domestic laws allow for effective exchange of information.

Phase 2 rating
Largely Compliant.

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

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

287. 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.

288. 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 16.1 % of its GDP in 2012. In terms of foreign trade, Andorra's main trading partners are (in order) Spain, France, Germany and Italy. TIEAs are in force with Germany, Spain and France a TIEA has been initialled with Italy.

289. In Andorra, there is one inter-ministerial commission dedicated to tax treaty negotiations. This commission is made of several ministries.

290. 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.[18] Since then, Andorra has signed 22 TIEAs, of which 19 are in force. In addition, Andorra signed the OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters, which has not yet been ratified. Andorra's EOI network covers:

- 25 members of the European Union;
- 33 OECD members;

18. 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.

- all G20 members; and
- 74 members of the Global Forum.

291. In addition, Andorra is actively working to expand its TIEA network. Negotiations have also been initiated with a number of other countries including Brazil, Bulgaria, Colombia, Hungary, India, Liechtenstein, Mexico, Philippines, Singapore, South Africa, Ukraine and United Kingdom, and the United States. TIEAs with Korea and Italy and the DTC with Luxembourg have already been initialled.

292. Since the entry into force of corporate income tax and income tax on self-employed worker, Andorra has started DTCs negotiations. When a TIEA already exists between Andorra and the partner with whom a DTC is negotiated, no EOI provision is included in the DTC (which is the case, for instance, for the DTC signed with France in April 2013). However, for DTC negotiations with jurisdictions that have no TIEA with Andorra, the DTC negotiations include an EOI provision (like the DTC that is has been initialled with Luxembourg). All new agreements concluded by Andorra are based on the OECD Model Tax Convention and include a full version of Article 26 of this Model Convention (including paragraphs 4 and 5).

293. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report, and no jurisdiction advised the assessment team that Andorra had refused to negotiate or conclude an information exchange agreement with it, although it has sometimes postponed the negotiations due to limited resources of the negotiation team. In summary, Andorra's network of information exchange agreements covers all relevant partners. Andorra has made a considerable amount of effort and progress in developing its network of EOI relationships to the standard since 2009, leading to an exchange of information relationship with 78 partners.

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.

Phase 2 rating
Compliant.

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)*

294. 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.

295. 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.

296. 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.

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

298. In addition, provisions in Andorra's EOI agreements 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.

Confidentiality in practice

299. Andorra has implemented strict confidentiality measures in its EOI process and practices. When an EOI request is received, it is registered and confidentially filed. A paper copy is also stored in the office of the Head of the EOI Unit, in a locked cabinet. Access to the buildings as well as to the office of the Head of the EOI Unit is under supervision with 24-hours security service and camera surveillance.

300. To prevent unauthorised access to confidential data, the authorities have set up a password-protected IT system. In addition, the IT system allows tracking of which data has been accessed and by whom. Access to the database is limited only to employees who need the information in connection to their work and can only be accessed from the premises; there is no external access possible.

301. The only persons with access to the requests are those in charge of processing incoming requests: the EOI Unit and the Minister of Finances (the competent authority). All members of the EOI Unit and the Minister with access to the database are, like all civil servants in Andorra, bound by professional secrecy subject to sanctions for default. No breach of confidentiality has ever happened as far as the persons working on EOI are concerned.

302. Andorra's competent authority discloses some information to the person who is the subject of the request and – where applicable – to the holder of the information. The notification procedure initially requires the summoning of the person concerned by the request to attend a meeting at the Ministry of Finance, and a letter to the information holder. As described in section B.2 above, during the meeting at the Ministry of Finance, or in the letter to the information holder, the competent authority discloses the name of the jurisdiction, the information requested and the years concerned but the notified person is not provided with the original request. A notified person has 13 days to appeal the exchange of information. In a court proceeding, all information concerning to the EOI request would be disclosed. In practice, during the period under review, three persons have appealed the exchange of

information after being notified. In these cases, the persons concerned by the request initially objected to the exchange of information, yet subsequently, they accepted that the information be exchanged.

303. The EOI Regulation establishes that, from the moment where the notification procedure begins, "it is possible to consult the dossier being processed by the competent authority" (Art. 6). This means that both the person under investigation in the requesting jurisdiction and the information-holder have a right to inspect the information provided by the competent authority of the requesting jurisdiction (including the EOI request) at any time after the notification procedure has started until the information has been exchanged and the dossier is closed by the competent authority. The EOI Regulation does not provide for any exceptions to this possibility.

304. The provision found in the EOI Regulation by which the dossier can be consulted in all cases after notification by the person under investigation and the information-holder (including the EOI request) does not meet the standard for confidentiality. The standard requires that the requested jurisdiction should disclose only the minimum information necessary to obtain the information requested. Moreover, the EOI request and communication between the competent authorities should not be disclosed unless there is a court proceeding or the requesting jurisdictions has given its consent. Andorra has indicated that only one jurisdiction has asked in three cases that information be kept confidential, and Andorra has concluded with this jurisdiction a mutual agreement that allows for exceptions to prior notification and for confidentiality to be kept in certain circumstances (see section B.2 above). Nonetheless, It is recommended that Andorra ensures that it discloses only the minimum information necessary to collect the requested information.

305. In practice, the Andorra authorities have indicated that neither the person under investigation in the requesting jurisdiction, nor the information holder have ever asked to consult the dossier.

306. The Andorran authorities have confirmed that they have never had a problem of confidentiality in practice. In addition, no member of the Global Forum has raised doubt about the ability of Andorra's authorities to respect confidentiality nor have any cases been reported where this obligation was violated.

All other information exchanged (ToR C.3.2)

307. 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, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
After notification, the person under investigation and the information-holder can inspect the file containing all information obtained from the requesting jurisdiction, including the EOI request.	Andorra should ensure that it discloses only the minimum information necessary to collect the requested information.

Phase 2 rating
Partially Compliant.

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)

308. 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.

309. 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.

310. 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. In practice, Andorra's competent authority does not have experience collecting information from lawyers as it currently does not have the legal powers to obtain information from third parties other than financial institutions. The EOI Regulations are accordingly not applicable. In any case, provisions in Andorra's international agreements override contradicting domestic legislation (Constitution, Art. 3(4)). As such, as far as the EOI agreements define what information which would reveal confidential communications between a client and a legal representative should not be exchanged, this provision should be applicable. All of Andorra's TIEAs except the one with Liechtenstein contain language akin to Article 7(3) of the OECD Model TIEA which defines the scope of the information that is considered to be legal secret and that a party does not have to provide.

311. 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. The EOI relationship between Andorra and Liechtenstein will nonetheless be to the standard in this respect once both jurisdictions ratify the MAC.

Notification of taxpayers

312. 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.

313. 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. Andorra and Liechtenstein are both signatories to the MAC and their EOI relationship will nonetheless be to the standard in this respect once both jurisdictions ratify the MAC. Andorra and Liechtenstein are also currently revising their agreement in order to amend their TIEA under a DTC format to be in line with the international standard.

314. The prior notification process in Andorra does not provide for any exception, which is not in line with the *Terms of Reference*. This issue is dealt with in section B.2 above, and a recommendation is made in this respect. A mutual agreement between ministers of Finances was made between Andorra and one EOI partner, which provides for exception to the prior notification process under certain circumstances. Although the exception to prior notification provided in the mutual agreement between these two jurisdictions has worked in practice, it is only applicable to one treaty partner (see section B.2 above). Andorra did not approach other partner jurisdictions to propose such an arrangement, but has advised that it is ready to conclude one if a partner jurisdiction asks for it.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

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)

315. 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.

316. 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.

317. 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. Nevertheless Andorra and Liechtenstein are currently revising their agreement in order to amend this protocol, under a DTC format to be in line with the international standard and are already party to the Multilateral Convention. During the review period there has been no exchange of information between Andorra and Liechtenstein.

318. During the period under review (July 2010 – June 2013), Andorra received a total of 29 requests for exchange of information, from four jurisdictions. A request is regarded as a single request irrespective of the number of subjects involved for which information is requested. Where a supplementary request for information was received in connection with the original request (i.e. where the original request was not fully satisfied, or where other elements have arisen based on the information that was sent to the requesting jurisdiction), this is viewed as part of the original request. Andorra indicated that it provided a final answer in 20 out of 29 requests.

319. Twelve requests were initially rejected due to differing interpretations of the entry into force clause of the TIEA. In these twelve requests Andorra approached the partner for re-submission of the requests in most cases. After approaching the partner, three requests were dealt with and the information was finally exchanged; four requests were closed as the requesting jurisdiction informed Andorra that in the meantime it had closed the investigation; in five cases where there is disagreement between Andorra and its partner the requests are considered as "pending". It is noted that a peer complained that it was only informed that the EOI request was not being processed because of the differing interpretation of the entry into force provisions in two cases; in other five cases, that peer did not receive any written explanation as to why the information was not being provided. The Andorran

authorities have indicated that, at a later stage, the EOI Unit explained the situation to this partner during bilateral meetings.

320. The table below provides an overview of the timeliness of response of Andorra during the review period. The time line of the three cases where the information was provided after re-submission is considered from the date of re-submission. In the four cases where the request was not processed in Andorra after the investigation was closed in the partner jurisdiction, the response time is calculated based on the date when the request was withdrawn.

Response times for requests received during the three-year review period

	Jul-Dec 2010		2011		2012		Jan-Jun 2013		Total	Average
	nr.	%	nr.	%	nr.	%	nr.	%	nr.	%
Total number of requests received* (a+b+c)	0		12		11		6		29	
Full response** ≤90 days	-	-	-	-	3	27.3	1	16.7	4	13.8
≤180 days	-	-	-	-	2	18.2	1	16.7	3	10.3
≤1 year (a)	-	-	-	-	3	27.3	2	33.3	5	17.2
1 year+ (b)	-	-	10	80	2	18.2	-	-	12	41.4
Requests still pending at the end of the review period (c)	-	-	2	20	1	9	2	33.3	5	17.2

* A request is regarded as a single request irrespective of the number of subjects involved for which information is requested.

** The time periods in this table are counted from the date of receipt of the request to the date on which the final response was issued.

321. The table shows that in the 29 EOI requests received during the review period, Andorra answered within 90 days in 13.8% of the cases, and within 180 days in 10.3% of the cases. Around 17% of the requests were processed in more than 180 days and 41% in more than a year. Five requests are still pending, representing 17.2% of the total requests. The table also shows that timeline has slightly improved over time: while in 2011 80% of requests were answered in more than a year, in 2012, almost 50% of the requests were answered within 180 days.

322. With regard to the slow timeframe of reply, Andorra has explained that before 2011, there was only one person working on EOI in addition to his/her other tasks and no EOI division existed. A dedicated EOI Unit was created at the end of 2011. The Andorran authorities have given other reasons for the sometimes delayed timeframe to answer incoming requests such as: the increase of workload during the last two years, the lack of experience in

dealing with EOI, in particular to establish the foreseeable relevance of the EOI request, the time needed for translation and the limited number of staff, and the time taken to consider retroactive requests. New personnel were hired in 2012 and 2013 which will help accelerate the treatment of incoming requests. In addition, a new computer system that tracks EOI requests and sends alarm to respect deadlines has been put in place and is now fully operational. Andorra has indicated that after the end of the review period, it has been able to reply to EOI requests in a timely manner, however, these requests are outside the scope of the current review. While progress has been made on the structuring and staffing of the EOI Unit over the last two years, Andorra still does not have enough experience to show that it has handled EOI requests timely. It is recommended that Andorra monitors its timeframe for answering requests to ensure that it is always able to reply in a timely manner.

323. During the review period, the Andorran competent authority did not always communicate effectively with requesting partners. In one case, the competent authority rejected the requests for good reasons: because the agreement was not in force. In four other cases (3 requests), it declined to provide information on the basis it considered the request as not foreseeably relevant; before rejecting the EOI requests, the Andorran competent authority did not always seek more explanations from the requesting jurisdiction, although the partners were satisfied with the answer received (see section C.1.1 above). With regard to the requests rejected because of divergence in interpretation of the entry into force clause (see section C.1.9 above), in a number of cases Andorra did not communicate to the partner in writing that the EOI request was not being processed (although the Andorran authorities have indicated that, at a later stage, the EOI Unit explained the situation to this partner during bilateral meetings). In a few cases, the partner initially received partial information and only after the partner indicated that some information was missing, Andorra exchanged complements of the information. The Andorran authorities have indicated that they always provide the information that they deem foreseeably relevant, explaining the situation, and if the competent authority receives additional information that would demonstrate the foreseeable relevance of additional information, they will provide such additional information.

324. Communication was also not effective with regard to status updates. Peers have reported that they did not always receive an update when the information could not be provided within 90 days. Even though peers have been satisfied with the answer in most cases (except two peers in relation to the entry-into-force provisions of their EOI agreement with Andorra), in other cases there has been a communication problem, where the status of the EOI request was not communicated, or EOI requests were rejected without seeking more information. Andorra has acknowledged this problem and has

indicated that it now informs all partners about the status of the demand by phone or by e-mail. Nevertheless, this relates to a period outside the three years under review and it is recommended that Andorra ensures that the competent authority communicates effectively with all its treaty partners, including by providing status updates.

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

325. 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.

326. 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.

Organisational process

327. The day to day work of the competent authority is carried out by the EOI Unit, which was created at the end of 2011. The first EOI request was received by Andorra at the beginning of 2011. Andorra has developed a procedural manual to deal with the EOI requests received.

328. When an EOI request is received by the competent authority, a dossier is created in the database maintained by the EOI Unit. Each request is assigned a code. In respect of each EOI Request, the database contains the following information: the code of the request, the name of the requiring jurisdiction, the type of information requested, date when the request was received, the status of the request and, when closed, the date of the transmission of a final answer to the jurisdiction. A paper copy is also created and confidentially archived. An acknowledgment of receipt is sent to the requesting jurisdiction in the same day the EOI request was received or in the following days. Andorra accepts requests in French, English Portuguese or Spanish. The request is translated internally directly by the staff of the Minister of Finance in one or two days and then processed.

329. The request is attributed to one of the agents depending on the availability of the staff of the EOI Unit. Once attributed, the agent in charge checks whether the request is complete, is based on a valid EOI agreement that is in force and that it was sent by the partner's competent authority.

330. After these procedural checks, the agent in charge checks whether the EOI request contains sufficient information to be considered foreseeably

relevant. The information to be provided by a requesting jurisdiction cannot be generic and must detail the following: *a)* the identity of the person concerned in the request; *b)* the period concerned in the request; *c)* the nature of the information requested; *d)* the purpose for which the information is requested; *e)* the grounds for believing the information requested could be of interest to the Administration of the requiring state; *f)* the grounds for believing that the information is available to the competent authority or could be obtained from a person in its jurisdiction; *g)* to the extent known, the name and address of any person believed to be in possession of the information (for example: the banks); *h)* statement certifying that the request is in accordance with the requiring state's legislation; *i)* statement certifying the requiring state has pursued all means available in its own territory to obtain the requested information, except those that would give rise to a disproportionate difficulty. The Minister of Finance signs off whether the request is foreseeably relevant.

331. If the requirements are not fulfilled, a reply is prepared to inform the EOI partner that its request has been rejected. The competent authority would also ask for clarifications, for example asking for further information in order to be able to answer the request. This is done through a letter signed by the Minister of Finance. This verification process generally takes two weeks, although in some cases, particularly with regard to the first EOI requests, this process took longer. Longer time was also taken for the EOI requests which are not processed because of the differing interpretation of the entry into force provisions between Andorra and the treaty partner. The Andorran authorities have indicated that in very complex cases, the EOI Unit would contact the requesting jurisdiction to make sure they understand correctly the request or to raise any issue, and this has happened in practice after the review period. In a number of cases, the competent authority did not inform the requesting jurisdiction that the EOI request was not being processed due to diverging interpretation of the entry into force provisions (see section C.1.9 above), although at a later time, Andorra has indicated that it informed the requesting jurisdiction during bilateral meetings.

332. Once it has been established that the EOI request is valid, the person who is the subject of the request and, where applicable, the person who might possess the information, are notified (see section B.2. above). The notifications are introduced in the database, the notification letter is scanned and a paper copy is kept in the dossier. The notification procedures have thus far taken approximately two-three weeks. When banking information was sought, the notification procedures, which involves the notification of both the person who is the subject of the request and the bank holding the information, took up to four-five weeks. If a person lodges an appeal against the transmission of the information, the competent authority will not be able to exchange the information until the notification procedure has been

completed. The Andorran authorities have indicated that the EOI Unit normally verifies whether the information is available in the databases to which it has direct access (the Companies Register and Business Register, see section B.1.1 above).

333. Once the notification procedures are completed, the EOI Unit sends a request to the holder of the information to provide it – a public office (generally by email) or a financial institution in Andorra (generally by letter). The Andorran authorities have indicated that the information is generally provided within one week. If more information is needed, an additional request is sent to the holder of the information, which normally also replies again in one week. Andorra has indicated that, during the period under review, it rarely sent partial response, as Andorra prefers to wait to have the complete answer before sending the response.

334. When the requested information is received by the EOI Unit, the information is vetted to make sure it is complete. Then the information is translated and a reply letter is drafted. The reply letter contains the information required and copy of certificates are attached where necessary. Finally, the reply letter is reviewed and signed by the Minister of Finance, and sent to the requesting jurisdiction. In case the Minister of Finance is away for long period, the Head of the EOI Unit is delegated to sign off the response to the EOI request. Thus far, such an occurrence never happened. The time normally taken by the competent authority from the moment of reception of the information for signature to the moment when the reply letter is sent is approximately two weeks.

Resources

335. The EOI Unit counted one employee when it was created in 2011. Since 2013, the EOI Unit is staffed with five employees, one Head of Unit (who is also the Head of the International Relations Unit of the Ministry of Finance, to which the EOI Unit is part), one specialist in political science and international affairs, one lawyer, one economist and one administrative assistant. In addition to exchange of information, the employees of the EOI Unit are also tasked with other international files, such as the negotiations with the European Union for the revision of the agreement between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments, negotiations in relation to the application of the United States Foreign Account Tax Compliance Act (FATCA), the implementation of the European legislation from the Monetary Agreement and approach to Europe.

336. While the team seems to be adequately staffed to perform its duties, the Andorran authorities mentioned that this situation is recent and that prior to 2012, only one employee was responsible for EOI. There has been an insufficiency of staff which resulted in two new agents hired in 2012 and an additional two in 2013.

337. All employees of the EOI Unit have a strong background experience in private practice (legal, audit or political affairs). In addition to on the job training, they have attended conferences and workshops organised by the OECD and the Global Forum (such as the competent authority meeting, assessors seminars and preparation to Phase 2 review seminars) to ensure continuous improvements to administrative procedures and practices. Moreover, the employees have access to a protocol elaborated by the Andorran authorities which explains all steps to follow to answer an EOI request. This protocol is based on OECD's guidelines and the domestic legislation.

338. A new database, specifically designed for international EOI on request was implemented in June 2013. Each EOI request receives a file number and is then registered in this database, along with the information relating to the request (date the request was received, requesting jurisdiction, the years concerned by the request, the requested information, the attachment to the request, the reference number given by the treaty partner). The request can be tracked by its file number and the database generates alarm after 60 days after the entry in the database if the file is not closed and again, before the 90-day deadline to send a status update. Status updates are made either by phone call or by email.

339. In recent years, Andorra has dedicated appropriate organisational processes and resources to its EOI system to ensure timely responses and the competent authority staff maintains high professional standards and expertise in relation to EOI.

Unreasonable, disproportionate or unduly restriction conditions for EOI (ToR C.5.3)

340. There are no aspects of Andorra's agreements, its laws, or administrative practice that would impose additional restrictive conditions on the exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
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.

Phase 2 rating	
Partially Compliant.	
Factors underlying recommendations	**Recommendations**
While progress has been made on the structuring and staffing of the EOI Unit over the last years, the timeframe for answering EOI requests was generally slow.	Andorra should monitor its timeframe for answering requests to ensure that it is always able to reply in a timely manner.
During the period under review, there has been some communication problems, where the status of the EOI request was not communicated, or EOI requests were rejected without seeking more information.	Andorra should ensure that the competent authority communicates effectively with all its treaty partners, including the provision of status updates within 90 days in all cases.

Summary of Determinations and Factors Underlying Recommendations

Overall Rating
PARTIALLY COMPLIANT

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. *(ToR A.1)*		
Phase 1: The element is in place.	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. The materiality of this gap is nonetheless very limited as the AML supervisory authorities have never come across a person in Andorra providing fiduciary services, and, during the period under review, Andorra received no EOI requests for information on foreign trusts.	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.

Determination	Factors underlying recommendations	Recommendations
Phase 2: Largely compliant.	Although companies are required to register ownership information with the Companies Register, the penalties to enforce these obligations have only recently been put in place. While some oversight is inherent in Andorra's legal framework, particularly given the role of notaries, the absence of penalties in the past means that there has been no coherent, systematic oversight of the obligations to maintain information.	Andorra should ensure that its oversight of obligations to maintain ownership information is coherent, systematic and adequate and should monitor the enforcement of the new penalties
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
Phase 1: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Andorran legislation does not ensure that reliable accounting records or underlying documentation are kept for foreign trusts with an Andorran-resident administrator or trustee. The materiality of this gap is nonetheless very limited as the AML supervisory authorities have never come across a person in Andorra providing fiduciary services, and, during the period under review, Andorra received no EOI requests for information on foreign trusts.	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.

Determination	Factors underlying recommendations	Recommendations
Phase 2: Largely compliant.	The Companies Register oversees and enforces the availability of accounting information through the submission of annual accounts, which however do not include underlying documentation. As such, there is no system of oversight to ensure that underlying documentation is kept by all companies. In addition, annual accounts are submitted to the authorities in a simplified form in a number of cases.	Andorra should implement a system of oversight to ensure that all relevant entities in practice keep full accounting records, including underlying documentation.
Banking information should be available for all account-holders. *(ToR A.3)*		
Phase 1: The element is in place.		
Phase 2: Compliant.		
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). *(ToR B.1)*		
Phase 1: The element is in place, but certain aspects of the legal implementation of the element need improvement.	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
Phase 2: Partially compliant.	With respect to joint bank accounts, the law requires that 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. It is unclear how Andorra would determine which information from joint bank accounts would be relevant for the requesting partner and which information would not. Andorra has no experience in exchanging information relating to joint bank accounts.	Andorra should monitor the ability of the competent authority to obtain and provide information from joint bank accounts so that it does not prevent effective exchange of information.
	During the period under review, the competent authority did not use its access powers to obtain accounting information from companies or other persons.	Andorra should ensure that the competent authority fully exercises its access powers when necessary.
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)*		
Phase 1: The element is in place, but certain aspects of the legal implementation of the element need improvement.	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.
Phase 2: Partially compliant.		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
Phase 1: The element is in place, but certain aspects of the legal implementation of the element need improvement.	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. In addition, two TIEAs cannot be fully implemented due to a provision in Andorran legislation which restricts the ability of the competent authority to obtain and exchange information related to tax years beginning before the date of signature of an EOI arrangement.	Andorra should ensure that its domestic laws allow for effective exchange of information.
Phase 2: Largely compliant.		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
Phase 1: The element is in place.		Andorra should continue to develop its EOI network with all relevant partners.
Phase 2: Compliant.		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
Phase 1: The element is in place, but certain aspects of the legal implementation of the element need improvement.	After notification, the person under investigation and the information-holder can inspect the file containing all information obtained from the requesting jurisdiction, including the EOI request.	Andorra should ensure that it discloses only the minimum information necessary to collect the requested information.

Determination	Factors underlying recommendations	Recommendations
Phase 2: Partially Compliant.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
Phase 1: The element is in place.		
Phase 2: Compliant.		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
Phase 1: 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.		
Phase 2: Partially compliant.	While progress has been made on the structuring and staffing of the EOI Unit over the last years, the timeframe for answering EOI requests was generally slow.	Andorra should monitor its timeframe for answering requests to ensure that it is always able to reply in a timely manner.
	During the period under review, there has been some communication problems, where the status of the EOI request was not communicated, or EOI requests were rejected without seeking more information.	Andorra should ensure that the competent authority communicates effectively with all its treaty partners, including the provision of status updates within 90 days in all cases.

Annex 1: Jurisdiction's response to the review report[19]

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

The Andorran Government has given careful consideration to the recommendations included in the Phase 1 evaluation and at the same time has been working in the Phase 2 evaluation in order to comply and apply correctly the OECD standards of exchange of information. The Andorran Government is aware that there is still some improvements but believes that lot of work has been done.

In terms of Exchange of Information (EOI), during the last 5 years, Andorra has been deeply committed to a process of greater transparency. On 7 September 2009 the Andorran Parliament adopted the Law 3/2009 for the EOI upon prior request and on 23 February 2011, it was approved the Regulation developing the Law 3/2009, which was amended on 1 June 2011 to align it with the OECD standards.

Recently, the Andorran Government approved an amendment of the referred Law 3/2009 and the Regulation that develops this Law in order to include certain exceptions to the prior notification in respect of all treaty partners. The modification in the regulation will include as well exceptions to the consultation of the dossier. These modifications were approved by the Parliament the 26th June 2014. This demonstrates the Andorra commitment with the international standards for transparency and exchange of information.

At end June 2014, Andorra is signatory to 22 TIEAs, 19 of which are in force and is continuing to expands its TIEA network with several jurisdictions, including OECD members and G20 members.

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

In terms of Automatic Exchange of Information (AEOI), Andorra signed in November 5, 2013 the OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters which has to be ratified by the Andorran Parliament. And the 18th June Andorra became a signatory to the OECD Declaration on Automatic Exchange of Information in Tax Matters of 6 May 2014. In addition of that Andorra participates in the AEOI Group.

Other commitments are moving in parallel and can also have an impact on the Andorran economy. Some of them are FATCA and the evaluations of Moneyval and GRECO. And at the European level: the Monetary Agreement signed by Andorra with the EU on June 2011, the amended Directive on taxation of savings and Andorra's approach to the EU to have a progressive access to the internal market.

Andorra is a country with a fast evolution, growth and with a clear projection abroad. As a result, in the last 3 years, Andorra has engaged a process of domestic reforms aiming to build up a competitive framework, including a new economic and tax framework.

In terms of the Andorran economic activity, on 21 June 2012, the Andorran Parliament approved the Law on Foreign Investment which introduced a substantial change as it opened all sectors 100% to foreign capital; foreign residents have now economic rights from the first day of residence and not after 10 or 20 years. And foreign residents can become liberal professionals as long as there is reciprocity for Andorran freelancers. This is the biggest change that the Andorran economy has experienced in recent decades.

The economic opening will lead to a diversification and an unprecedented revitalization of the Andorran economy. Andorra had never gone such a long way neither in the process of internationalization of the economy nor in the time necessary for foreign residents to acquire economic rights.

In terms of the tax framework and DTA's Agreements, it is important to point out that Andorra has now a modern tax system which the Andorran Government has been completed in just over 3 years.

Recently, the Andorran Government has completed the new tax framework with the approval by the Parliament in April 2014 of the income tax law on individuals (IRPF), which will enter into force in January 1, 2015. Regarding the other new laws on taxation: the non-resident income tax (IRNR) came into force on April 2011, both the corporate tax (IS) and the tax on economic activities (IAE) entered into force on 1 January, 2012 and the value added tax law (IGI) entered into force in January 1, 2013.

On 8 January 2014, the Government of Andorra passed the Decree on the creation and operation of the Tax and Customs Agency, which joins both departments in one and will be in charge of management, liquidations,

collection, inspection and ensuring application of the sanctions under the criteria of unity of actions. The Bill law on the basis of taxation, which is in parliamentary process, is intended to be passed and approved during July 2014.

In addition, the new tax and legal framework, has allowed Andorra to start working on the ratification of agreements to avoid double taxation, such as the one signed with France, in Paris on April 2, 2013 and the one signed in Luxembourg on June 2, 2014.

This report demonstrates that Andorra is making a lot and important changes in its economy in a very short period of time. This is important taking into account the size of the country and the available resources.

The Andorran Government will is to continue to improve its legal framework and to ensure that Andorra accomplish with the OECD principles and standards on exchange of information process while ensuring the Level Playing Field.

Annex 2: List of all Exchange-of-Information Mechanisms

	Treaty partner	Type of EOI arrangement	Date signed	Date in force
1	Albania	Multilateral Convention	Signed	In force in Albania 01-12-2013
2	Anguilla[20]	Multilateral Convention	Signed	In force in Anguilla 01-03-2014
3	Argentina	TIEA	26-10-2009	15-06-2012
		Multilateral Convention	Signed	In force in Argentina 01-01-2013
4	Aruba[21]	Multilateral Convention	Signed	In force in Aruba 01-09-2013
5	Australia	TIEA	24-09-2011	03-12-2012
		Multilateral Convention	Signed	In force in Australia 01-12-2012
6	Austria	TIEA	17-09-2009	10-12-2010
		Multilateral Convention	Signed	Not yet in force
7	Azerbaijan	Non-amended Multilateral Convention	signed	In force in Azerbaijan 01-06-2011
8	Belgium	TIEA	23-10-2009	Not in force
		Multilateral Convention	Signed	Not yet in force
9	Belize	Multilateral Convention	Signed	In force in Belize 01-09-2013

20. Extension by the United Kingdom (receipt by Depositary on 13 November 2013).

21. Extension by the Netherlands (receipt by Depositary on 29 May 2013).

	Treaty partner	Type of EOI arrangement	Date signed	Date in force
10	Bermuda[22]	Multilateral Convention	Signed	In force in Bermuda 01-03-2014
11	Brazil	Multilateral Convention	Signed	Not yet in force
12	British Virgin Islands[23]	Multilateral Convention	Signed	In force in the British Virgin Islands 01-03-2014
13	Canada	Multilateral Convention	Signed	In force in Canada 01-03-2014
14	Cayman Islands[24]	Multilateral Convention	Signed	In force in Cayman Islands 01-01-2014
15	China	Multilateral Convention	Signed	Not yet in force
16	Chile	Multilateral Convention	Signed	Not yet in force
17	Colombia	Multilateral Convention	Signed	In force in Colombia 01-07-2014
18	Costa Rica	Multilateral Convention	Signed	In force in Costa Rica 01-08-2013
19	Croatia	Multilateral Convention	Signed	Not yet in force
20	Curaçao[25]	Multilateral Convention	Signed	In force in Curaçao 01-09-2013
21	Czech Republic	TIEA	11-06-2013	Not in force
		Multilateral Convention	Signed	In force in Czech Republic 01-02-2014
22	Denmark	TIEA	24-02-2010	13-02-2011
		Multilateral Convention	Signed	In force in Denmark 01-06-2011
23	Estonia	Multilateral Convention	Signed	Not yet in force

22. Extension by the United Kingdom (receipt by Depositary on 13 November 2013).

23. Extension by the United Kingdom (receipt by Depositary on 13 November 2013).

24. Extension by the United Kingdom (receipt by Depositary on 25 September 2013).

25. Extension by the Netherlands (receipt by Depositary on 29 May 2013).

	Treaty partner	Type of EOI arrangement	Date signed	Date in force
24	Faroe Islands[26]	TIEA	24-02-2010	18-06-2011
		Multilateral Convention	Signed	In force in Faroe Islands 01-06-2011
25	Finland	TIEA	24-02-2010	12-02-2011
		Multilateral Convention	Signed	In force in Finland 01-06-2011
26	France	TIEA	22-09-2009	22-12-2010
		Multilateral Convention	Signed	In force in France 01-04-2012
27	Georgia	Multilateral Convention	Signed	In force in Georgia 01-06-2011
28	Germany	TIEA	25-11-2010	20-01-2012
		Multilateral Convention	Signed	Not yet in force
29	Ghana	Multilateral Convention	Signed	In force in Ghana 01-09-2013
30	Gibraltar[27]	Multilateral Convention	Signed	In force in Gibraltar 01-03-2014
31	Greenland[28]	TIEA	24-02-2010	6-4-2013
		Multilateral Convention	Signed	In force in Greenland 01-06-2011
32	Greece	Multilateral Convention	Signed	In force in Greece 01-09-2013
33	Guatemala	Multilateral Convention	Signed	Not yet in force
34	Guernsey	Multilateral Convention	Extended	In force in Guernsey 1-9-2014
35	Hungary	Multilateral Convention	Signed	Not yet in force
36	Iceland	TIEA	24-02-2010	14-02-2011
		Multilateral Convention	Signed	In force in Iceland 01-02-2012

26. Extension by Denmark (receipt by Depositary on 28 January 2011).

27. Extension by the United Kingdom (receipt by Depositary on 13 November 2013).

28. Extension by Denmark (receipt by Depositary on 28 January 2011).

	Treaty partner	Type of EOI arrangement	Date signed	Date in force
37	India	Multilateral Convention	Signed	In force in India 01-06-2012
38	Indonesia	Multilateral Convention	Signed	Not yet in force
39	Ireland	Multilateral Convention	Signed	In force in Ireland 01-09-2013
40	Isle of Man[29]	Multilateral Convention	Signed	In force in Isle of Man 01-03-2014
41	Italy	Multilateral Convention	Signed	In force in Italy 01-05-2012
42	Japan	Multilateral Convention	Signed	In force in Japan 01-10-2013
43	Jersey	Multilateral Convention	Extended	In force in Jersey 1-6-2014
44	Korea	Multilateral Convention	Signed	In force in Korea 01-07-2012
45	Latvia	Multilateral Convention	Signed	Not yet in force
46	Liechtenstein	TIEA	18-09-2009	10-01-2011
		Multilateral Convention	Signed	Not yet in force
47	Lithuania	Multilateral Convention	Signed	In force in Lithuania 1.6.2014
48	Luxembourg	Multilateral Convention	Signed	Not yet in force
49	Malta	Multilateral Convention	Signed	In force in Malta 01-09-2013
50	Mexico	Multilateral Convention	Signed	In force in Mexico 01-09-2013
51	Moldova, Republic of	Multilateral Convention	Signed	In force in Moldova 01-03-2012
52	Monaco	TIEA	18-09-2009	16-12-2010
53	Montserrat[30]	Multilateral Convention	Signed	In force in Montserrat 01-10-2013

29. Extension by the United Kingdom (receipt by Depositary on 21 November 2013).

30. Extension by the United Kingdom (receipt by Depositary on 25 June 2013).

	Treaty partner	Type of EOI arrangement	Date signed	Date in force
54	Morocco	Multilateral Convention	Signed	Not yet in force
55	Netherlands	TIEA	06-11-2009	01-01-2011
		Multilateral Convention	Signed	In force in the Netherlands 01-09-2013
56	New Zealand	Multilateral Convention	Signed	In force in New Zealand 01-03-2014
57	Nigeria	Multilateral Convention	Signed	Not yet in force
58	Norway	TIEA	24-02-2010	18-06-2011
		Multilateral Convention	Signed	In force in Norway 01-06-2011
59	Poland	TIEA	15-06-2012	18-11-2013
		Multilateral Convention	Signed	In force in Poland 01-10-2011
60	Portugal	TIEA	30-11-2009	31-03-2011
		Multilateral Convention	Signed	Not yet in force
61	Romania	Multilateral Convention	Signed	Not yet in force
62	Russian Federation	Multilateral Convention	Signed	Not yet in force
63	San Marino	TIEA	21-09-2009	07-12-2010
		Multilateral Convention	Signed	Not yet in force
64	Saudi Arabia	Multilateral Convention	Signed	Not yet in force
65	Singapore	Multilateral Convention	Signed	Not yet in force
66	Sint Maarten[31]	Multilateral Convention	Signed	In force in Sint Maarten 01-09-2013
67	Slovak Republic	Multilateral Convention	Signed	In force in Slovak Republic 01-03-2014

31. Extension by the Netherlands (receipt by Depositary on 29 May 2013).

	Treaty partner	Type of EOI arrangement	Date signed	Date in force
68	Slovenia	Multilateral Convention	Signed	In force in Slovenia 01-06-2011
69	South Africa	Multilateral Convention	Signed	In force in South Africa 01-03-2014
70	Spain	TIEA	14-01-2010	10-02-2011
		Multilateral Convention	Signed	In force in Spain 01-01-2013
71	Sweden	TIEA	24-02-2010	11-02-2011
		Multilateral Convention	Signed	In force in Sweden 01-09-2011
72	Switzerland	TIEA	17/3/2014	Not in force
		Multilateral Convention	Signed	Not yet in force
73	Tunisia	Multilateral Convention	Signed	In force in Tunisia 01-02-2014
74	Turkey	Multilateral Convention	Signed	Not yet in force
75	Turks and Caicos[32]	Multilateral Convention	Signed	In force in Turks and Caicos 01-12-2013
76	Ukraine	Multilateral Convention	Signed	In force in Ukraine 01-09-2013
77	United Kingdom	Multilateral Convention	Signed	In force in the United Kingdom 01-10-2011
78	United States	Multilateral Convention	Signed	Not yet in force

32. Extension by the United Kingdom (receipt by Depositary on 20 August 2013).

Annex 3: List of laws, regulations and other relevant material

Company law

Companies Act (Llei 20/2007)

Companies Register Regulation (Reglament 26.03.2008)

Law 28/2013, amending the Companies Act

Companies Register Regulations issued on 30 April 2014, repealing the Companies Register Regulation 2008

Foreign Investment Law

Foreign Investment Act (Llei 2/2008)

Foreign Investment Law (Llei 10/2012), repealing Foreign Investment Act 2008

Foreign Investment Regulation (Reglament 08.10.2008)

Foreign Investment Regulation issued on 28 August 2012, repealing Foreign Investment Regulation 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)

Non Resident Income Tax Act (Law 94/2010), as amended by Law 18/2011

Indirect General Tax Act (Law 11/2012), as amended by Law 11/2013

Decree on the Creation and Operation of the Tax and Customs issued on 8 January 2014

Accounting law

Accounting Act (Llei 30/2007), amended by the Law 8/2010 and Law 26/2011, consolidated wording of the Accounting Act published on 22 February 2012

General Accounting Plan (Decret 23.07.2008), modification published on 22 February 2012

Accounting Register Regulation (Reglament 09.06 2010)

Foundation law

Foundation Act (Llei 11/2008)

Foundation Register and Protectorate Regulation (Reglament 01.042009)

Foundations Liquidation Proceedings Regulation (Regulation 11.07.2012

AML and financial regulation law

Law for International Cooperation on Criminal Matters and the Combat against the Laundering of Money or Securities arising from International Crime, amended in 2008, 2011, and 2013

Anti Money Laundering Regulation (Reglament 13.05.2009)

Banking Act (Llei 14/2010), repealed

Organisational requirements and functioning conditions of the entities of the Andorran Financial System Act (Law 8/2013, of 9 May 2013, on the organisational requirements and functioning conditions of the operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements)

Legal regime of the entities of the Andorran Financial System Act (Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra).

Collective Investment Scheme Act (Llei 10/2008)

Financial Entities Authorisation Act (Llei 35/2010)

Financial System Disciplinary Regime Act (Llei 27.11.1997)

Andorran National Institute of Finance (INAF) Act (Llei 14/2003)

Law 10/2013, of 23 May 2013, on the INAF (Law 10/2013)

Communiqué No.163/05, issued by INAF

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), amended on 2007, 2008, 2010, 2012 and 2013

Association Act (Llei 29.12.2000)

Penal Procedure Act (Llei 10.12.1998), amended on 2008, 2010 and 2012

Public Finances Act (Llei 19.12.1996)

Notary Law, 1996

Andorran legislation is available at: www.bopa.ad/bopa.nsf/home?OpenFrameSet under "Tractats internacionals i Lleis".

Annex 4: People interviewed during the on-site visit

The Head of the Andorran Government

The Minister of Finance

Officials from the Ministry of Finance

The EOI Unit

Officials from the Ministry of Foreign Affairs

Officials from the Tax and Customs Agency

Officials from the Register of Companies

Officials from the Register of Foundations

Officials from the Register of Associations

Members of the Legal Department of the Andorran Government

Members of the Andorran Financial Services Authority (INAF)

Members of the Financial Intelligence Unit (FIU)

Representatives of the Andorran Bar Association

Representatives of the Andorran Chamber of Notaries

Representatives of the Andorran Economists College

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: ANDORRA

This report contains a "Phase 2: Implementation of the Standards in Practice" review, as well as revised version of the "Phase 1: Legal and Regulatory Framework review" already released for this country.

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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.

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