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# Rule of Law in the Heart of Europe: How Andorra, Liechtenstein and Monaco have undermined EU values

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Acknowledgement: this report was first published in French by Le Monde Décrypté, Brussels on 13<sup>th</sup> December  
This current translation is co-published by Le Monde Décrypté & The Bridge Tank, *Invited Contributors Series*  
15<sup>th</sup> December 2022

# Foreword

Europe has seen its fortunes shift dramatically as the world has become increasingly multipolar. In 1960, the countries that now make up the European Union were a distinct economic hegemon, accounting for more than a third of the world's gross domestic product (GDP).<sup>1</sup> By 1990, however, this number had shrunk to 25.5%.<sup>2</sup> According to recent projections by accounting firm PWC, by 2050, the EU could represent just 10% of global GDP.<sup>3</sup> Meanwhile, China, which surpassed the EU's economy for the first time this year, is expected to become the world's largest economy by 2030.<sup>4</sup>

Given this rapid re-orientation, some have argued that Europe is at risk of fading into irrelevance. For instance, William Bratton, the author of *China's Rise, Asia's Decline* (2020), has maintained that "Europe's importance to global trade, finance and technological innovation is waning". Similarly, Robert Tombs, professor of history at Cambridge University, has also recently dismissed today's EU as geopolitically vulnerable and "impotent".<sup>5</sup>

Nevertheless, one domain where Europe will continue to exert significant influence is in the rule of law. According to the Council of Europe, the rule of law is one of the "principles which form the basis of all genuine democracy".<sup>6</sup> As well as being the foundation for human rights, the rule of law ensures accountability and transparency, access to independent and impartial courts, and non-discrimination before the law.<sup>7</sup> Furthermore, in the EU, the rule of law is seen as crucial for maintaining an investment-friendly business environment.<sup>8</sup> Although the extra-legal expropriation of private property remains a risk for individuals and businesses in other parts of the world,<sup>9</sup> European countries safeguard investors by guaranteeing robust protections for due process.

The rule of law is Europe's competitive advantage in a multipolar world. For this reason, as Europe continues to face international competition, it should take steps to avoid depreciating its unique position as a bastion for jurisprudence and democracy.

Europe should therefore focus on addressing the threats that could damage its reputation as a leader in upholding the rule of law. In this regard, three European microstates – Andorra, Liechtenstein and Monaco – represent a challenge. These countries, which could be described as sitting on the periphery of the EU, nevertheless have an outsized influence on the European financial markets. As we describe in this report, gross miscarriages of justice in these three microstates have had pan-European implications. Furthermore, due to their historic status as tax havens with little corporate transparency,<sup>10</sup> Andorra, Liechtenstein, and Monaco have also functioned as safe harbours for bad actors to conduct business in Europe.<sup>11</sup>

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<sup>1</sup> <https://www.politico.eu/article/europe-on-the-wane-global-economics-demographics-gdp/>

<sup>2</sup> <https://ec.europa.eu/social/main.jsp?langId=en&catId=1196&newsId=2412&furtherNews=yes>

<sup>3</sup> <https://www.pwc.com/gx/en/world-2050/assets/pwc-the-world-in-2050-full-report-feb-2017.pdf>

<sup>4</sup> <https://www.trtworld.com/magazine/china-s-economy-surpasses-the-european-union-s-for-the-first-time-54291>

<sup>5</sup> <https://www.telegraph.co.uk/news/2022/01/11/eu-now-geopolitical-irrelevance/>

<sup>6</sup> <https://rm.coe.int/1680935bd0>

<sup>7</sup> [https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule\\_of\\_Law\\_Check\\_List.pdf](https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf)

<sup>8</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_4467](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_4467)

<sup>9</sup> [https://www.researchgate.net/publication/249991487\\_An\\_Overview\\_of\\_Kazakhstan%27s\\_Investment\\_Laws\\_and\\_its\\_Investor-State\\_Arbitral\\_Awards](https://www.researchgate.net/publication/249991487_An_Overview_of_Kazakhstan%27s_Investment_Laws_and_its_Investor-State_Arbitral_Awards)

<sup>10</sup> <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18151&lang=en>

<sup>11</sup> [https://www.academia.edu/43286092/Politics\\_of\\_the\\_Four\\_European\\_Microstates](https://www.academia.edu/43286092/Politics_of_the_Four_European_Microstates)

For this reason, these three countries are the focus of this report. It is in Europe's collective interest to rectify reputational risks and sources of fragility. This report highlights recent cases in each country where the rule of law has been subverted by those in power. It also offers recommendations for how the implementation of the rule of law could be improved<sup>12</sup>.

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<sup>12</sup> The opinions expressed in this publication are those of the author. They do not purport to reflect the opinions or views of the publishing media or their members.

# Content

<b>Foreword</b>	2
<b>Content</b>	4
<b>Executive Summary</b>	5
1) ANDORRA	7
<b>1.1 Governance</b>	7
<b>1.2 Tax environment</b>	9
<b>1.3 International Commitments</b>	10
<b>1.4 Case Study: BPA</b>	11
2) LIECHTENSTEIN	14
<b>2.1 Governance</b>	14
<b>2.2 Tax environment</b>	15
<b>2.3 International commitments</b>	16
<b>2.4 Case study: Liechtenstein Tax Affair</b>	17
3) MONACO	20
<b>3.1 Governance</b>	20
<b>3.2 Tax environment</b>	21
<b>3.3 International commitments</b>	22
<b>3.4 Case study: Monacogate</b>	22
CONCLUSION	27
<b>Recommendations</b>	28

# Executive Summary

The rule of law is one of the "principles which form the basis of all genuine democracy," according to the Council of Europe.<sup>13</sup> It is crucial for the European nations and the EU to protect this core value across the continent. Any faults or oversights, be they constitutional, financial, or relating to individual freedoms, must be addressed and corrected.

This report identifies severe threats to the rule of law in Europe from three microstates: Andorra, Liechtenstein, and Monaco.

Due to the size of their banking and finance sectors, these nations have a significant influence on Europe's financial markets despite not being EU members. The report demonstrates that these low-tax and lightly regulated microstates have served as the setting for some of Europe's most damaging banking and political scandals. These scandals have threatened Europe's economic and financial stability and undermined the region's reputation as a champion of the rule of law.

The report studies the governance, tax environment and international commitments of each nation and identifies three cases where there have been serious failings by the respective governments to uphold the rule of law:

- **ANDORRA:** Banca Privada d'Andorra (BPA)

In 2015, the US Treasury (FinCEN) published a notice designating BPA as a foreign financial institution of primary money laundering concern. Andorran authorities reacted, seizing control of the bank's assets, despite concerns by the bank's shareholders that the notice was misguided.

Since then, FinCEN has withdrawn its notice, and the Spanish courts have cleared BPA of any wrongdoing. Yet in Andorra the case remains unresolved. It has since been claimed by multiple sources that the intervention was the result of a political dispute between Spain and Catalonia and that Andorra's failure to uphold the rule of law allowed this to happen.

*The BPA case exemplifies how failure to uphold the rule of law and apply due process to banking regulation can put both private businesses and individuals at risk. Furthermore, it showcases the US's capability to intervene in the EU banking system, prior to any involvement from any EU institution. It also highlights that, for a micro-state's sovereignty is to be respected internationally, it must be able to manage its outsized banking industry in a fair and transparent manner.*

- **LIECHTENSTEIN.** The Liechtenstein Tax Affair / Liechtenstein Global Trust bank (LGT)

In 2008, German tax authorities revealed that LGT assisted over 1,300 individuals to commit tax evasion by channelling an estimated €4bn out of Germany into foundations and trusts set up by the bank. The scandal threatened the welfare and stability of

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<sup>13</sup> <https://rm.coe.int/1680306052>

Liechtenstein and its powerful royal family. The affair ended following two years of investigations and legal actions after Liechtenstein agreed to pay Germany a record €50 million settlement.

*The case illustrates the licit ways in which lax financial regulation, poor governance, and failure to uphold the rule of law in microstates can be exploited by entities and individuals from outside that jurisdiction. Despite rolling out significant financial reforms, Liechtenstein still helps to facilitate global tax abuse. The microstate's failure to meet its neighbours' standards when tackling tax avoidance poses a severe fiscal threat to the EU.*

- **MONACO.** “Monacogate”.

In 2017, French newspapers revealed that a Russian oligarch had arranged substantial inducements to high-ranking Monegasque officials to intervene in a personal dispute and arrange the arrest of a business partner. He and nine other people were subsequently charged with a litany of offences relating to the arrest.

*'Monacogate' exemplifies how jurisdictions that lack transparency and accountability risk being subverted and ultimately can allow for the rule of law to be undermined by wealthy and influential individuals to further their own agendas.*

The report recommends three areas where the EU could look to improve the rule of law in these microstates.

- 1. Ratification of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**

Neither Andorra, Liechtenstein, nor Monaco have yet ratified this OECD Convention, which utilises a peer review system to keep its signatories accountable, thus aiding the implementation of the OECD anti-bribery and-money-laundering instruments.

- 2. Extension of Supervisory Integration/Cooperation with EU member states.**

The microstates and EU should prioritise reaching new bilateral arrangements on economic and financial matters. Additionally, EU members with close political and economic ties to the microstates should actively support Andorra, Liechtenstein and Monaco in strengthening the rule of law.

- 3. Promotion of whistleblowing**

Microstate governments should do their utmost to promote a culture of whistleblowing, a tactic proven to act as a deterrent for tax evasion and corruption.

# 1) ANDORRA

The Principality of Andorra is a small independent state situated in the Pyrénées mountain range, bordered by France in the north and Spain in the south. Although it is regarded as one of the smallest nations in Europe,<sup>14</sup> Andorra has a GDP per capita of over \$43,000.<sup>15</sup> Its banking sector has over €11 billion deposits and over €61 billion in assets under management.<sup>16</sup>

- **Andorra became a centre for refuge and commerce**, in the first half of the 20th century, isolated from both World Wars and the Spanish Civil War, as well as for smuggling for Spanish and French residents. The country's favourable location in the region enabled Andorra to capitalise on the political and economic turmoil in Europe and develop a professional banking system in the 1940s. Since then, banking has been one of the most important economic sectors in the microstate, accounting for 15% of its GDP.<sup>17</sup>
- **Andorra is not a member of the European Union**, but, as with most microstates in the continent, it enjoys a special relationship with the EU. It has used the euro as its *de facto* currency since 2002, and in 2011 it concluded a monetary agreement with the EU that made the euro its official currency.<sup>18</sup>

## 1.1 Governance

In Andorra, political, judicial and economic structures have been found lacking, resulting in recent international pressure to improve the country's governance and financial regulations. In addition, political and economic power is concentrated in the hands of a few elite families.

- **Andorra is a parliamentary constitutional monarchy and the world's only "co-principality"**, in which the Prime Minister serves as the head of government and the Co-Princes serve as the Heads of State. Since 1278, the Co-Princes of Andorra have been France's Head of State (Emmanuel Macron) and the Bishop of the Spanish City of La Seu d'Urgell in Catalonia (Joan Enric Vives i Sicília).
- **Judicial power is vested in 3 Courts**, the Magistrates Court, the Criminal Law Court, the Constitutional Court, and the High Court of Andorra. Andorra relies on Spanish judges and legal experts to serve in the country's judiciary in order to meet the demand of the judicial system. In 2021, a US State Department Human Rights Practices Report found that Andorran judiciary's lack of human resources "often resulted in lengthy detentions beyond the period stipulated by law".<sup>19</sup>

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<sup>14</sup> <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=AD>

<sup>15</sup> <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=AD>

<sup>16</sup> [https://www.andorranbanking.ad/wp-content/uploads/2022/06/Memoria-ABA\\_-2021\\_-ENG-1.pdf](https://www.andorranbanking.ad/wp-content/uploads/2022/06/Memoria-ABA_-2021_-ENG-1.pdf)

<sup>17</sup> <https://www.worlddata.info/europe/andorra/tourism.php>

<sup>18</sup> <https://www.efta-studies.org/post/andorra-monaco-san-marino>

<sup>19</sup> <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/andorra>

- **The leading banking families in Andorra play a significant role in the country’s political system.** This draws into question the extent to which state is able to regulate the banking sector independently. This is best exemplified by the Reig family, the founders and shareholders of Banca Reig (now Andbank) and the largest shareholders of Crèdit Andorrà (bank).
  - Julià Reig-Ribo, founder of Banca Reig, served as Catalan Ombudsman – the de facto head of government of Andorra – between 1960-1967 and 1973-1979 and is seen as the father of modern Andorra.<sup>20</sup>
  - His nephew, Òscar Ribas-Reig, who served as President of Banca Reig and Andbank, was also the first elected Prime Minister of Andorra and founder of the centre-right party Agrupament Democràtic Nacional, the precursor to the ruling Demòcrates per Andorra (DA) party. During his second term, the government drafted and adopted Andorra’s current constitution.
  - Julià Reig-Ribo’s niece, Maria Reig I Moles, also served as a member of Andorra’s Legislature, holding the post of Secretary of State for the Environment and playing a central role in the drafting of the constitution.
  - Today Maria Reig is the President of Reig Capital Group, a holding company which is the majority shareholder of Crèdit Andorrà and an important investor in multiple businesses in Andorra.
  - Maria Reig’s son Carles Enseñat Reig is the President of the Parliamentary Group of the ruling DA party. He is also Chairman of the Legislative Committee on Foreign Policy, and a Member of the Legislative Committee on Finance and Budget.
  
- **The interests of banking families and the government are also reflected in Andorra’s media sector.** Reporters Without Borders (RSF) found that the state-owned broadcaster operates largely under government influence and that “private media are controlled by bankers with strong, vested interests”.<sup>21</sup> Additionally, RSF found that although no official censorship exists, journalists are pushed into self-censorship by the close relations between media outlets and the elites. Similarly, democracy watchdog Freedom House found that “reporting on the activities of Andorra’s banks has been particularly difficult” due to the influence of the banking sector.<sup>22</sup> Furthermore, “journalists are pushed into self-censorship by the close relations between state-owned media and government, and by the influence of economic and financial elites in privately owned media. Journalists are limited to chronicling daily life rather than revealing financial scandals.”<sup>23</sup> In the RSF 2022 World Press Freedom Index, Andorra ranked 53<sup>rd</sup> (score: 68.79); just below Armenia and Suriname and above Slovenia and Romania.<sup>24</sup>

<sup>20</sup> <https://www.fundaciojuliareig.ad/el-fundador-2/>

<sup>21</sup> <https://rsf.org/en/country/andorra>

<sup>22</sup> <https://freedomhouse.org/country/andorra/freedom-world/2021>

<sup>23</sup> Ibid.

<sup>24</sup> <https://rsf.org/en/index>

## Pandora Papers impact

In October 2021, a Pandora Papers investigation revealed that Andorran bank Andbank facilitated money laundering and tax evasion through the creation of a network of offshore accounts in multiple jurisdictions.

According to investigations by the International Consortium of Investigative Journalists (ICIJ), Andbank and its partner, Alcogal, a Panamanian law firm, set up a small law and accounting firm named AFSI to manage the registration of companies in opaque jurisdictions on behalf of clients, mostly from Europe.<sup>25</sup>

Among the most prominent individuals who used Andbank's network are former Manchester City football coach Pep Guardiola, Portuguese businessman Jose Regojo Velasco, the directors of Brazil's Petrobras oil company, Luis Carlos Fernandes Afonso and Carlos Fernando Costa, and Chinese businessman Gao Ping, whose business illegally transferred an estimated €70 million from Andorra to China.<sup>26</sup> According to the ICIJ investigation, AFSI had 320 companies registered in Panama, Belize, British Virgin Islands and Seychelles in 2018.<sup>27</sup>

### 1.2 Tax environment

Andorra's low tax environment attracts foreign investors, but it comes at a cost to its international reputation.

- **Andorra has no capital gains, inheritance, or sales taxes.** The government does not impose any tariffs on imports and exports. Personal income tax brackets are situated between 0 and 10%, compared to 49% in Spain and 45% in France. The maximum corporate tax rate is 10%, compared to 25% in Spain and 33.3% in France. VAT, which is the lowest in Europe, stands at 4.5%, compared to 21% in Spain and 20% in France.<sup>28</sup>

This low tax environment attracts foreigners to open companies in Andorra and deposit their funds in the country's three banking groups. According to the Andorran Banking Association 2021 Annual Report, the total number of assets under management in Andorra rose by more than 18% since 2020 and has risen by over 75% since 2017.<sup>29</sup> Customer deposits have increased by 9.75% since 2020 and by 13% since 2017<sup>30</sup>.

- **International organisations have voiced concerns.** This low level of tax combined with lax requirements for the disclosure of company information, has the potential to undermine the rule of law in Andorra. For example, the Organisation for Economic Co-operation and Development (OECD)<sup>31</sup> and the Economic and Financial Affairs Council (ECOFIN)<sup>32</sup> have historically labelled Andorra as a tax haven due to its banking

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<sup>25</sup> <https://english.elpais.com/usa/2021-10-05/afsi-the-obscure-andorran-firm-that-handled-hundreds-of-offshore-companies-for-its-clients.html>

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> <https://andorrainsiders.com/en/taxes-rates-taxes/>

<sup>29</sup> <https://www.andorranbanking.ad/wp-content/uploads/2022/07/Memoria-ABA-2021-ENG.pdf>

<sup>30</sup> Ibid.

<sup>31</sup> <https://www.oecd.org/countries/monaco/list-of-unco-operative-tax-havens.htm>

<sup>32</sup> <https://www.consilium.europa.eu/media/31945/st15429en17.pdf>

secrecy and low taxes. The success of its banking system has relied on an economic environment “without any monetary authority acting as a central bank, with the free movement of currency, self-regulated banking secrecy and without taxes”.<sup>33</sup> Andorra’s low corporate tax rates, which are less than 12.5%<sup>34</sup>, are one of the main reasons why Oxfam International continues to include Andorra on its list of tax havens.

### 1.3 International Commitments

The most significant tax and banking regulations adopted by Andorra have come from pressure from external parties, particularly the European Union.

Despite enjoying nation state autonomy in the heart of Europe, over the past twenty years Andorra has complied with political pressure from France and Spain to align its financial regulation more effectively with the EU.

- **In 2004 Andorra signed the *Savings Taxation Agreement with the EU*.** It helped better regulate offshore investment and to more effectively prevent money laundering. The agreement included the introduction of a “withholding tax on interest received in Andorra by nationals of Member States of the European Community and an exchange of information upon prior request”. The treaty also recommended that Andorra sign double taxation agreements (DTAs), which it did with Spain in 2010 and France in 2011, the latter two years after the then-French President Nicolas Sarkozy had threatened to renounce his title of Co-Prince of Andorra unless the microstate made efforts to improve its tax and banking practices.
- **In 2011, Andorra and the EU signed a Monetary Agreement.** It allowed Andorra to use the euro as its official currency but which, crucially, included measures against money laundering and counterfeiting.<sup>35</sup> Further coordination came in February 2016, when the Andorran government signed an agreement with the EU to incorporate Andorran law to the Common Reporting Standard of the Organisation for Economic Co-operation and Development.<sup>36</sup>
- **All these agreements have helped to improve the standard of financial regulation.** However, each reform has been hard won and adopted largely on the basis of self-interest rather than for any concern for pan-European rule of law. Indeed, according to Andorran financial consultancy Abast Global, Andorra has a “love-hate relationship” with the EU as it seeks to find a balanced position that allows it to attract European capital and investment while maintaining the ability to decide its legal system. Further EU integration would require Andorra to adopt “strict and highly confiscatory tax approvals” and regulations that would ruin the advantages that Andorra has as a sovereign country.<sup>37</sup>

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<sup>33</sup> <https://lawahead.ie.edu/andorra-gibraltar-next-door-tax-havens-of-the-past/>

<sup>34</sup> [https://www.oxfamnovib.nl/Files/rapporten/2021/20210215%20Oxfam%20Media%20briefing%20-%20tax%20havens%20review\\_.pdf](https://www.oxfamnovib.nl/Files/rapporten/2021/20210215%20Oxfam%20Media%20briefing%20-%20tax%20havens%20review_.pdf)

<sup>35</sup> <https://www.vilaweb.cat/noticia/3894983/20110606/lacord-monetari-andorra-unio-europea-signara-daci-pocs-dies.html>

<sup>36</sup> <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/reportingschema/Andorra-domestic-reporting-format-EN.pdf>

<sup>37</sup> [https://andorrainsiders.com/en/agreement-andorra-european-union-relations/#Los\\_acuerdos\\_ya\\_firmados](https://andorrainsiders.com/en/agreement-andorra-european-union-relations/#Los_acuerdos_ya_firmados)

## 1.4 Case Study: BPA

A notable case that demonstrates the abuse of the rule of law in Andorra in recent times involved the dissolution of Andorran bank Banca Privada d'Andorra (BPA).

- **BPA was one of Andorra's largest and fastest growing banks.** But it was closed in 2015. Founded in 1957 under the name of Banca Cassany, BPA has been owned by major banking groups and investors, including French BNP Paribas Group and Spanish Caixa Catalunya. From 2000, the majority shareholders of the bank were Spanish-Andorran brothers Higiní and Ramon Cierco. Under their ownership, BPA expanded into five countries including Spain, where the bank acquired Banco Madrid in 2011 and became the first Andorran entity to obtain a banking licence in Spain.
- **On March 6, 2015, the US Treasury published a notice.** Its Financial Crimes Enforcement Network (FinCEN) designated BPA as a foreign financial institution of primary money laundering concern under Section 311 of the USA PATRIOT Act and prohibited US financial entities from processing transactions involving BPA. The notice claimed that BPA facilitated money laundering activities for Russian, Chinese and Venezuelan nationals as well as members of the Mexican Sinaloa cartel.

Andorran authorities acted on FinCEN's announcement swiftly, seizing control of BPA's assets. In Spain, the central bank Banco de España and the Spanish Financial Intelligence Unit SEPBLAC took control over Banco Madrid until its dissolution in 2016. In Andorra, the National Institute of Finance (INAF) – renamed Andorran Financial Authority (AFA) in 2018 – transferred BPA's non-toxic assets into a state-owned bank, Vall Bank, which was later sold to a US-based investment firm and is now owned by Crèdit Andorrà.

### Withdrawal of the notice

BPA's owners, the Cierco family, contested the notice, claiming that the allegations raised by FinCEN referred to matters that BPA had previously addressed and that Andorran authorities were aware of.<sup>38</sup> In 2014, the INAF (AFA) had requested all Andorran banks to provide information regarding reputational risks that could affect the country's reputation. BPA reported its accounts linked to Russia, China and Venezuela, but the bank declared that the INAF did not raise concerns about these issues.<sup>39</sup>

In 2015, the shareholders filed a lawsuit against the U.S. Treasury, claiming that the agency's actions against BPA were unjustified and unconstitutional, citing the notice was fatally defective, as it failed to provide the informational basis for its actions. In 2016, whilst the litigation proceedings against FinCEN were pending, the US announced that it was withdrawing its money-laundering notice against BPA citing that the bank was "no longer operating as a financial institution that poses a money laundering threat to the U.S." and the Ciercos case against FinCEN was dismissed by the courts.<sup>40</sup>

<sup>38</sup> <https://www.prnewswire.com/news-releases/key-points-on-fincens-withdrawal-of-its-section-311-notices-against-banca-privada-dandorra-300223409.html>

<sup>39</sup> <https://informebpa.com/2016/03/08/report-intervention-grup-bpa/>

<sup>40</sup> <https://quickcen.sanctions.org/QuickCEN/research/311-special-measures-rescission-of-nprm-banca-privada-d%E2%80%99andorra>

## Undermining the rule of law

- **The Cierco family maintain the Andorran government played a primary role.** They claim the government violated their civil rights when deciding to seize BPA. In a statement they said: "The repeated breach of the duties and obligations of the Andorran government and INAF, which took place before and after the issuance of the FinCEN notice on March 10, 2015, constitute a failure of the Andorran Government to meet its constitutional duty."<sup>41</sup> In April 2016 the Ciercos also pointed to a lack of transparency, noting that the "Government of Andorra" neither charged them with "any wrongdoing" nor "disclosed any specific information" to support their ousting from BPA's Board of Directors.<sup>42</sup>
- **Three years later.** In 2019, Andorra's Institute for Human Rights (IDHA) asserted that three senior Spanish politicians – the former prime minister Mariano Rajoy, the former Minister of Finance Cristóbal Montoro and the Interior Minister Jorge Fernández Díaz - had "intimidated the Andorran Government with a FinCEN report that was false" and that this had resulted in the Government "making their technical decisions based on false information".<sup>43</sup> As such, the IDHA concluded that the pressure exerted by Spain constituted "a blatant assault on Andorran sovereignty".<sup>44</sup>

Andorran judge Stephanie Garcia is currently reviewing the case and has issued rogatory letters to all three Spaniards, all of whom have been accused of some level of participation in the illegal targeting of BPA.<sup>45</sup>

The case reflects the weakness of the rule of law in Andorra and the vulnerability of investors in the country who, despite the attractiveness of a low taxation environment, have little to protect them from unjust political interference.

## Legacy

- **BPA and its subsidiary Banco Madrid were eventually cleared of wrongdoing by the Spanish courts.** In 2019, Spain's Examining Magistrate's Court nº 38 (*Juzgado de Instrucción Nº 38*) found that "since Banca Privada d'Andorra acquired the Spanish entity, (money-laundering) control measures have been reinforced."<sup>46</sup> The Magistrate of the Commercial Court No. 1 of Madrid (*Magistrado del Juzgado de lo Mercantil Núm. 1 de Madrid*) also ruled that Spain's SEPBLAC did not provide any evidence that

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<sup>41</sup> <https://www.prnewswire.co.uk/news-releases/bpas-majority-shareholders-sue-andorran-authorities-for-3646-million-euros-in-damages-582654561.html>

<sup>42</sup> <https://www.prnewswire.co.uk/news-releases/the-cierco-brothers-intend-to-take-all-necessary-and-appropriate-action-against-jc-flowers--co-and-the-andorran-government-to-block-the-expropriation-of-banca-privada-dandorra-577046581.html>

<sup>43</sup> <https://www.diariandorra->

[ad.translate.google.com/noticies/nacional/2019/07/16/denuncia\\_institut\\_drets\\_humans\\_andorra\\_contra\\_rajoy\\_per\\_extorsio\\_cas\\_bpa\\_148414\\_1125.html?x\\_tr\\_sl=ca&x\\_tr\\_tl=en&x\\_tr\\_hl=en&x\\_tr\\_pto=sc](ad.translate.google.com/noticies/nacional/2019/07/16/denuncia_institut_drets_humans_andorra_contra_rajoy_per_extorsio_cas_bpa_148414_1125.html?x_tr_sl=ca&x_tr_tl=en&x_tr_hl=en&x_tr_pto=sc)

<sup>44</sup> [https://www.elnacional.cat/en/politics/rajoy-spanish-government-attacked-andorran-sovereignty\\_772863\\_102.html](https://www.elnacional.cat/en/politics/rajoy-spanish-government-attacked-andorran-sovereignty_772863_102.html)

<sup>45</sup> Leaked audio recordings published in June 2022 from former Spanish National Police Commissioner José Manuel Villarejo revealed that BPA was targeted by Spanish officials as part of a wider "Operation Catalonia", a covert project aimed at crushing the Catalan independence movement. In September 2022, Spain's Congress launched a public inquiry to investigate the operation. The investigation's remit will include "possible links with FinCEN and other international organisations that could have prompted interventions of banking entities."

<sup>46</sup> [https://www.elconfidencial.com/empresas/2019-01-08/banco-madrid-blanqueo-dinero\\_1745774/](https://www.elconfidencial.com/empresas/2019-01-08/banco-madrid-blanqueo-dinero_1745774/)

suggests that BPA facilitated money laundering activities.<sup>47</sup> Additionally, the National Court (*Audiencia Nacional*) in Madrid ruled that BPA's involvement with Andrei Petrov, one of the cases cited by FinCEN, did not amount to any banking offences.<sup>48</sup>

- **Court proceedings in Andorra are still ongoing.** BPA's CEO, Joan Pau Miguel, was sent to prison for two years in Andorra without trial. A case against Miguel and other BPA directors eventually started in October 2022. All civil proceedings taken by the Cierco family to seek damages from Andorra for what happened have ground to a halt. The slow judicial process has led to questions about the independence of the judiciary and separation of powers in Andorra, a critical component for any country with strong rule of law.

Given the losses incurred by the state<sup>49</sup> and claims raised against the government,<sup>50</sup> it is expected that the affair will cost Andorra over €996,4 million, or €12,500 per resident.<sup>51</sup> The issue also remains a matter of contention in relations between the Principality and Spain.<sup>52</sup>

*The BPA case exemplifies how failure to uphold the rule of law and apply due process to banking regulation can put both private businesses and individuals at risk. Furthermore, these lapses in Andorra contributed to the dissolution of a regulated banking entity in an EU member state. If Andorran sovereignty is to be respected internationally it must demonstrate that it is able to manage its outsized banking industry in a fair and transparent manner.*

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<sup>47</sup> [https://elpais.com/economia/2017/07/28/actualidad/1501267951\\_097551.html](https://elpais.com/economia/2017/07/28/actualidad/1501267951_097551.html)

<sup>48</sup> <https://www.lavanguardia.com/vida/20181121/453082062872/absuelven-a-expleado-de-bpa-de-ayudar-a-blanquear-al-mafioso-ruso-petrov.html>

<sup>49</sup> <https://eltaquigrafo.com/los-documentos-secretos-de-la-bpa-que-andorra-oculta-desde-hace-siete-anos/23660/>

<sup>50</sup> [https://www.elconfidencial.com/empresas/2016-06-09/nacionalizacion-bpa-andorra-familia-cierco-indemnizacion\\_1214478/](https://www.elconfidencial.com/empresas/2016-06-09/nacionalizacion-bpa-andorra-familia-cierco-indemnizacion_1214478/)

<sup>51</sup> BPA's shareholders are pursuing a €496.4 million claim against the government of Andorra. The figure is based on an estimated valuation of BPA prior to its expropriation, according to two independent agencies. Additionally, under state management, BPA is reported to have accumulated losses of at least €500 million since it was expropriated. Together, the total cost of BPA's takeover would cost Andorra – which has a population of 79,824 residents – roughly €996,400,000.

<sup>52</sup> <https://elpais.com/espana/2022-11-02/el-tribunal-superior-de-justicia-de-madrid-rechaza-la-peticion-de-rajoy-de-paralizar-la-comision-rogoratoria-de-andorra-sobre-la-operacion-cataluna.html>

## 2) LIECHTENSTEIN

Liechtenstein is one of the smallest nations in Europe and yet one of the wealthiest countries in the world. It has the same landmass as the city of Brussels, with a population of 38,000 citizens as of 2021,<sup>53</sup> but has a GDP per capita of over \$169,000, roughly twice as much as neighbouring Switzerland and three times as much as Austria.<sup>54</sup> Financial services account for over one-fourth of Liechtenstein's GDP, and its banking sector has over \$45.5 billion in deposits and \$76 billion in assets under management.<sup>55</sup>

- **Liechtenstein remained neutral during both World Wars.** The economic devastation and lack of finance caused by the fighting in Europe threatened long-term inward investment and led to the use of financial arrangements and favourable tax policies to attract foreign capital to Liechtenstein. In the 1920s, Liechtenstein signed a monetary and customs union with Switzerland, which allowed Liechtenstein to use the Swiss franc as its official currency.<sup>56</sup> In the post-war period, Liechtenstein employed low corporate taxes, attractive personal tax levies, and strict banking secrecy to draw companies and wealthy individuals into the microstate.<sup>57</sup>
- **Liechtenstein is not a member of the European Union.** It has been a member of the European Economic Area since 1995 and Schengen since 2011. Liechtenstein is further integrated into the EU through cooperation with Switzerland, as the microstate is highly integrated with the Swiss economy.<sup>58</sup>

### 2.1 Governance

Although a constitutional monarchy, the powers invested in the Prince of Liechtenstein, who serves as Head of State, has led to the microstate being described as an “absolute monarchy.”<sup>59</sup> Freedom House<sup>60</sup> reports that Liechtenstein has one of the most politically powerful hereditary monarchies in Europe.

- **As Head of State, the Prince holds significant legislative powers.** He may call referendums, propose, approve and reject legislation, and dissolve parliament. The Lantag, Liechtenstein's legislative body, also has the power to propose and approve legislation, but enactment is dependent on the approval of the Prince.

The Prince also has executive power which he shares with the Prime Minister, as head of Government, and the Cabinet, both of whom are appointed by, the Lantag.

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<sup>53</sup> <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=LI>

<sup>54</sup> <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=LI>

<sup>55</sup> <https://www.ebf.eu/liechtenstein/>

<sup>56</sup> <https://www.eda.admin.ch/eda/en/fdfa/representations-and-travel-advice/liechtenstein/switzerland-liechtenstein.html>

<sup>57</sup> <https://www.britannica.com/place/Liechtenstein>

<sup>58</sup> <https://www.eda.admin.ch/eda/en/fdfa/representations-and-travel-advice/liechtenstein/switzerland-liechtenstein.html>

<sup>59</sup> <http://news.bbc.co.uk/1/hi/world/europe/2853991.stm>

<sup>60</sup> <https://freedomhouse.org/country/liechtenstein/freedom-world/2022>

- **Judicial authority is vested in the Regional Court at Vaduz.** So is the Princely High Court of Appeal, the Princely Supreme Court, the Administrative Court, and the State Court. The judiciary is generally seen as independent and impartial, but the Monarch has a powerful influence over the appointment of judges. The selection board for judicial candidates is chaired by the Prince, and he has veto power on candidate recommendations. As a result, Freedom House contends that the process lacks a key element of democratic accountability.<sup>61</sup> This poses immediate risks to the country's ability to uphold the rule of law.
- **In 2003, Liechtenstein voted to approve a new Constitution.** It expanded the political influence of the monarch, granting the Prince the power to dismiss the government, nominate judges and veto legislation.<sup>62</sup> The referendum, in which Reigning Prince Hans-Adam threatened to quit the country if he lost, was criticised by the Council of Europe's Commission for Democracy Through Law (Venice Commission) for presenting "a decisive shift" away from the constitutional monarchy system. The commission's report stated that the Prince's powers were not compatible with the European standard of democracy.<sup>63</sup>
- **The Prince's influence is not limited to the political arena but also extends to the financial and banking sectors of the microstate.** The Princely House of Liechtenstein, which includes the reigning Prince Hans-Adam II, Hereditary Prince Alois, Prince Maximilian and other royals, own the largest bank in Liechtenstein: LGT Group. LGT, which is run by Prince Maximilian, accounts for over 58% of the total assets held by banks in the microstate.<sup>64</sup> The Liechtensteinische Landesbank AG (LLB) is the second largest bank and controls 17.5% of assets.<sup>65</sup> LLB was privatised in 1993, but the Principality remains the largest shareholder in terms of capital and banking rights.<sup>66</sup>

## 2.2 Tax environment

Liechtenstein's consolidation as a global finance and banking centre has relied on its favourable tax environment. The country has one of the lowest tax regimes in Europe – including the minimum corporate tax rate approved by the EU.

However, it has consistently been criticised as a tax haven, scoring below both Andorra and Monaco in recent assessments by reputable international organisations such as the Tax Justice Network and the global charity Oxfam.

Liechtenstein's corporate tax rate stands at 12.5%, with a distinction made between resident companies which are taxed on worldwide income and non-resident companies which are only required to pay taxes on income derived from the microstate.<sup>67</sup> Moreover, residents and non-

<sup>61</sup> <https://freedomhouse.org/country/liechtenstein/freedom-world/2022>

<sup>62</sup> <http://news.bbc.co.uk/1/hi/world/europe/2853991.stm>

<sup>63</sup> [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)032-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)032-e)

<sup>64</sup> [https://thebanks.eu/banks/9875/market\\_share](https://thebanks.eu/banks/9875/market_share)

<sup>65</sup> Ibid.

<sup>66</sup> <https://reports.llb.li/2020/ar/en/group-structure-and-shareholders/#:~:text=The%20Principality%20of%20Liechtenstein%20is,per%20cent%20of%20the%20shares.>

<sup>67</sup> <https://www.lawyersliechtenstein.com/taxation-in-liechtenstein>

residents of Liechtenstein are exempt from paying any capital gains tax, dividend income tax, income from foreign permanent establishments tax, or income from foreign property.<sup>68</sup>

Criticism of these tax arrangements comes from multiple sources:

- **In the early 2000s, a German intelligence report** described Liechtenstein “as a financial haven for Colombian drug barons, the Mafia and the Russian underworld”.<sup>69</sup> In 2015, the European Union included the microstate on its blacklist of tax havens, prompting Liechtenstein to commit to combat tax evasion.<sup>70</sup> Later that year, the microstate abandoned its ironclad banking secrecy policy after signing an agreement with the EU on tax information sharing.<sup>71</sup> Following the approval of tax reform legislation in 2018, the EU removed Liechtenstein from its list of non-cooperative tax jurisdictions.<sup>72</sup>
- **In 2019, the US Department of State** described Liechtenstein as a country “attractive to money launderers” and to persons involved in terrorist financing,<sup>73</sup> due to its low corporate tax rate, together with accommodating laws of incorporation and corporate governance.
- **In 2021, The Tax Justice Network’s “Tax Haven Index”** listed Liechtenstein on its ranking of jurisdictions most complicit in helping multinational corporations underpay corporate income tax.<sup>74</sup> Notably, the Principality scored worse than both Monaco and Andorra. Liechtenstein also appeared in Oxfam International’s tax havens list for 2021.<sup>75</sup>

### 2.3 International commitments

The treaties and agreements the microstate has signed with Switzerland play a role in the regulation and supervision of Liechtenstein's financial services sector. The 1980 currency treaty with Switzerland declared the Swiss franc to be the official currency of Liechtenstein and made a number of Swiss legal and administrative provisions applicable in the microstate.<sup>76</sup> Moreover, both nations signed a double taxation agreement in 2017 and an agreement on the automatic exchange of information in tax matters (AEOI) in 2018.<sup>77</sup>

As a member of the European Economic Area (EEA), Liechtenstein is subject to EU directives and regulations that are incorporated by legislators into the EEA agreement. In particular, the 2010 EU law that established the European Banking Authority (EBA) has a direct effect on

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<sup>68</sup> <https://www.ecovis.com/liechtenstein/tax-guide/>

<sup>69</sup> <https://www.nytimes.com/2000/08/31/news/qa-prince-hansadam-ii-liechtensteins-future-as-a-clean-tax-haven.html?>

<sup>70</sup> <https://www.eubusiness.com/news-eu/economy-politics.120n>

<sup>71</sup> <https://www.europarl.europa.eu/news/en/press-room/20151201IPR05547/ending-eu-citizens-bank-secrecy-in-liechtenstein>

<sup>72</sup> [https://www.ey.com/en\\_gl/tax-alerts/liechtenstein-removed-from-eu-black-list-consideration-following-implementation-of-anti-avoidance-rules-into-tax-](https://www.ey.com/en_gl/tax-alerts/liechtenstein-removed-from-eu-black-list-consideration-following-implementation-of-anti-avoidance-rules-into-tax-)

<sup>73</sup> Laurie A. Gould and Matthew Pate, 'State Fragility Around the World' (2019):

<https://books.google.fr/books?id=f2ymCwAAQBAJ&lpq=PA153&ots=E9t1ahHUzj&dq=%22these%20same%20factors%20have%20historically%20made%20this%20country%20attractive%20to%20money%20launderers%22&pg=PA153#v=onepage&q&f=false>

<sup>74</sup> <https://taxjustice.net/country-profiles/liechtenstein/>

<sup>75</sup> [https://www.oxfamnovib.nl/Files/rapporten/2021/20210215%20Oxfam%20Media%20briefing%20-%20tax%20havens%20review\\_.pdf](https://www.oxfamnovib.nl/Files/rapporten/2021/20210215%20Oxfam%20Media%20briefing%20-%20tax%20havens%20review_.pdf)

<sup>76</sup> <https://thelawreviews.co.uk/title/the-banking-regulation-review/liechtenstein>

<sup>77</sup> <https://www.eda.admin.ch/eda/en/fdfa/representations-and-travel-advice/liechtenstein/switzerland-liechtenstein.html>

Liechtenstein.<sup>78</sup> The Principality is thus integrated into the EBA and the wider European system of financial supervision.<sup>79</sup>

## 2.4 Case study: Liechtenstein Tax Affair

The Liechtenstein Tax Affair is one of the biggest financial scandals in the Principality. The affair led to multiple investigations into the tax dealings of citizens in Australia, Germany, Finland, Czech Republic, Spain, and the United States. LGT Bank and, as a result, the Princely House of Liechtenstein, were at the centre of the scandal for facilitating tax evasion for wealthy and high-net-worth individuals. It is believed that LGT Bank protected over \$5 billion from taxation in Germany alone.<sup>80</sup>

It is another example of how weak rule of law in a microstate allowed an elite group of individuals to benefit from fraudulent activity and undermined global efforts to tackle financial crime.

### Whistle-blower

The Liechtenstein tax affair was exposed in February 2008 when German tax authorities announced that they possessed information on the accounts of over 1,300 individuals in LGT Bank suspected of engaging in tax evasion and the concealment of assets and funds in the principality.<sup>81</sup>

The investigation was sparked after the Government paid roughly €4.2 million to whistle-blower Heinrich Kieber, a former employee of LGT Group.

- **Kieber had been in possession of a CD-Rom** containing the names of LGT Bank customers and had attempted to sell the data to tax authorities in the US, UK and other jurisdictions for over 18 months unsuccessfully until the Germans agreed to buy it.<sup>82</sup>

Kieber, who soon after went into hiding, stated that he took the data after suspecting that LGT was involved in tax evasion.<sup>83</sup> The data revealed that the account holders channelled an estimated €4bn (US\$5.9bn) out of Germany into secret foundations and trusts set up by LGT Bank, triggering Germany's largest-ever investigation into tax fraud at that time.<sup>84</sup>

- **LGT Bank immediately expressed anger** over what it deemed "stolen information" being shared by European tax authorities, stating that "LGT regards such methods as being extremely offensive."<sup>85</sup> Liechtenstein authorities revealed that they suspected

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<sup>78</sup> <https://www.globallegalinsights.com/practice-areas/banking-and-finance-laws-and-regulations/liechtenstein>

<sup>79</sup> <https://www.fma-li.li/en/international-affairs/europe.html>

<sup>80</sup> <https://www.theguardian.com/business/2008/feb/21/globaleconomy.europeanbanks>

<sup>81</sup> <https://web.archive.org/web/20081103013551/http://www.sueddeutsche.de/%2Ctt2m2/wirtschaft/artikel/599/158176/>

<sup>82</sup> <https://www.wsj.com/articles/SB120333229682874855>

<sup>83</sup> [https://www.journeyman.tv/film\\_documents/4237/transcript/](https://www.journeyman.tv/film_documents/4237/transcript/)

<sup>84</sup> <https://www.economist.com/news/2008/02/22/not-so-fine-in-liechtenstein>

<sup>85</sup> <https://www.dw.com/en/liechtenstein-tax-scandal-spreads-across-europe/a-3148308>

Kieber was the source of the information, since he had previously approached the Liechtenstein Royal Family about the data.<sup>86</sup>

## **Repercussions in Germany and the US**

As so often with scandals facilitated by a weak domestic rule of law, it was international intervention which proved to be most effective in bringing justice.

- **In Germany**, the Bundesnachrichtendienst, its Federal Intelligence Service, investigated over 1,250 suspects and issued roughly 900 search warrants, to investigate the estimated €3.4 billion smuggled into Liechtenstein and recover the thousands of euros owed to the German government in tax payments.<sup>87</sup> German investigators also conducted several raids and searches in German banks in Hamburg, Munich, and Frankfurt with links to LGT, including the banking house Metzler, Dresdner Bank, Hamburg Berenberg Bank and UBS offices in Munich.<sup>88</sup>

The German investigators' conclusion that LGT aided and abetted tax evasion led to public condemnation and pressure on Liechtenstein to clean up its banking sector from various countries, including the Australia, Germany and other EU member states.<sup>89,90</sup> It also led to the resignation and imprisonment of Klaus Zumwinkel, the wealthy businessman and high-profile boss of *Deutsche Post* who was believed to have dodged over €1 million worth of taxes.<sup>91</sup>

- **In the United States**, the case led to the establishment of a US Senate tax evasion probe, tasked with investigating misconduct from American citizens and companies listed in LGT's data leak.<sup>92</sup> The investigators found that the Liechtenstein Royal Family's LGT Group contributed to a "culture of secrecy and deception" that enabled clients to "evade US taxes, dodge creditors, and ignore court orders."<sup>93</sup> Similarly, a report conducted by the Senate Committee on Homeland Security and Governmental Affairs, published in 2014, found that LGT "used loopholes to circumvent their QI reporting Obligations [tax information] and, from 2001 to 2007, avoided reporting tens of thousands of US client accounts with billions of dollars in undeclared assets".<sup>94</sup>

## **Role of the Monarchy**

The Liechtenstein Tax Affair not only put into question the banking practices of the Principality, but also threatened the welfare and stability of both LGT and the Royal Family. A year after the scandal broke out, LGT reported that clients pulled out over CHF 3.7 billion from the bank.<sup>95</sup>

<sup>86</sup> <https://www.cnn.com/2008/08/15/banking-scandal-unfolds-like-a-thriller.html>

<sup>87</sup> <https://web.archive.org/web/20081103013551/http://www.sueddeutsche.de/%2Ctt2m2/wirtschaft/artikel/599/158176/>

<sup>88</sup> <https://www.spiegel.de/wirtschaft/steuerrazzia-fahnder-durchsuchen-erneut-banken-in-muenchen-und-hamburg-a-536284.html>

<sup>89</sup> <https://www.brisbanetimes.com.au/world/tax-evaders-put-liechtenstein-under-pressure-20080227-ge9po4.html>

<sup>90</sup> <https://www.economist.com/news/2008/02/22/not-so-fine-in-liechtenstein>

<sup>91</sup> <https://www.dw.com/en/liechtenstein-tax-scandal-spreads-across-europe/a-3148308>

<sup>92</sup> <https://www.theguardian.com/business/2008/jul/18/taxavoidance.australia>

<sup>93</sup> <https://www.cnn.com/id/25713850>

<sup>94</sup> [https://www.hsgac.senate.gov/imo/media/doc/REPORT%20-%20OFFSHORE%20TAX%20EVASION%20\(Feb%2026%202014,%208-20-14%20FINAL\).pdf](https://www.hsgac.senate.gov/imo/media/doc/REPORT%20-%20OFFSHORE%20TAX%20EVASION%20(Feb%2026%202014,%208-20-14%20FINAL).pdf)

<sup>95</sup> <https://www.reuters.com/article/lgt-idUSLDE67002S20100825>

- **Additionally, German financial authorities opened a tax evasion investigation** into Prince Max, the chief executive of the LGT Group and a son of reigning Prince Hans-Adam II.<sup>96</sup> The investigators argued that Prince Max, while living in Germany, failed to pay taxes on investment gains which were held by a foundation established by LGT for the Royal Family.<sup>97</sup>
- **Tellingly, Crown Prince Alois initially condemned Germany’s investigation of LGT’s clients** and called the process “legally unthinkable in Liechtenstein.”<sup>98</sup> He also encouraged Liechtenstein’s Minister of Justice and Deputy of Head of Government Klaus Tschuetscher to explore legal avenues to penalise the Bundesnachrichtendienst for the use of stolen data as the basis of their investigation.<sup>99</sup> In Liechtenstein, no investigation was initiated over the conduct and dealings of the Royal Family’s bank, but instead, the chief prosecutor of the microstate indicted Kieber for violating the bank’s non-disclosure agreement.<sup>100</sup>

The investigations against LGT ended in 2010 after Liechtenstein paid Germany a record €50 million settlement.<sup>101</sup> The German investigators agreed to suspend their probe into 40 employees of LGT for abetting tax evasion after the individuals paid a fine of €3.65 million and LGT paid €46.35 million.<sup>102</sup>

## **Legacy**

The Liechtenstein LGT affair illustrates the licit ways in which lax financial regulation, poor governance and failure to uphold the rule of law can be exploited by entities and individuals.

The microstate allowed a number of non-residents to evade taxes, and in doing so, undermine the fiscal system in Germany, Spain, the United States, as well as a variety of other countries. The LGT Affair also damaged the standing of the Principality amongst its neighbours and within Europe at large, particularly Germany.<sup>103</sup>

*Since then, Liechtenstein has rolled out significant financial reforms, some of which have been praised by Moneyvaal<sup>104</sup> and GRECO.<sup>105</sup> However, as the Tax Justice Network and Oxfam have indicated, Liechtenstein still helps to facilitate global tax abuse. For instance, in 2021, it has been claimed that Liechtenstein was responsible for inflicting \$47.3 million in tax losses on other countries.<sup>106</sup>*

<sup>96</sup> <https://www.nytimes.com/2009/02/20/business/worldbusiness/20iht-prince.4.20340196.html>

<sup>97</sup> Ibid.

<sup>98</sup> <https://www.nytimes.com/2008/02/19/business/worldbusiness/19iht-tax.4.10198813.html>

<sup>99</sup> <https://www.spiegel.de/politik/ausland/bnd-zahlungen-an-datendieb-liechtenstein-attackiert-deutschland-in-der-steueraffaire-a-536213.html>

<sup>100</sup> <https://www.reuters.com/article/liechtenstein-tax-prosecution-idUSL2773397720080227>

<sup>101</sup> [https://www.wealthbriefing.com/html/article.php?title=LGT Group To Settle German Tax Probe With Fine&id=34179#.YyyXM-zMKEs](https://www.wealthbriefing.com/html/article.php?title=LGT+Group+To+Settle+German+Tax+Probe+With+Fine&id=34179#.YyyXM-zMKEs)

<sup>102</sup> <https://www.thelocal.de/20101216/31861/>

<sup>103</sup> <https://www.nytimes.com/2008/03/13/business/worldbusiness/13tax.html>

<sup>104</sup> <https://www.coe.int/en/web/human-rights-rule-of-law/-/moneyval-acknowledges-liechtenstein-s-progress-in-improving-measures-to-combat-money-laundering-and-financing-of-terrorism>

<sup>105</sup> <https://www.coe.int/en/web/greco/-/liechtenstein-publication-of-the-4th-evaluation-round-compliance-report>

<sup>106</sup> <https://taxjustice.net/country-profiles/liechtenstein/>

### 3) MONACO

The Principality of Monaco is a coastal microstate situated on the French Riviera. Monaco is the second smallest sovereign state in Europe and is recognised as one of the most expensive places to live and highest concentration of wealth in the world<sup>107</sup>.

- **With a population of over 39,000 residents and a GDP of \$7.2 billion**, Monaco has the world's highest GDP per capita, estimated to be \$179,000, over four times higher than that of neighbouring France.<sup>108</sup> Its banking sector has over \$129 billion in deposits and securities and over \$70 billion worth of assets under management.<sup>109</sup>

Monaco's mild climate, scenery, and established gambling facilities have contributed to the principality's status as a tourist destination and recreation centre for the wealthy. A significant number of wealthy individuals have taken up residence in Monaco due to its favourable positioning as a tax haven. Over 30% of Monaco's residents are millionaires.<sup>110</sup> In recent years, Monaco has become a major banking centre, and the sector accounts for 15% of the microstate's GDP.<sup>111</sup>

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- **Monaco is not a member of the European Union** but due to its close bilateral relations with France, the microstate is subject to certain EU policies, including the EU customs territory and VAT area. Through its treaties with France, Monaco is a de facto member of the Schengen area and has used the euro as its currency since 2002.<sup>112</sup>

#### 3.1 Governance

International commentators have raised concerns about the structural limits to democracy in Monaco, in particular the ability of its citizens to directly influence their government and judiciary. These democratic limitations, together with a strong dependence on French institutions and businesses, undermine the rule of law in Monaco.

- **Monaco has been governed under a constitutional monarchy since 1911**, with the sovereign Prince of Monaco acting as its Head of State.<sup>113</sup> The Prince holds significant executive power, appointing the Council of Government – the cabinet – and, in consultation with the government of France, also selecting the Minister of State – the Prime Minister. Legislative power is held by both the Prince and the elected,

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<sup>107</sup> <https://data.un.org/CountryProfile.aspx/Docs/CountryProfile.aspx?crName=Monaco>

<sup>108</sup> [https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?most\\_recent\\_value\\_desc=true](https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?most_recent_value_desc=true)

<sup>109</sup> <http://www.ccaf.mc/en/the-ccaf-in-one-click/the-monegasque-financial>

<sup>110</sup> <https://www.bbc.com/worklife/article/20180206-the-country-running-out-of-space-for-its-millionaires>

<sup>111</sup> <https://www.worlddata.info/europe/andorra/tourism.php>

<sup>112</sup> <https://en.gouv.mc/Policy-Practice/Monaco-Worldwide/Monaco-and-the-European-Union>

<sup>113</sup> <https://monacodc.org/institutions.html>

unicameral National Council of Monaco, which votes on the bills and budgets initiated by the executive. Freedom House highlights that there are structural limits on the opposition's ability to secure power through elections, as Monaco's cabinet and Prime Minister are not responsible to the legislature, but directly accountable to the Prince.<sup>114</sup> Additionally, it argues that "people's political participation is heavily circumscribed by democratically unaccountable forces."<sup>115</sup>

- **As with the Government, the Prince also appoints members of the judiciary**, with key posts filled in consultation with the government of France. According to Freedom House, "the recruitment process for judges lacks transparency, which contributes to a perception that they may lack independence."<sup>116</sup> The organisation also acknowledged that "high-level corruption remains a problem and officials sometimes act with impunity".<sup>117</sup>

The Group of States Against Corruption (GRECO) – the Council of Europe's anti-corruption body – found in 2017 that there is an "absence of specific rules and mechanisms designed to preserve the integrity" of the legislature and judiciary and recommended the adoption of a Code of Conduct to tackle corruption and conflicts of interest.<sup>118</sup> This was determined by an evaluation questionnaire filled out by Monaco's government as well as a GRECO's evaluation team's visit to the Principality.

### 3.2 Tax environment

As explained by the Monegasque financial consultancy Monaco Private Banking, the "general principle of taxation in Monaco is the total absence of any direct taxation".<sup>119</sup> There is no personal income tax in Monaco for all residents and no corporate income tax for most companies operating in the Principality. There is also no taxation on investment income, capital gains, dividends or income as an employee, freelancer, or director.

- **An exception to Monaco's favourable tax systems are French nationals.**<sup>120</sup> In 1963, in an attempt to stop the massive flow of capital from France to Monaco, then-president Charles De Gaulle forced the Principality "by means of a border blockade to sign a tax convention obliging French citizens living there to pay taxes to France."<sup>121</sup>
- **That same year, in compensation for the loss of revenues** Monaco incurred by losing its attractiveness to French elites, France reached an agreement with Monaco to give the microstate part of France's value-added tax (VAT) income. In 2022 France reportedly paid Monaco around €105 million. *Euractiv* reports that between 2009 and 2021, France paid Monaco €1.497 billion.<sup>122</sup>

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<sup>114</sup> <https://freedomhouse.org/country/monaco/freedom-world/2020>

<sup>115</sup> <https://freedomhouse.org/country/monaco/freedom-world/2022>

<sup>116</sup> <https://freedomhouse.org/country/monaco/freedom-world/2021>

<sup>117</sup> Ibid.

<sup>118</sup> <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16807313bb>

<sup>119</sup> <https://www.monaco-privatebanking.com/en/taxation.html>

<sup>120</sup> <https://www.monaco-privatebanking.com/en/taxation.html>

<sup>121</sup> <https://www.euractiv.com/section/economy-jobs/news/france-still-sends-e100-million-a-year-to-millionaire-haven-monaco/>

<sup>122</sup> Ibid.

### 3.3 International commitments

With regard to the rule of law, Monaco has already conformed to certain EU regulations, particularly those related to the financial and banking sectors. The regulatory system of Monaco is closely tied to that of France through bilateral agreements signed by both countries, many of which, in turn, bind Monaco to EU regulations.<sup>123</sup>

- **France and Monaco signed a treaty on exchange control** in 1945, which established the principle of the application of French banking regulations to Monaco. The scope of French regulatory powers has been amended multiple times since the adoption of the agreement, most recently in 2010 when it was agreed that the ACPR would supervise Monegasque banking institutions.<sup>124</sup>
- **The customs union agreement between both countries** has also made Monaco a member of EU Customs Union since 1968. Additionally, in accordance with the provisions of the Franco-Monegasque agreements signed in 1963 and 2003, Monaco is part of the European VAT system.<sup>125</sup> In 2016, Monaco and the EU reached an agreement for the automatic exchange of information on the financial accounts of non-residents, starting in 2018.<sup>126</sup>

As with Andorra, Monaco has been officially engaging in negotiations with the EU for further integration into the bloc since 2015.

### 3.4 Case study: Monacogate

“Monacogate” – as dubbed by French media – is a prominent example of corruption and abuse of rule of law in Monaco.

The scandal came to light after the French investigative online newspaper *Mediapart* reported in August 2017 that Russian oligarch Dmitry Rybolovlev arranged substantial inducements to Monegasque ministers, police officers and members of the judiciary to orchestrate the arrest of Swiss businessman Yves Bouvier in Monaco in 2015.<sup>127</sup>

Rybolovlev, his lawyer Tetiana Bersheda, and eight others were subsequently charged for a litany of offences relating to the Bouvier arrest, including influence peddling, corruption and violation of professional secrecy. This included, *Mediapart* reported, some of Monaco’s most senior officials, such as the then Director of Judicial Services, Philippe Narmino, Minister of the Interior, Paul Masseron, and Attorney General, Jean-Pierre Dreno.<sup>128</sup>

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<sup>123</sup> <https://www.state.gov/reports/2022-investment-climate-statements/france-and-monaco/>

<sup>124</sup> <https://thelawreviews.co.uk/title/the-banking-regulation-review/monaco>

<sup>125</sup> <https://en.gouv.mc/Policy-Practice/Monaco-Worldwide/Monaco-and-the-European-Union>

<sup>126</sup> <https://en.gouv.mc/Policy-Practice/Monaco-Worldwide/Monaco-and-the-European-Union>

<sup>127</sup> <https://web.archive.org/web/20171026055546/https://www.mediapart.fr/journal/international/210817/quand-la-police-monegasque-se-met-au-service-du-president-de-l-monaco>

<sup>128</sup> [https://www.mediapart.fr/en/journal/international/171118/how-russian-oligarch-dmitry-rybolovlev-spun-his-web-over-monaco?page\\_article=5](https://www.mediapart.fr/en/journal/international/171118/how-russian-oligarch-dmitry-rybolovlev-spun-his-web-over-monaco?page_article=5)

## **Russian oligarch in the centre of Europe**

Dmitry Rybolovlev is Russia's 15th richest oligarch.<sup>129</sup> who made most of his fortune as the owner of potash-producer Uralkali, which he sold to Kremlin-linked oligarchs for \$6.5 billion in 2010.<sup>130</sup> Rybolovlev first came to Monaco in 2011, no doubt attracted by the Principality's favourable financial regulations. For example, at UBS in Monaco, he is reported to be the economic beneficiary of 15 accounts which are, for the most part, connected with companies based in other tax havens.<sup>131</sup>

Rybolovlev is perhaps best known as the owner and President of the Ligue 1 football club AS Monaco. He gained ownership after acquiring 66% of the club's shares from Prince Albert's House of Grimaldi.<sup>132</sup> The club became an important tool for building favour with government officials and influential individuals in Monaco.<sup>133</sup> Rybolovlev is reported by *Mediapart* to have developed a close relationship with Prince Albert, who has visited Rybolovlev's Greek island of Skorprios, his yacht in Corsica, and property in Majorca.<sup>134</sup>

Since leaving Russia in 2011, Rybolovlev has acquired various multi-million-dollar properties in the west, including apartments in New York City<sup>135</sup> and London<sup>136</sup>, two chalets in Switzerland<sup>137</sup> and a private island in Greece.<sup>138</sup> Nevertheless, he chose Monaco, with its minimalist taxation and centralised political power, as his permanent residence.

## **Case overview**

In Monaco, Rybolovlev – through his personal lawyer Bersheda – filed a complaint against art dealer Yves Bouvier in February 2015, accusing Bouvier of fraud involving the sale of 38 works of art from 2003 to 2014.<sup>139</sup>

Following an invitation from Rybolovlev, Bouvier visited Monaco that month and was detained and arrested for two weeks by Monegasque officials.<sup>140</sup>

Bouvier has since been cleared of any wrongdoing in the five jurisdictions where Rybolovlev took legal action, including Monaco in 2019.<sup>141</sup>

Rybolovlev's final outstanding criminal complaint was dismissed by the Geneva prosecutor's office in September 2021, but the decision was overturned by the Court of Appeal in July 2022 and continues to be investigated.<sup>142</sup>

<sup>129</sup> <https://www.bloomberg.com/graphics/2022-russian-billionaires-sanctioned-ukraine-war/?sref=XalkB7Wb>

<sup>130</sup> <https://www.mining.com/two-billionaires-cashed-in-big-time-ahead-of-uralkali-bombshell-55537/>

<sup>131</sup> <https://www.mediapart.fr/en/journal/international/151118/dmitry-rybolovlev-man-who-wanted-offer-himself-country?onglet=full>

<sup>132</sup> <https://www.bbc.co.uk/sport/football/16322948>

<sup>133</sup> <https://www.monaco-tribune.com/en/2022/05/as-monaco-produce-thrilling-comeback-to-see-off-brest/>

<sup>134</sup> <https://www.mediapart.fr/en/journal/international/171118/how-russian-oligarch-dmitry-rybolovlev-spun-his-web-over-monaco>

<sup>135</sup> <https://nypost.com/2016/01/09/russian-oligarch-lists-88m-central-park-penthouse/>

<sup>136</sup> <https://www.telegraph.co.uk/news/2022/03/30/inside-story-billionaire-towers/>

<sup>137</sup> [https://www.swissinfo.ch/eng/business/property-investment\\_do-billionaires-just-want-homes-away-from-home-/38722720](https://www.swissinfo.ch/eng/business/property-investment_do-billionaires-just-want-homes-away-from-home-/38722720)

<sup>138</sup> <https://www.forbes.com/sites/morganbrennan/2013/04/15/russian-billionaire-heiress-buys-famed-greek-island-of-skorprios/?sh=3c656b5a1546>

<sup>139</sup> <https://www.theguardian.com/world/2015/feb/26/leading-swiss-art-broker-arrested-over-alleged-price-fixing-scam>

<sup>140</sup> <https://news.artnet.com/market/is-yves-bouvier-free-275272>

<sup>141</sup> <https://www.ft.com/content/800e5246-1ce4-11ea-97df-cc63de1d73f4>

<sup>142</sup> <https://www.theartnewspaper.com/2022/07/28/geneva-court-overturns-dismissal-of-dmitry-rybolovevs-fraud-case-against-art-dealer-yves-bouvier>

## **Undermining the rule of law**

In the course of the legal dispute, damning evidence came to light of “privileged links” with the judiciary as *Le Monde* reported, under investigation as being an extensive bribery and manipulation of the Monegasque authorities by Rybolovlev himself and his legal team.

- **A turning point in the dispute** came when Rybolovlev’s lawyer, Tetania Bersheda, had her mobile phone examined as part of an investigation by the Monegasque authorities. In September 2017, French newspaper *Le Monde* revealed that hundreds of messages on the phone showed in extensive detail Rybolovlev’s efforts to bribe and manipulate Monegasque politicians, police officials and business figures.<sup>143</sup> This involved gifts of expensive wine, tickets to football matches and six-figure donations to charities, as well as holidays at Rybolovlev’s properties.
- **One particular trip stood out.** In early 2015, Monaco’s then Minister of Justice Philippe Narmino spent two days with Rybolovlev at his chalet in Gstaad, Switzerland. He was joined by Gérard Cohen, HSBC’s managing director in Monaco.<sup>144</sup> Bouvier was arrested days later, in part based on a letter from HSBC Monaco stating that the art dealer jointly held accounts with an associate named Tania Rappo. This turned out to be false. Monaco’s prosecutor general, Jean-Pierre Dreno, was also revealed to have worked directly with Rybolovlev’s lawyers on drafting the criminal complaint against Bouvier before it was officially submitted.<sup>145</sup>
- **Other messages**, *Mediapart* reported, revealed that Bersheda was in direct contact with two high-ranking police officials involved in the investigation into Bouvier: the head of the Monaco police criminal investigation department, Christophe Haget, as well as his deputy, Frédéric Fusari.<sup>146</sup> Bersheda was in touch with the officials during the weeks before and after Bouvier’s arrest and even warned the officials about his arrival in Monaco, writing: “He will come on the 25th [of February], in the morning. That’s certain. Plan A should remain in place.”<sup>147</sup>

In addition to his lawyer’s activities, evidence also emerged that Rybolovlev himself had successfully arranged to discuss the progress of the case against Bouvier with Haget and Fusari.<sup>148</sup>

- **Justice Minister Philippe Narmino resigned**, shortly after the publication of the revelations from Bersheda’s phone in *Le Monde*<sup>149</sup> and *Mediapart*<sup>150</sup>. Within weeks a

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<sup>143</sup> [https://www.lemonde.fr/police-justice/article/2017/09/14/le-milliardaire-russe-dmitri-rybolovlev-au-centre-d-un-monacogate\\_5185432\\_1653578.html](https://www.lemonde.fr/police-justice/article/2017/09/14/le-milliardaire-russe-dmitri-rybolovlev-au-centre-d-un-monacogate_5185432_1653578.html)

<sup>144</sup> <https://www.letemps.ch/suisse/un-mysterieux-diner-gstaad-eclaire-dun-jour-nouveau-laffaire-yves-bouvier>

<sup>145</sup> [https://www.liberation.fr/france/2019/12/13/affaire-rybolovlev-pourquoi-la-justice-monegasque-a-annule-la-procedure-pour-escroquerie\\_1769060/](https://www.liberation.fr/france/2019/12/13/affaire-rybolovlev-pourquoi-la-justice-monegasque-a-annule-la-procedure-pour-escroquerie_1769060/)

<sup>146</sup> <https://www.mediapart.fr/en/journal/international/171118/how-russian-oligarch-dmitry-rybolovlev-spun-his-web-over-monaco>

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

<sup>149</sup> [https://www.lemonde.fr/police-justice/article/2017/09/14/le-milliardaire-russe-dmitri-rybolovlev-au-centre-d-un-monacogate\\_5185432\\_1653578.html](https://www.lemonde.fr/police-justice/article/2017/09/14/le-milliardaire-russe-dmitri-rybolovlev-au-centre-d-un-monacogate_5185432_1653578.html)

<sup>150</sup> <https://web.archive.org/web/20171026055546/https://www.mediapart.fr/journal/international/210817/quand-la-police-monegasque-se-met-au-service-du-president-de-l-monaco>

criminal investigation was opened by Judge Édouard Levraut against Rybolovlev, Bersheda, Narmino, Haget, Fusari, Masseron and other officials.<sup>151</sup>

A year later, in 2018, the Monaco Public Prosecutor opened a criminal investigation into Rybolovlev and Bersheda for corruption, influence peddling, violation of legal processes, and the violation of privacy.<sup>152</sup> Despite these ongoing investigations, Bersheda has been allowed to leave Monaco while Rybolovlev continues to live in the Principality without any repercussions.

In 2020 Monaco's High Court confirmed a judgement passed by the Court of Appeal in December 2019 which annulled the whole investigation against Yves Bouvier. The judgement stated that the "investigations were conducted in a biased and unfair way" and that the Monaco legal authorities "undermined the rights of the defendant" by secretly assisting both Rybolovlev and Bersheda.<sup>153</sup>

### **Consequences**

As a damning consequence of standing up for the rule of law, one key figure in the Monacogate case, Judge Édouard Levraut, appears to have suffered considerable repercussions.

He led the criminal investigation against Rybolovlev, Bersheda, and the Monegasque politicians and authorities. He did not have his secondment in Monaco renewed, as expected, in September 2019.<sup>154</sup>

- **This development raised fresh concerns about the weakness of Monegasque judiciary** and the separation of powers in Monaco. Furthermore, there were further consequences for Levraut in France, after a case was brought against him in July of the following year by French Justice Minister Eric Dupond-Moretti.<sup>155</sup> Dupond-Moretti represented implicated Monegasque police official Christopher Haget during Monacogate and had served as Rybolovlev's lawyer in the past.<sup>156</sup>
- **French Justice Minister Dupond-Moretti** had the Inspection Générale de la Justice, an agency that oversees the judicial system, initiate disciplinary proceedings against Levraut on the grounds that he "failed in his duties of reservation and prudence" for publicly criticising the French judiciary in an interview to the French media about the corruption scandal.<sup>157</sup>

Happily, the French legal system proved stronger than its weakened neighbouring Principality. In September 2022 it was reported that Levraut faced no sanctions.<sup>158</sup> Levraut himself has publicly stated that he believes the case against him was a reprisal from Dupond-Moretti for

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<sup>151</sup> <https://www.thetimes.co.uk/article/finger-of-suspicion-in-monaco-art-scandal-points-to-russian-billionaire-qb5jgtkxg>

<sup>152</sup> [https://www.lemonde.fr/police-justice/article/2018/11/06/le-president-de-l-as-monaco-perquisitionne-et-place-en-garde-a-vue\\_5379701\\_1653578.html](https://www.lemonde.fr/police-justice/article/2018/11/06/le-president-de-l-as-monaco-perquisitionne-et-place-en-garde-a-vue_5379701_1653578.html)

<sup>153</sup> <https://www.ft.com/content/800e5246-1ce4-11ea-97df-cc63de1d73f4>

<sup>154</sup> [https://www.lemonde.fr/en/france/article/2022/03/29/how-monaco-got-rid-of-a-french-magistrate-deemed-too-curious\\_5979261\\_7.html](https://www.lemonde.fr/en/france/article/2022/03/29/how-monaco-got-rid-of-a-french-magistrate-deemed-too-curious_5979261_7.html)

<sup>155</sup> <https://www.mediapart.fr/en/journal/france/270122/tale-frances-justice-minister-russian-oligarch-and-inconvenient-judge>

<sup>156</sup> Ibid.

<sup>157</sup> [https://www.lemonde.fr/en/france/article/2022/03/29/how-monaco-got-rid-of-a-french-magistrate-deemed-too-curious\\_5979261\\_7.html](https://www.lemonde.fr/en/france/article/2022/03/29/how-monaco-got-rid-of-a-french-magistrate-deemed-too-curious_5979261_7.html)

<sup>158</sup> <https://www.mediapart.fr/journal/france/010922/l-audience-l-accusation-contre-le-juge-anticorruption-edouard-levraut-se-degonfle>

his actions tackling corruption in Monaco.<sup>159</sup> In a final twist, in October 2022, Dupond-Moretti was ordered by the French courts to stand trial for conflict of interest, involving his actions against Levraut and other judges.<sup>160</sup>

## **Legacy**

No action has yet been taken against Rybolovlev or Bersheda, though the case is reportedly still under investigation. Rybolovlev remains a major public figure in Monaco and continues to hold considerable financial and political influence in the microstate.

Specifically, this scandal has damaged Monaco's reputation, particularly against the backdrop of the war in Ukraine,<sup>161</sup> and its consequences have also threatened the rule of law in France.

But more fundamentally, Monacogate exemplifies how jurisdictions that lack transparency and accountability allow for the rule of law to be undermined by wealthy and influential individuals. Despite Monaco's commitment to European democratic values, this case shows that high-ranking officials and influential members of the banking sectors assisted a Russian oligarch in a personal feud with a business partner who has acted with impunity.

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<sup>159</sup> <https://news.mc/2022/09/01/former-monaco-judge-claims-hes-victim-of-reprisal/>

<sup>160</sup> <https://www.nytimes.com/2022/10/03/world/europe/french-justice-minister-trial.html>

<sup>161</sup> <https://www.france24.com/en/live-news/20220302-spotlight-shines-on-monaco-s-russian-owner-rybolovlev>

# CONCLUSION

Any abuses of the rule of law in European jurisdictions endanger its global standing as a fair and just place to do business. This study has highlighted gaps in the current European framework by demonstrating how the microstates of Andorra, Liechtenstein and Monaco have either loosely adhered to the principles of the rule of law or ignored them entirely.

- **Andorra**, the first case study shows how Andorran government executives were instrumental in the dramatic seizure — now deemed unjust by Spanish courts — of BPA. Prompted by FinCEN, Andorra’s presidential administration hastily penalised a bank over unfounded allegations – and in doing so – created a massive scandal that is expected to cost Andorrans close to one billion euros.
- **In Liechtenstein**, LGT Bank, which is controlled by the Liechtensteiner Princely family, facilitated non-transparent financial practices to enable numerous international clients, some of which had links to illiberal regimes (such as Russia and China) to evade taxes in their own countries. Since tax evasion schemes “rob states of revenue, hollow out public services, and they fuel populist resentment”,<sup>162</sup> LGT’s policy – while legal in the principality itself – undermined the rule of law in Europe at-large.
- **In Monaco**, Finally, Russian oligarch Rybolovlev – *au fait* with Monaco’s social and political elite – wielded the principality’s courts against Yves Bouvier. His actions, which involved bribing law enforcement and political officials, were tantamount to state capture, allowing him to exert a bloated influence over judicial proceedings.

Our case studies collectively indicate that these microstates, located at the centre of Europe, have lacked adequate governance procedures to uphold the rule of law. Each example shows how elites have exploited national legislation and weak judicial processes to obstruct the dispensation of justice.

- For this reason, and in the context of European democracy and rule of law, it is important that Andorra, Monaco and Liechtenstein move to implement policies that provide for greater separation of powers to allow proper checks and balances on the different branches of government.
- Conversely, a well understood and positively invited external screening by the EU might help the three microstates too, inasmuch they have, at some point or another, engaged in clarifying their banking systems. As far as these moves are sincere, the weight and outreach of the EU system may leverage this willingness against foreign individuals who otherwise, so far, had it easy to over-exploit and sometimes overturn ‘attractive’ but weak systems.

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<sup>162</sup> <https://freedomhouse.org/article/how-tax-evasion-and-other-financial-schemes-undermine-democracy>

## Recommendations

### **Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, to be ratified.**

Neither Andorra, Liechtenstein, nor Monaco has yet ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.<sup>163</sup> None of the three microstates are OECD members; nevertheless, signatories include other non-OECD members, such as Argentina and Russia. The Convention utilises a peer review system to keep its signatories accountable, thus aiding the implementation of the OECD anti-bribery and-money-laundering instruments.

In order to support judicial independence and equal treatment under the law state in European microstates, national authorities should also take steps to revitalise or create bipartisan transparency initiatives. Such initiatives should exchange information and guidance with applicable extraterritorial and international financial monitoring institutions.

### **Supervisory Integration/Cooperation with EU member states, to be extended.**

Monaco and Andorra have been discussing further integration with the European Union since 2015.<sup>164</sup> These talks could ultimately lead to new bilateral arrangements and membership proposals. Both Andorra and Monaco would benefit from participation in the greater European Union framework, which would help to promote domestic transparency and the rule of law.

In the meantime, it should be incumbent on other EU member states, such as France and Austria, to play a more active role in supporting cross-jurisdictional criminal investigations into and diplomatic briefing against financial criminals in bordering microstates. France, for instance, could seek to coordinate with and provide advice to authorities in Monaco and Andorra; Austria, in turn, could do the same in Liechtenstein. Both Austria and France, which boast robust anti-corruption programmes, and have access to resources that would provide measurable benefits to the three microstates' law enforcement capabilities.

### **Whistleblowing, to be promoted**

The European Commission, which protects whistle-blowers, maintains that their (whistle-blowers') "reports can lead to effective detection, investigation and prosecution of violations of EU law that would otherwise remain hidden".<sup>165</sup> In her paper, "Protection of the Rule of Law Through Whistleblowing," Serbian judge and GRECO expert Mirjana Martić has also said that "whistle-blowers are at the forefront of the rule of law and transparency".<sup>166</sup>

Microstate governments should therefore do their utmost to promote a culture of whistleblowing, a tactic proven to "perturb the tax haven business". In 2021, *The Journal of Law and Economics* published "The deterrence effect of whistleblowing", by Niels Johannesen and Tim Stolper.<sup>167</sup> Citing the case of LGT Bank in Liechtenstein, the study found that whistle-blowing "not only acts as the catalyst for prosecuting individual criminals but also promotes honest behaviour by lifting the lid on undesirable conduct". Further, whistle-blowing acts as a deterrent, frightening and disrupting networks of tax fraudsters.

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<sup>163</sup> <https://www.oecd.org/corruption/oecdantibriberyconvention.htm>

<sup>164</sup> [https://www.europarl.europa.eu/doceo/document/E-9-2022-001118\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2022-001118_EN.html)

<sup>165</sup> [https://ec.europa.eu/info/sites/default/files/placeholder\\_11.pdf](https://ec.europa.eu/info/sites/default/files/placeholder_11.pdf)

<sup>166</sup> [https://rlr.iup.rs/wp-content/uploads/2021/12/RLR\\_2021\\_online\\_cip.pdf#page=67](https://rlr.iup.rs/wp-content/uploads/2021/12/RLR_2021_online_cip.pdf#page=67)

<sup>167</sup> <https://www.mpg.de/18313408/0221-pat-the-deterrence-effect-of-whistleblowing-916457-x>