GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

MONACO



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Monaco 2013

PHASE 2: IMPLEMENTATION OF THE STANDARD IN PRACTICE

> November 2013 (reflecting the legal and regulatory framework as at May 2013)



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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. The present report summarises Monaco's legal and regulatory framework for transparency and exchange of information for tax purposes as well as its practical implementation. The international standard laid down in the Terms of Reference of the Global Forum for monitoring and reviewing progress towards transparency and exchange of information, considers the availability of relevant information within a given jurisdiction, the ability of the competent authority to access it swiftly, and whether the information may be exchanged effectively with its partners in information exchange. The assessment of effectiveness in practice has been performed in relation to a three year period (2009 to 2011).

2. The absence of a formal pledge by Monaco to implement the principles of transparency and exchange of information had prompted the Principality's inclusion on the list of non-co-operative tax havens established by the OECD in 2002. The commitment to endorse these principles that was made on 24 March 2009 and the subsequent conclusion of 12 agreements calling for exchange of tax information enabled Monaco on 21 September 2009 to be placed on the list of jurisdictions that have effectively implemented these international standards.

3. Since its commitment to the international standard on transparency and exchange of information on 24 March 2009, Monaco has signed 26 agreements which meet the standard, in addition to the existing DTC with France, dating back to 1963. Twenty four of these agreements are in force. Monaco expects to sign shortly four more agreements and is currently negotiating with, amongst others, Poland, Spain (initialled on the 14th of February 2013) and the United Kingdom Monaco is encouraged to continue making progress in negotiating new EOI agreements to the standard.

4. The initial assessment of the legal and regulatory framework in force in Monaco showed that, overall, the Principality's legal framework meets the international standard for transparency and exchange of information with respect to availability of ownership information. Administrative authorisation to engage in a business activity, as well as registration in the Monegasque Directory of commerce and industry, provide broad assurance that ownership information concerning commercial companies and partnerships is available. The same holds true with regard to banking information, the availability of which is assured under the Anti-Money Laundering (AML) legislation. The thorough practices of the Monegasque authorities with regard to the verification of ownership information upon authorisation and registration ensure in most instances the direct availability of this information to the government authorities of Monaco. Entities required to maintain ownership information do, in practice, comply with their obligations which make ownership information available upon request.

5. By virtue of the amendments made to its legal and regulatory framework in 2011 and 2012, Monaco now ensures the availability of ownership information for all types of companies incorporated in Monaco thanks to the obligation to keep a share register. Bearer shares are prohibited by Monaco's legislation and existing bearer shares issued by two listed companies must be converted into registered shares by the end of 2014. In addition, the two companies that were allowed to issue bearer shares in order to fulfil requirements to be listed on a French regulated stock exchange are required to have knowledge of the identity of all owners of such shares and to provide this information upon request of Monaco's authorities. These requirements are supported by sanctions. Amendments to Monaco's AML framework ensure the availability of ownership information in relation to express trusts recognised in or with a presence in Monaco.

6. New legal requirements ensure that all types of entities that exist in Monaco, including partnerships under civil law, foreign trusts and foundations, are required to keep reliable accounting records for at least five years. In practice, these legal obligations are respected and information on all types of entities is verified and available, including identity and ownership information, accounting records and underlying documents. However, given that record keeping requirements for non-trading partnerships and trusts are recent, Monaco should monitor, on an on-going basis, the availability of accounting records for such partnerships and trusts.

7. Monegasque legislation provides for access to available information held by any person when such information is required for the purposes of international information exchange, including information that is required to be kept in Monaco for AML purposes. Likewise, the absence of any reference to a domestic tax interest, whether in domestic legislation or in the treaties concluded by Monaco, ensures that the Monegasque competent authorities can exercise their powers to collect information for EOI purposes. In practice, Monaco's authorities have been able to collect the necessary information when requested, as confirmed by their EOI partners.

8. As regards of access to information, the handling of incoming requests differs depending on whether the request is made by France or by

another jurisdiction, although in all cases these requests are treated with the same care and efficiency. The procedure to collect and provide information is the same in both cases except that with countries other than France a prior notification procedure applies

- for requests received from France, the competent authority is, for historical reasons, the Director of the Department of Tax Services (DSF) and these requests are dealt with by the administrative assistance unit of this Department. Over the three years 2009-11, Monaco received 199 EOI requests from France representing 98.5 % of the requests received. On average, the Monegasque authorities fully answered incoming requests within 90 days in 98 % of cases;
- for requests received from all other jurisdictions, the competent authority is the Minister of Finance and Economy and the requests are treated by the exchange of information division of the Department of Finance and Economy, with the assistance of the DSF for the collection of information. Requests received from these jurisdictions are subject to a prior notification procedure. This prior notification procedure is inconsistent with the international standard since it does not allow for any exceptions, although in urgent cases, deadlines – which provide for exchange of information within 90 days – are shortened. It is recommended that Monaco introduces some exceptions to the prior notification procedure to bring it in line with the international standard, 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 and monitor its application to ensure it is compatible with an effective EOI. Over the three years 2009-11, Monaco received three EOI requests from partners other than France. Answers were provided within 90 days in all these instances.

9. The average answering timeframe shows that Monaco has devoted sufficient resources to its EOI system, as confirmed by comments received from its treaty partners.

10. Monaco has been assigned a rating¹ for each of the 10 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 Monaco's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Monaco has been assigned the following

^{1.} This report reflects the legal and regulatory framework as at the date indicated on page 1 of this publication. Any material changes to the circumstances affecting the ratings may be included in Annex 1 to this report.

ratings: Compliant for elements A.1, A.3, B.1, C.1, C.3 and C.4, Largely Compliant for elements A.2, C.2 and C.5, and Partially Compliant for element B.2. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Monaco is Largely Compliant.

11. A follow up report on the steps undertaken by Monaco 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 Report on Monaco

12 The assessment of Monaco's legal and regulatory framework and the practical implementation and effectiveness of this framework were based on the international standard for transparency and exchange of information as described in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes and have been prepared using the Global Forum's Methodology for Peer and Non-Member Reviews. The assessment has been conducted in four stages: Phase 1 in 2010, the first supplementary review in 2011 and the second supplementary review in 2012, assessed Monaco's legal and regulatory framework for the exchange of information, while Phase 2, carried out in 2013, looked at the practical implementation of that framework, as well as any amendments made to the legal and regulatory framework since the second supplementary review. This assessment is therefore based on the laws, regulations and information exchange mechanisms in force or effective at the end of May 2013, other information, explanations and material provided by Monaco and information provided by treaty partners of Monaco as well as information collected during the on-site visit to Monaco in November 2012. During the on-site visit, the assessment team met with officials and representatives of the relevant Monegasque government agencies, including the Department of Finance and Economy, Department of Tax Services (DSF), and the Economic Expansion Division (DEE – in charge of the registry of Businesses and Companies), the Financial Circuits Supervisory and Monitoring Service (SICCFIN, the anti-money laundering authorities), and also the Notaries and Chartered accountants.

13. The Terms of Reference break 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) exchanging information. This review assesses Monaco's legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding Monaco's legal and regulatory framework that either: (*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 for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Monaco's practical application of each of the essential elements and a rating of either: (*i*) compliant, (*iii*) largely compliant, (*iii*) partially compliant, or (*iv*) non-compliant is assigned to each element. An overall rating is also assigned to reflect Monaco's overall level of compliance with the standards.

14. The 2010 and first supplementary reviews were conducted by an assessment team comprised of two assessors and a representative of the Global Forum Secretariat: Shauna Pittman, advisor in the Canadian tax administration; Kamlesh Varshney, Director in the Indian tax administration; and Rémi Verneau for the Global Forum Secretariat. The team evaluated the legal and regulatory framework for transparency and exchange of information and Monaco's relevant information exchange mechanisms. For the second supplementary review, the assessment team included Shauna Pittman, advisor in the Canadian tax administration; Manon Hélie, Manager in the exchange of information service of the Canadian Revenue Agency; Sukesh Kumar Jain, Director in the Foreign Tax and Tax Research Division, Ministry of Finance, Government of India; and two representatives of the Global Forum Secretariat, Mélanie Robert and Rémi Verneau.

15. The Phase 2 assessment was conducted by a team consisting of two assessors and two representatives of the Global Forum Secretariat: Manon Hélie, Manager, Exchange of Information Services Section of the Canadian Revenue Agency; Sukesh Kumar Jain, Director in the Foreign Tax and Tax Research Division, Ministry of Finance, Government of India; Mélanie Robert and Rémi Verneau for the Global Forum Secretariat. The team evaluated the implementation and effectiveness of Monaco's legal and regulatory framework for transparency and exchange of information and its relevant information exchange mechanisms.

16. The ratings assigned in this report were adopted by the Global Forum in November 2013 as part of a comparative exercise designed to ensure the consistency of the results. An expert team of assessors was selected to propose ratings for a representative subset of 50 jurisdictions. Consequently, the assessment teams that carried out the Phase 1 and Phase 2 reviews were not involved in the assignment of ratings. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach. The assignment of ratings was also conducted at a different time from those reviews, and the

circumstances may have changed in the meantime. Readers should consult Annex 1 for information on changes that have occurred.

Overview of Monaco

General information on Monaco's legal and tax system

17. An enclave on the French Riviera, the Principality of Monaco is a sovereign and independent State on the shores of the Mediterranean Sea, half-way between the French city of Nice and the Italian border. On an area of 195 hectares, the Principality of Monaco has a population of 36 371 (as estimated in 2012), including 8 389 Monegasques (23% of the population), 8 346 French citizens (23% of the population), 5 421 Italians (15%) and 2 281 Britons (6.3%).

Legal system

18. The Principality's political and institutional system is governed by the Constitution of 17 December 1962 (as amended by Law No. 1 249 of 2 April 2002). As the fundamental law of the State, the Constitution sets forth the nature of the Government, the organisation of public powers and the relationships between them. The Principality is a hereditary and constitutional monarchy which proclaims the primacy of the law over all other institutions.

19. The Monegasque legal system is based on civil law.

20. According to the Constitution, legislative power is wielded by the Prince and the National Council, insofar as laws require the agreement of the Prince and the elected assembly. The initiative for lawmaking lies with the Prince, but the assembly has exclusive power to adopt a law. The Government operates under the high authority of the Prince. It is made up of the Minister of State and five Government Counsellors, each of whom heads a Department (Interior; External Relations; Facilities, Environment and Town Planning; Finance and Economy; Health and Social Affairs). It is the Government's mission to enforce the law, deliver public services and keep the peace. The judiciary is independent.

21. The hierarchy of Monegasque legal instruments is as follows: Constitution, treaties and international agreements, laws, sovereign orders, orders (issued by the Minister of State or other administrative authorities) and other administrative decisions.

Tax and customs system

22. The DSF – the Monegasque competent authority for information exchange with France – operates under the authority of the Department of Finance and Economy, which also oversees the Department of Economic Development (in charge of managing the Directory of commerce and industry, see below) and the Financial Information and Monitoring Department (*Service d'Information et de Contrôle des Circuits Financiers*, SICCFIN), which enforces anti-money laundering legislation.

23. The Monegasque tax system relies especially on indirect taxes. Value added tax (VAT) is imposed on the same bases and at the same rates -5.5% for the reduced rate, 7% for the intermediary rate, 19.6% for the standard rate – as in France (article 15 of the Franco-Monegasque Tax Convention of 18 May 1963). The VAT regime in force within the European Union has been applicable in Monaco since 1 January 1993.

24. There is no personal income tax in Monaco. Pursuant to article 7 of the Franco-Monegasque Tax Convention of 18 May 1963, French nationals who transferred their domicile to Monaco after 13 October 1957 are subject to French income tax as though they had maintained their domicile or tax residence in France.

25. Monegasque businesses (both individuals and legal entities) engaging in an industrial or commercial activity and deriving more than 25% of their turnover outside of Monaco are subject to profit tax. The applicable tax rate is 33.33%, it being understood that capital gains from the sale of fixed assets by an ongoing concern may, with some exceptions, be tax exempt if reinvested. Other local businesses are not subject to any tax on profits if more than 75% of their turnover is in Monaco, except for legal entities that are receiving income from the transfer or concession of patents, trademarks, know-how or income from copyrights.

26. Inheritance and gift taxes are levied on goods and assets located within the Principality or having their base there, irrespective of the domicile, residence or nationality of the deceased or the donor. The rate of tax, which is levied on the market value of assets, varies according to the closeness of the relationship between the deceased and his or her heir (from 0% between parents and children or between spouses to 16% between unrelated persons). Transfer tax is also levied on the acquisition of real estate assets.

27. There is no wealth tax, nor are any taxes levied for the benefit of local authorities in Monaco.

28. Duties and taxes on alcoholic beverages and precious metals are subject in the Principality of Monaco to the identical regulations as in France.

Since 1 January 1993, the general arrangements applicable to intra-EU trade in products subject to excise duty have been in force in Monaco as well.

29. French territory and Monegasque territory, including the territorial waters thereof, form a customs union set up by the Customs Convention of 18 May 1963. The French Customs Code is directly applicable in the Principality of Monaco, French customs officials are authorised to operate in Monaco.

Overview of commercial law, the financial sector and other factors relevant to the exchange of information

Commercial law

30. Monegasque legislation (the Commercial Code) provides for five types of commercial undertakings (see below for explanations in English): *société anonyme monégasque* (SAM); *société en commandite par actions* (SCA); *société à responsabilité limitée* (SARL); *société en commandite simple* (SCS); and *société en nom collectif* (SNC), the last two being partnerships. Pursuant to Monegasque legislation (Sovereign Order of 1895 applicable to SAMs and SCAs and Law No. 1 144 of 26 July 1991 applicable to SARLs, SNCs and SCSs), prior authorisation from the authorities is required in order to engage in an activity independently or in the form of a company.

31. A SAM is a joint stock company composed of at least two associates. Its share capital, which must be at least EUR 150 000, must be fully paid up. Shares and coupons are negotiable only after the company's incorporation has been finalised, and shares are registered until fully paid up. Founders' shares and shares representing contributions to be fully paid up at the time the company is constituted may not be traded until two years after the company is constituted. As of 31 December 2012, there were 1 286 SAM in Monaco.

32. For the purposes of applying Monegasque legislation, an SCA is also considered a joint stock company. Associates in such companies are therefore liable for losses only up to the amount of their investments in the business. In practice there are currently no SCA in Monaco.

33. A SARL is made up of two or more persons whose liability for losses is limited to the amount of their investments in the company. Share capital must be at least EUR 15 000, comprising contributions in kind or contributions in cash. A company may only be incorporated as a SARL if it engages in a commercial activity. As of 31 December 2012, there were 1 047 companies constituted under the form of a SARL in Monaco.

34. An SNC is a partnership formed by two or more persons, and its purpose is to do business under a company name. The partners listed in the partnership statutes have unlimited joint liability for all of the firm's

commitments. As of 31 December 2102, there were 44 partnerships in the form of a SNC.

35. An SCS is formed between one or more partners having unlimited joint liability for debts and one or more limited partners whose liability is limited to the amounts of their investments in the business. Monaco now has 280 partnerships created under the form of a SCS.

Banking and financial activities

36. The Principality of Monaco and France constitute a relatively homogenous market for banking activities. Indeed, under the Franco-Monegasque Convention of 14 April 1945 and exchanges of letters with France in 1963, 1987 (replaced by a new exchange of letters in 2010) and 2001, French rules for the organisation of the banking sector are applicable in Monaco, and credit establishments located in the Principality are placed under the jurisdiction of the French supervisory authorities.

37. Financial activities in Monaco are governed by Law No. 1 338 of 7 September 2007 as implemented by Sovereign Order No. 1 284 of 10 September 2007, while collective investment undertakings are governed by Law No. 1 339 of 7 September 2007 and Sovereign Order No. 1 285 of 10 September 2007.

38. The independent administrative authority instituted by Law No. 1 338, the Financial Activities Supervisory Commission (*Commission de Contrôle des Activités Financières*, CCAF), issues licences, monitors compliance with regulatory provisions and ensures that the companies concerned take the necessary measures. It also conducts documentary and on-site audits of those entities. It co-operates with its counterparts on the basis of bilateral memoranda of understanding, which to date have been signed with Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

39. Aggregate turnover for the banking sector in 2011 amounted to EUR 715 million (637 million in 2010) and the banking sector represents 15% of Monegasque GDP. At year-end 2011, the sector comprised 39 entities, all of which were subsidiaries or branches of European banks. Assets kept in Monaco totalled EUR 83.16 billion, rising by 6.7% over the course of the year 2011. Outstanding loans totalled EUR 16 billion.

40. In addition, as of 31 December 2011 there were 46 financial activities firms in the Principality. These manage 59 Monegasque funds (there are no investment companies with variable capital in Monaco), whose assets on that same date totalled EUR 4.6 billion, and they also provided advisory, contract management and foreign fund management services managing assets of approximately EUR 13.6 billion.

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Deposits*	16.25	16.94	19.78	23.45	28.72	30.48	24.97	24.03	28.91
Securities*	40.09	42.36	49.11	47.94	49.96	44.54	50.40	53.92	54.25
Total assets*	56.35	59.30	68.89	71.39	78.67	75.02	75.37	77.95	83.16
Banks	45	43	39	40	41	39	38	39	39

41. Over the past nine years, the Monegasque banking sector has evolved as follows:

* billion.

The fight against money laundering

42. The backbone of Monaco's anti-money laundering arsenal is Law No. 1.362 of 3 August 2009 and Sovereign Order No. 2.318 of 3 August 2009. Among the requirements imposed on professions are:

- to identify and check the identity of customers and beneficial owners;
- constant vigilance, including reviews of all transactions and operations;
- regular updating of records;
- internal organisational measures (including designation of a person in charge of the fight against money laundering, terrorist financing and corruption);
- to report any suspicion of money laundering, terrorist financing or corruption to the Financial Information and Monitoring Department (SICCFIN).

43. Evaluations of this legislation were conducted in 2003 and 2008 by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), which assesses compliance with international standards in these areas by Member States of the Council of Europe not belonging to the Financial Action Task Force (FATF). A progress report was published in 2009.² A second progress report was adopted in December 2011. The 4th round of evaluation of Monaco has started, the Council of Europe assessors conducted an on-site visit in November 2012, for the purposes of the assessment report. This report should be examined by the MONEYVAL assembly in September 2013.

44. The report published in 2008 states, *inter alia*, that Monaco's legal and regulatory provisions governing the vigilance obligations of financial

^{2.} These reports are available on the following web site: www.coe.int/moneyval.

institutions with regard to customers and transactions are on the whole satisfactory, although they are phrased in generally succinct terms that frequently entail interpretation to determine the actual scope of requirements. These provisions appear fully compliant with FATF requirements as to the scope of the obligation to identify and check the identification of customers, as well as the obligation to obtain information on the purpose and proposed nature of business relationships (including the updating of customer records). In addition, in the field of international cooperation, the SICCFIN has signed 35 bilateral agreements for AML/CFT with foreign anti-money laundering authorities and is cooperating with all members of the Egmont group based on reciprocity.

Transparency and exchange of information

45. Pursuant to the tax treaty concluded with France on 18 May 1963, and more specifically article 20 of the treaty, Monaco is committed to exchanging information with France so that French income tax can be levied on individuals and companies exactly as specified. For the period under review (2009-11) Monaco has received 199 EOI requests from France and three EOI requests from other jurisdictions.

46. Given the rules in force in the Principality with regard to value added tax, Monaco also takes part in the European system for exchanging VAT-related information. In this connection, the Principality receives and processes about 15 information exchange requests per year.

47. In addition, Monaco has concluded an agreement with the European Union calling for the imposition within Monaco of measures equivalent to the ones instituted by the Directive on taxation of savings income in the form of interest payments (Directive 2003/48/EC, the "Savings" Directive). As a result, Sovereign Order No. 101 of 20 June 2005, implementing the Directive, provides that as from 1 July 2005 withholding tax shall be levied on interest payments issued by Monegasque paying agents to beneficiaries residing in a Member State of the European Union. 75% of the revenue from this withholding tax is refunded annually to the States of residence of the said beneficiaries. If they so choose, however, residents of Member States of the European Union may opt out of the withholding tax in Monaco. In this case, the beneficiary of the interest requests the paying agent established in Monaco to advise the Principality's tax authorities of the details of the payment. This information is then passed along by the Department of Finance and Economy of the Principality of Monaco to the competent authority of the State of residence of the beneficiary of this income. According to the Monegasque authorities, such information has been exchanged with, amongst other, Italy, the United Kingdom, Belgium and Germany. With regard to exchange of information on savings income, Monaco has exchanged 1 000 pieces of data in 2010, 837 in 2011 and 922 in 2012 under the arrangements for voluntary disclosure under the Savings Directive.

48. Lastly, and as specified in both of the tax treaties concluded with France, automatic exchanges of information take place between the two States, and these include the turnover reported in Monaco by businesses established in France, the amounts paid by Monegasque employers to French residents and the annual amount of securities income paid out by Monegasque banking institutions. No figures could be provided to the assessment team in this area since this information is covered by tax secrecy laws and could only be provided with the express agreement of France.

Compliance with Standards

A. Availability of Information

Overview

49. Effective exchange of information requires the availability of reliable information. If such 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 report considers the legal and regulatory framework now in place in Monaco as regards the availability of ownership information, accounting records and banking information. It also assesses the implementation and effectiveness of this framework in practice.

50. There are two requirements on trading companies at the time of their incorporation – administrative authorisation to do business, and registration in the Directory of Commerce and Industry. Because of these two requirements, information on the ownership of Monegasque joint stock companies – SAMs (limited companies), SCAs (partnerships limited by shares) and SARLs (limited liability companies) – is available when such a company is set up.

51. Monaco ensures that ownership information is kept in relation to all type of companies and partnerships that can be created under Monaco's law.

52. Joint stock companies (SAMs) and partnerships limited by shares (SCAs) are prohibited from issuing bearer shares and must convert shares already issued in this form into registered shares before the end of 2014. Since the end of 2011, such companies must at all times be in a position to

provide a list of shareholders upon request of Monaco's authorities. These companies also have to maintain a share register where all transfers of registered shares must be recorded in a timely fashion.

53. In respect of trading partnerships – SNCs and SCSs – Monegasque legislation ensures that information on the ownership of such businesses is available, since each member of a partnership bearing unlimited personal liability for company debts must be registered in the Directory of Commerce and Industry or receive administrative authorisation to do business. Partners bearing limited liability are not registered in this directory. This information is, however, held by the Department of Economic Development and is therefore available to the competent authority.

54. Regarding partnerships set up for non-trading purposes – *société civile immobilière* and *société civile de moyens* – the registration requirements of the Special Directory of Non-Trading Companies (*Répertoire spécial des sociétés civiles*) do not make ownership information available. Nevertheless, the obligation to register articles of association and all subsequent share sales for tax purposes makes it possible to obtain this information directly from the Monegasque tax authorities.

55. While no trust may be created in Monaco under Monegasque law, the legislation nevertheless allows trusts established under foreign law to be constituted in or transferred to Monaco. Amendments made to Monaco's Anti Money Laundering (AML) law ensure that accurate ownership information in relation to beneficiaries of trusts will be kept by trustees.

56. With respect to foundations, there is no formal requirement as such under Monegasque law that they be registered in a directory. Nevertheless, the way in which they operate, notification of any changes thereto and continuous monitoring of such entities by a special commission ensures that information on their founders is available at all times.

57. Monaco's legal provisions require companies, partnerships, foundations and trustees to keep accounting records with underlying documentation for at least five years. As a result, Monaco ensures that all legal entities created under its laws are subject to a record keeping requirement in line with the international standard.

58. Lastly, the penalties for non-compliance with the obligation to report an activity or to retain information that the law on the fight against money laundering requires be kept would seem sufficiently dissuasive to ensure compliance therewith by persons and all sorts of entities established in Monaco.³

^{3.} Pursuant to this legislation, penalties can include a fine of up to EUR 1.5 million or the withdrawal of the administrative authorisation to do business.

59. Monaco's legal and regulatory framework as well as its practices, including a double system of authorisation and registration for trading entities, ensure the availability of ownership and identity information, banking information and accounting records in all circumstances. Based on its long-standing relationship with, and comments received from France, as well as its expanding network of agreements Monaco actively exchanges all types of information in relation to ownership, identity, banking and accounting data for both individuals and legal entities in Monaco. Six requests in relation to ownership or identity information were received during the period under review. In all cases this information was available internally (i.e. it was directly available to the competent authority without the need to collect it) and was provided to the requesting jurisdictions.

60. However, record keeping requirements for non-trading partnerships and trusts are recent and Monaco's experience in this regard is not yet developed. Monaco should monitor the availability of such information.

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 4 A.1.1)

61. Monegasque legislation provides for three types of companies: *société anonyme monégasque* (SAM); *société en commandite par actions* (SCA); and *société à responsabilité limitée* (SARL).

62. Companies wishing to do business in Monaco require authorisation from the Minister of State, under either the Sovereign Order of 5 March 1895 (for SAMs and SCAs) or Law No. 1 144 of 26 July 1991 (for SARLs). Monegasque branches of foreign companies are required to obtain this authorisation as well.

63. Pursuant to Law No. 721 of 27 December 1961 as supplemented by Sovereign Order No. 2 853 of 22 June 1962, any legal person legally deemed a trader is required to register with the Directory of Commerce and Industry, which is administered by the Department of Economic Development, which registers companies, amends their registration and strikes them from the Directory.

^{4.} Terms of Reference to monitor and review progress towards transparency and exchange of information for tax purposes.

Incorporation of legal entities

64. In Monaco, legal entities are generally created by notaries or other professionals like accountants and lawyers. When created by an accountant or a lawyer, the deed of incorporation is transferred to a notary for certification and registration with the Directory of Commerce and Industry (except in the case of SARLs and *sociétés civiles* that do not need to be created by notaries). Transactions involving real estate must also be made by notary otherwise the transaction will not be valid.

65. When creating a new company, notaries always verify the identity of shareholders and beneficial owners in accordance with anti-money laundering requirements that apply in Monaco. In addition, they verify other information such as the address, profession, residency of the incorporators and the origin of funds and keep this information for a period of at least 5 years.

66. In fact, notaries keep the information in relation to the creation or modification of statutes of legal entities for a period of 30 years, as required by the law (Sovereign Order of 4 March 1886). In addition, compliance with AML obligations by notaries is subject to a strict verification process (see below for the verification process for notaries).

Issuance of administrative authorisation to do business

67. The legislation requiring companies to be authorised to do business specifies no particular form, and there is thus no particular information that must necessarily be submitted in order to obtain such authorisation.

68. In practice, however, the Department of Economic Development requires the following information before it grants authorisation:

- for associates [shareholders] who are natural persons: identity of the associate and the associate's spouse (if applicable), personal address, criminal record, curriculum vitae, interests in other trading companies in Monaco or abroad.
- for associates that are legal persons: excerpt from the minutes of the board of directors' meeting at which it was decided to subscribe to the capital of the company to be formed, a copy of the company's articles of association stating the main lines of business, and an individual information sheet on the person representing the legal person, a less-than-three month-old copy of that person's criminal record check, a photocopy of his or her identity card or passport and the identity of the beneficial owners.

69. To be allowed to exercise a commercial activity, a prior administrative authorisation must be granted. Without this prior authorisation, the legal entity with commercial purposes or the individual commercial activity cannot be registered in the Directory of Commerce and Industry. The authorisation process in Monaco is very meticulous and aims at ensuring the good character of future associates and their competences, especially in sensitive sectors. The opening of a business is always subject to the granting of administrative approval, meaning that the creation of the entity will be effective only when the authorisation is issued. For certain activities, the authorisation procedure may be delayed while specialised bodies are consulted in order to obtain further advice. The professional in charge of the creation of the company is also generally the person in charge of requesting this administrative authorisation.

70. The authorisation request must be made to the Department of Economic Development which provides an acknowledgment of receipt within five days of receiving of a complete file, confirming whether the file is admissible or not. To determine the admissibility of the file, the Department of Economic Development verifies the statutes of incorporation, the object of the entity and the authorisation request form. If information is found to be missing, the file is not accepted and a notification is sent to the requesting entity for additional information.

71. If the file is complete, the Department of Economic Development analyses the request and gives its decision within three-months from the receipt of the request, otherwise the authorisation is automatically granted. In practice the analysis and the answer are always completed within the three-month timeframe. The Monegasque authorities have confirmed that this three months deadline has always been respected and that in practice the average answering period is 40 days. To perform its analysis, the Department of Economic Development will ask the Monegasque police to carry out an inquiry into the "morality" of the individuals involved in the commercial activity (criminal records check) and the Monegasque tax authorities will provide information on the tax situation of other legal entities in which the shareholders have a participation. The Department of Economic Development will also notify the anti-money laundering authorities (SICCFIN) if the commercial activities are covered by the SICCFIN's supervision.

72. The premises must be acceptable for the performance of the activities (based on the nature of the activities) and respect security measures. They are systematically verified for the authorisation to be granted and need to be approved by a technical commission (the technical commission gives its decision within 10 to 15 days of receipt of the request for approbation of the premises).

73. If the new entity has not found appropriate premises to carry on its business, the authorisation will be granted but with a three-month period for

the company to find suitable premises. If suitable premises are not found during this timeframe, the entity must request an extension, which may be granted by the Department of Economic Development.

74. Once the information is received from these administrations, the file is presented to the Government Council that will either accept or reject the authorisation request. If accepted, the authorisation is issued and the creation of the legal entity can be finalised. If the authorisation request is rejected, it must be justified in writing.

75. In 2011, 458 requests for authorisation were analysed in Monaco. Each year, approximately 10 to 15 files are rejected, generally for morality issues (generally because they reveal a criminal record).

76. Within two months of the issuance of its administrative authorisation, a legal entity must register with the Directory of Commerce and Industry.

77. The administrative authorisation can be suspended or withdrawn in certain circumstances by the Minister of State, for instance, when no business activity is performed during a period of six months or more, if the premises are no longer suitable for the activities performed, or if an activity that is not allowed by the articles of association or by the administrative authorisation is performed. In such cases, the Department of Finance and Economy can suspend or remove the authorisation to do business with a letter to the legal entity requiring the liquidation of this entity and the cancellation of its registration.

78. When the liquidation is completed, the minutes of the shareholders' meeting stating the completion of the liquidation shall be given to the Directory of Commerce and Industry in support of the request for cancellation accompanied by a check for the relevant fees to be paid. In the event that the formalities are not completed, a letter is sent by the Directory of Commerce and Industry to the President of the Court of First Instance asking him to proceed with the striking off of the company.

79. The administrative authorisation can only be withdrawn by the Minister of State,⁵ following the recommendation of the Commission for Revocation which meets twice a year and hears the cases presented for revocation or withdrawal. Its decision is purely consultative and the final decision is taken by the Minister of State. Any revocation or withdrawal must be justified in writing. In 2012, 5 cases of revocation in relation to SAMs were heard by the Commission and 3 administrative authorisations were revoked. 33 cases were presented for revocation of other types of legal entities and 19 authorisations were revoked. If the authorisation is not withdrawn, the authorities will monitor the situation to ensure that the situation is corrected.

^{5.} The equivalent of the Prime Minister.

Registration in the Directory of Commerce and Industry

80. The regulations relating to the Directory of commerce and industry, which according to article 1 shall be applicable to any person deemed by law to be a trader and doing business in Monaco, requires that certain information about a company be reported at the time of its registration (Sovereign Order No. 2.853 of 22 June 1962). SARLs, which can be trading companies only, are therefore required to be registered in the Directory. SAMs and SCAs that engage in trading activities must also be registered. In contrast, if such companies are non-trading they must be registered in the Directory of non-trading companies. The same registration requirements are applicable to branches of foreign companies.

81. For legal persons and foreign establishments, the registration report must be signed by the company's legal representative and indicate the company's legal form and official name, its main line of business, its head office and main operating location, the surnames, given names and personal domiciles of associates holding unlimited personal liability for company debts, the surnames, given names and personal domiciles of associates or third parties invested with management or administrative power and the details of members of the supervisory board of SCAs. No mention of associates other than those referred to above is to be made in this Directory. There is also no requirement to disclose beneficial ownership information in the Directory as the legal owner is, under Monegasque legislation, deemed to be the beneficial owner as well.

82. The Department of Economic Development keeps information regarding shareholders and associates over the entire lifetime of companies and for five years after their removal from the Directory of commerce and industry.

In practice

83. When an authorisation to do business was granted and a deed of incorporation is received for registration, the Directorate of Commerce and Industry verifies all documents submitted including the identity of associates [shareholders], the purpose of the company and the premises where the activities will be performed.

84. Once the Directory of Commerce and Industry is of the opinion that the file is in order and that the entity fulfils all necessary requirements to perform its activity in Monaco, the articles of incorporation are registered [by the Directory] and published in the Monaco's gazette. The registration and publication process is completed in 48 hours. The Directory is publically available on the internet. Information on each entity is also kept in paper files. 85. The registration must be renewed every five years for all legal entities. Upon renewal, the Directory verifies again all documents in the file of the entity, including ownership information, the premises of the business as well as the accounting records, the turnover of the entity (provided by the tax authorities). Most verifications are done off-site but the Directory can also perform on-site verifications or interviews if needed.

86. The main issues that have been noticed by the Directory over these verification processes are the lack of appropriate premises and the absence of activity for a period of six months (which will trigger the cancellation of the administrative authorisation by the Revocation Commission). In general, there are approximately 2 300 verifications of balance sheets made by the Directory each year and approximately 600 other verifications annually.

87. Finally, if a legal entity has ceased its commercial activity but has not deregistered with the Directory, the Directory can make a request to the Court of First Instance for an automatic cancellation of the registration. The Directory has recently undertaken the revision and update of its database and is closing all inactive entries. In order to complete this process, 300 requests for automatic cancellation have been made and are now processed by the Directory, for a total of 4 187 legal entities in the register, in order to update the registry.

Subsequent changes

Over the lifetime of a SARL, any new associate (shareholder) is 88 required to file a report with the Minister of State if he or she is a Monegasque citizen, or request authorisation if he or she is a foreigner (articles 4 and 7 of Act No. 1.144 of 26 July 1991), and be registered in the files of the Department of Economic Development. This information is not, however, recorded in the Directory of commerce and industry. The following information must be provided when a legal entity is an associate [shareholder]: excerpt from the minutes of the board of directors' meeting at which it was decided to subscribe to the capital of the company to be formed, a copy of the company's articles of association mentioning the main lines of business as well as any further modification of the articles of association, employees and an individual information sheet on the person representing the legal person, a less-than-three month-old copy of that person's criminal record, a photocopy of his or her identity card or passport and the identity of the beneficial owners. The authorisation request for a change of associate must be done as soon as possible because any commercial activity performed without authorisation is subject to penal sanction. The government has a three-month answering timeframe.

89. In addition, all other changes to the articles of incorporation of all types of company must be registered with the Directory. Modifications to the

statutes trigger a verification of all documents in the file of the legal entity, including the premises, the accounting records and the turnover of the business. In addition to the information available in the Directory, all information on a company is also kept in a paper file.

Information kept by companies

90. On 15 December 2011, Monaco enacted a new law providing for rules for the mandatory registration of shares. This law⁶ states in its articles 1 and 4 that all shares issued by SAMs and SCAs must be in a registered form. Second, article 5 of the law provides that all shares issued by SAMs and SCAs must be registered in a share register. All transfers must be effected through a transfer document and registered in the share register within one month of transfer. The transfer document must detail the identity (for natural persons: first name and last name; for legal entities: name – see Ministerial Order of 5 April 2012, art. 8) and addresses of both transferor and transferee. All registers and transfer documents must be kept at the company's headquarters and can be accessed by the Department for Economic Development at any time.

91. Upon verification (during tax audits or an enquiry conducted by the Directory), if the information is not kept at the headquarters, a report will be issued and sanctions will be applied. The Monegasque authorities have confirmed that ownership information is provided by companies when requested in all cases within a 90-day period.

Foreign companies

92. In Monaco, the registration and authorisation processes for foreign companies wishing to conduct business in the Principality is exactly the same as for companies incorporated in Monaco pursuant to article 5 of the law n° 1144. The same information must be provided and is verified by the Monegasque authorities upon authorisation and registration of the foreign company. The Monegasque authorities have confirmed that they have always been able to obtain information on foreign companies when requested by a partner (five EOI requests in relation to foreign companies were received by Monaco during the period under review).

^{6.} Law No 1.385 of 15 December 2011 providing for Miscellaneous Provisions to update the Legislation on Companies, Partnerships under Civil Law, Trusts and Foundations.

Information held by other persons

93. With regard to shares in companies traded on a regulated market, shareholders' names are known to the financial intermediary responsible for keeping the shares. However, only two Monegasque companies fall into this category.

94. Law No. 1 362 of 3 August 2009 on the fight against money laundering, terrorist financing and corruption requires a number of professional categories, including service providers, to identify customers and check their identities against documentary evidence.

95. Pursuant to this Law, as supplemented by Sovereign Order No. 2 318 of 3 August 2009, service providers and certain professions duly stipulated in article 2 of the Law are in particular required to keep certain information about their customers:

- If they are regular customers, when a business relationship is established (article 3 of the Law); or,
- If they are occasional customers, when there is a transfer of funds, an operation involving EUR 15 000 or more, or an operation involving any amount when there is suspicion of money laundering or corruption.

96. Article 7 of the aforementioned Order lists the information that must be provided when a professional enters into a business relationship with a customer that is a legal entity. Among the required information are the articles of association of the legal person as well as documentary evidence of the list of officers. Hence, articles 14 and 15 of the Sovereign Order n° 2.318 are to be interpreted together with articles 3 and 5 of Law n° 1.362 such that the professional must identify the directors and other members of the directing boards as well as all partners and beneficial owners upon the start of the relationship. During on-site visits, the SICCFIN (*Service d'Information et de Contrôle sur les Circuits Financiers*, the anti-money laundering authorities) verifies that the list of partners and other owners is available in the file.

97. When a transaction or operation is carried out, article 5 of Law 1.362 of 3 August 2009 in conjunctions with article 13 of the Order stipulates the elements to be covered by the identification of beneficial owners within the meaning of article 14, in respect of both legal persons and natural persons who ultimately possess or control, shares or voting rights of the legal person, as well as natural persons who effectively exercise control over the management of the legal person. These elements are:

• in respect of natural persons: surname, given name, date of birth and address;

• in respect of legal persons, legal entities and trusts: the official name, head office, list of officers, knowledge of provisions governing the power to make commitments on behalf of the legal person.

98. Professionals subject to Law No. 1.362 of 3 August 2009 on the fight against money laundering, terrorist financing and corruption must keep all information about their customers at their head office.

99. In Monaco, only three notaries are allowed to perform their activities. They are under the supervision of the General prosecutor and are subject, every year, to a verification process to control the respect of their professional and anti-money laundering obligations. The verification process is performed by a team of five French notaries who verify all information and have access to all the documents that must be maintained.

100. The yearly controls ensure that the notaries and their employees have a very high level of knowledge of the applicable anti-money laundering obligations and that they thoroughly respect them. No sanctions for breach of anti-money laundering obligations have ever been applied to a notary in Monaco.

101. The 28 chartered accountants in Monaco are under the supervision of the anti-money laundering authority, the SICCFIN. All activities performed by chartered accountants are subject to the anti-money laundering legislation. They are thus required to provide the SICCFIN with an annual report. The SICCFIN regularly verifies the compliance of the chartered accountants with the anti-money laundering obligations through specific controls.

102. The chartered accountants professional body has its own anti-money laundering obligations as part of its professional obligations. This means that chartered accountants have to respect both the AML obligations provided by law and the AML obligations provided by their professional body. The professional body provides regular training and performs quality controls. It also verifies that the AML obligations provided by the professional body are respected. These controls can lead to disciplinary sanctions and even to criminal sanctions through the General Prosecutor. However, these quality controls are recent and no sanction has yet been applied.

103. Hence, chartered accountants are subject to a system of double checks (one by the SICCFIN on the respect of the AML obligations and one by the professional body on the respect of the professional obligations including AML obligations from the professional body), and based on the results of these controls, it appears that accountants are well informed of their obligations have been applied in the past by the SICCFIN for breach of anti-money laundering obligations but no authorisation has ever been revoked on this

basis. During the period under review, no sanction was applied to chartered accountants for failure to comply with AML obligations.

104. Monegasque tax authorities, including VAT authorities, often request information from chartered accountants either by letter or through on-site verifications. Tax authorities have also confirmed that they are satisfied with the information provided by accountants because it is available and of good quality.

105. All other professionals providing services to companies are also subject to supervision. As these activities are considered to be sensitive, the Monegasque authorities, including the SICCFIN, systematically verify that the 37 service providers allowed to provide services to companies in Monaco comply with their legal anti-money laundering obligations. A total of 21 on-site visits of service providers were performed in 2009, 12 in 2010 and 12 in 2011. The entire group of service providers is then controlled every three years. In general, service providers have a very good level of compliance with their AML obligations. In 2009, one warning and one reprimand were issued, there was no sanctions applied in 2010 and two reprimands and one fine were applied to service providers in 2011. In addition, for the period under review, seven requests required information from service providers were received. In all cases the information was provided in due time and then exchanged within the 90-day period.

Nominee ownership

106. Monaco's legislation does not allow nominee ownership. When there is a contract or the legal owner is mandated by another person who would be the beneficial owner, the information would be maintained by the legal owner.

107. Monaco law does not recognise nominees therefore there are no cases involving nominees either for legal, tax or anti-money laundering purposes.

Conclusion

108. Monaco has a very specific system of administrative authorisation and registration whereby a large amount of information has to be provided to administrative authorities before starting a business activity. In order to obtain an administrative authorisation (which is mandatory for every business in Monaco), detailed information on the owners of the entity must be provided and is verified by the authorities, including identity information and police records. Information is also needed for registration and such information is also verified by the registration authorities, including again identity information on owners. The registration process has to be renewed every five years where all information is verified again, including ownership information. 109. Six requests in relation to ownership or identity information were received during the period under review. In all cases this information was available internally (i.e. it was directly available to the competent authority without the need to collect it) and was provided to the requesting jurisdictions. Given these legal requirements and strong verification procedures that apply to companies incorporated in Monaco as well as foreign companies and considering the comments received in particular from Monaco's main treaty partner, France, it is concluded that in Monaco, the availability of identity and ownership information in relation to companies is in line with the standard set out in the Terms of Reference.

Bearer shares (ToR A.1.2)

110. Companies incorporated in Monaco were allowed to issue *actions au porteur*, translated into English by the words "bearer shares". On further analysis, it appears that these *actions au porteur* are shares under electronic format with no physical certificate and consequently are not bearer shares in the traditional sense. The two companies that were allowed to issue these *actions au porteur* are listed on a French stock exchange where ownership information in relation to these shares is available to the financial intermediaries responsible for trading these shares.⁷ There was, nevertheless, no means for Monaco's authorities to get access to this information as it is stored in a foreign country.

111. Pursuant to articles 1 and 4 of Law No 1.385 of 15 December 2011, SAMs and SCAs can only issue registered shares and *actions au porteur* ("bearer shares") are therefore clearly prohibited. The two companies incorporated in Monaco that were allowed to issue such shares before the entry into force of this law had to immediately comply with this obligation and no other companies in Monaco can issue bearer shares.

112. Article 2 of this new Law provides that all companies that were allowed to issue bearer shares must amend their articles of incorporations within six months of the entry into force of the Law, which was by 30 June 2012, to remove any reference to bearer shares. Once these articles are amended to comply with the new legal requirements, written confirmation must be provided to the State Minister (art. 1 of the Ministerial Order of 5 April 2012) and further be published in Monaco's Official Gazette.

7. As described in the Combined Peer Review Report for France, the financial intermediaries responsible for the trading these shares are subject to a set of legal rules requiring shareholders to be identified at any time (see in particular the French Anti-Money Laundering Law). The shares of the two Monaco companies listed in France are subject to the same rules. Therefore, the identity of owners of such shares is known at any time although this is not from a professional situated in Monaco but in France.

113. Article 3 of the Law provides that from the entry into force (December 2011), SAMs' and SCAs' shareholders have three years (to December 2014) to present their shares to the company to ensure their conversion into registered shares. During this timeframe a shareholder can still exercise his/her rights in the company, even though his/her bearer shares are not converted. Once this timeframe is over, shareholders have two additional years to ask for the conversion of the shares (up to December 2016). During this timeframe, shareholders can no longer exercise any rights in the company until their shares have been converted. If still not converted after these two years, the shares must be converted and sold by the company on the foreign stock exchange where it is listed. Therefore, shareholders conserve their rights attached to the shares up to December 2014. After 2014, shareholders that have not asked for the conversion can no longer exercise their rights (such as voting right, right to dividend) until conversion. After 2016, bearer shares that have not been converted must be converted and sold by the company and shareholders lose their rights and titles.

114. Although bearer shares issued before the entry into force of the Law have to be converted by the end of 2014 in order for the shareholder to continue to exercise rights, the two companies affected by these new provisions are also required to be in a position, upon request of the Department for Economic Development, to provide the identity of the owner of the bearer shares (art. 1 of the Law). To comply with this obligation, these companies can rely on the information already in possession of the financial intermediary responsible of the trading of the shares on the French stock exchange as this intermediary is required, under the French law, to have knowledge of the identity of these shareholders.

115. If a company does not comply with its obligation to keep a share register updated or is not in a position to provide on request of the Department for Economic Development the identity of all holders of shares listed on a foreign regulated stock exchange, its administrative authorisation can be withdrawn or revoked.⁸ In the most serious situations, Monaco's authorities can ask the General Prosecutor to strike-off this company from the Directorate of Commerce and Industry.

116. The possibility to issue "bearer shares" in Monaco was already strictly limited to two listed companies. Monaco has now amended its legal and regulatory framework to prohibit the issue of bearer shares. Moreover, these two companies must identify, since 30 December 2011, their shareholders in all instances to comply with the legal requirement to provide, upon request, this information to the Department of Economic Development.

^{8.} Pursuant to article 9-7 of the Law No 1.144 of 26 July 1991, any company not complying with any applicable legal or regulatory requirement can have its administrative authorisation withdrawn or revoked.

117. Since the introduction of the new legislation prohibiting bearer shares, it has been confirmed that the two Monegasque companies concerned have amended their articles of incorporation to remove any reference to bearer shares and are now able to identify all their shareholders and provide information, if requested. Monaco received two requests in relation to bearer shares in 2009 (no requests in relation to bearer shares were received in 2010 and 2011). The information was provided to the DSF and then exchanged to the treaty partner within 90 days.

Partnerships (ToR A.1.3)

118. Two types of trading partnerships may be created under Monegasque legislation (see paragraphs 32-33):

- société en nom collectif (SNC);
- société en commandite simple (SCS).

119. In addition, Monegasque legislation provides for creation of two types of non-trading partnerships:

- société civile immobilière (SCI);
- société civile de moyens (SCM).

Information held by the administrative authorities about trading partnerships

120. Under articles 4 and 7 of Law No. 1.144 of 26 July 1991, partners in trading partnerships who are Monegasque citizens must file yearly trading reports, and foreign partners must obtain personal authorisation to do business.

121. The following information about partners who are natural persons is required when a partnership is established: identity of the partner and the partner's spouse (if applicable), personal address, criminal record, curriculum vitae, and any interests in other trading companies in Monaco or abroad. In the case of legal persons, the following information must be provided: excerpt from the minutes of the board of directors' meeting at which it was decided to subscribe to the capital of the company's articles of association (translated into French), a certified copy of the company's articles of association (translated into French) employees and an individual information sheet on the person representing the legal person, a less-than-three month-old copy of that person's criminal record, a photocopy of his or her identity card or passport and the identity of the beneficial owner.

122. Because authorisations are issued *intuitu personae*, when shares are sold to a third party, any new associate must file a report if he or she is a Monegasque citizen or obtain personal authorisation if he or she is a foreigner.

123. Except for limited-liability partners in SCSs, for whom the information is available only through the Department of Economic Development, the information concerning the identity of partners in SNCs and full-liability partners in SCSs is recorded in the Directory of commerce and industry if the partners who are fully and personally liable for debts are required to be listed therein [article 1 b) 6 of Sovereign Order No. 2 853 of 22 June 1962].

124. In addition, Monegasque legislation stipulates that all changes concerning partners in partnerships should be noted in this Directory. As a result, the identity of partners is always known, both when a partnership is established and during its lifetime.

125. The Department of Economic Development keeps information on partners throughout the entire lifetime of partnerships and for five years after a partnership's removal from the Directory of commerce and industry.

In Monaco, registration requirements for trading partnerships are 126. exactly the same as registration requirements for companies described under Section A.1.1. As for all legal entities, partnerships with more than 25% of their turnover outside Monaco are subject to corporate profit tax and have to file an annual tax return in Monaco. An administrative authorisation is first needed and to obtain it, information on each partner of a trading partnership must be provided and is verified. This information includes identity information, police records and tax information on each partner of the trading partnership. Each new partner must be authorised by Monaco's authorities. Upon registration, identity information of the partners is also needed as well as additional information, such as information on the object of the partnership and its premises. The registration process of each trading partnerships must be renewed every five years where the information is again verified. Thus, identity information on trading partnerships is available and provided when requested. One EOI request on partnerships was received in 2009, three in 2010 and one in 2011. In all cases, this information was directly available to the tax authorities. The Monegasque authorities have confirmed that they are in a position to provide ownership information on partnership when so requested by their partners.

Information held by the administrative authorities on non-trading partnerships

127. Pursuant to articles 2 and 3 of Law No. 797 of 18 February 1966, contracts creating non-trading partnerships must be registered with the Monegasque tax authorities. The same holds true for any sale of shares. This information is set out in the "*registre de recettes*"⁹ and is available to the tax authority willing to access it for EOI purposes.

128. Pursuant to article 5 of this same law, non-trading partnerships must register with the Special Directory kept by the Directory of commerce and industry within two months of being established. In accordance with these same provisions, this filing contains a number of details about the partnerships, including the amount of its share capital and the number of shares outstanding. However, this report contains no information about the holders of the shares themselves. The Monegasque authorities clarified that a copy of the constituent act would also be provided.

129. Over the lifetime of a partnership, any change in the information that must be recorded in the Special Directory of non-trading partnerships must be reported. If the identity of shareholders is not part of the information listed in the Directory, then no updating of that same information is required under Monegasque legislation.

130. Non-trading partnerships are not allowed to carry on any commercial activities, so they are not required to have an authorisation from the Department of Economic Development. However, they need to register with both the Special Directory kept by the Directory of Commerce and Industry and with the Monegasque tax authorities. Non trading partnerships will not have any legal existence if they are not registered.

131. Monaco's authorities have reported that a professional subject to anti-money requirement is generally involved in the creation of a non-trading partnership, considering the spectrum of activities these entities can have. Most non-trading partnerships are set up to hold real estate, in which case the creation has to be done by a notary. The involvement of a professional gives broad assurance that the registration within two months of the creation will be respected, which is the case in practice as reported by Monaco's authorities.

132. Upon registration with the Special Directory kept by the Directory of commerce and industry, and again upon registration with the Monegasque tax authorities, the identity of the manager is subject to verifications.

^{9.} The "registre de recettes" is a public record maintained at the local tax office. All deeds and some private contracts are subject to a stamp tax and are registered in this book.

133. In contrast with other trading legal entities, non-trading partnerships are not required to renew their registration every five years, but all modifications need to be registered with the Special Directory, including the transfer of shares. In addition, non-trading partnerships are not subject to tax in Monaco as they do not carry on commercial activity, but they are subject to transfer tax when immovable property is transferred.

134. In Monaco, all non-trading partnerships are registered both with the Monegasque tax authorities and the Special Directory for non-trading partnerships kept by the Directory of commerce and industry which means that the information (including ownership information) is verified twice and easily accessible by the Monegasque authorities. Given that the information on the creation and subsequent changes of non-trading partnerships is available to the Monegasque authorities because of registration requirements and given that these registrations requirements are well respected in Monaco, identity and ownership information on non-trading partnerships is verified and easily available through different means. Its availability is therefore in line with the international standard.

Information held by other persons

135. The prudential rules instituted by Law No. 1.362 of 3 August 2009 on the fight against money laundering, terrorist financing and corruption also apply in respect of services provided to partnerships. The requirements described above are applicable *ipso facto*.

Conclusion

136. The system of multiple authorisation and registration for both trading and non-trading partnerships make that all information pertaining to partnerships is verified several times by different administrative authorities. This gives the assurance that ownership information will be available to an administrative authority in Monaco and that the accuracy of this information will be very high. Monaco's has reported that it has always been in a position to provide ownership information on partnership when requested by a partner (one EOI request on partnership was received in 2009, three in 2010 and one in 2011 and they were all answered by Monaco).

Trusts (ToR A.1.4)

137. Under Monegasque law, provisions relating to trusts are contained in Law No. 207 of 12 July 1935 as amended by Law No. 1.216 of 7 July 1999.

138. While no trust *per se* can be constituted under Monegasque law, it is possible to create a trust in Monaco under foreign law. Such a creation is

subject to the formal requirements imposed by Monegasque law on wills and gifts and is required to be done before a notary established in Monaco. A certificate that the act complies with the substantive requirements of the foreign law under which the trust is being established must also be furnished at that time.

139. Trusts that are duly constituted under foreign law may be transferred in the same way as they are created. The settlor and the trustee have an original of the foreign law trust's act of creation recorded by a Monegasque notary.

140. "Only legal persons shall be authorised to act as trustees, and if applicable any natural person taken from a special list compiled and updated by the Chief Justice of the Court of Appeal on the proposal of the Public Prosecutor may be authorised to act as co-trustee or local representative (article 3 of the Law n° 207 of 1935). [...] If the trustee is not established in the Principality, he must designate a local representative." Only with such prior registration may trustees act to manage assets entrusted to them by virtue of a foreign-law trust constituted in or transferred to Monaco.

Information held by the administrative authorities

141. The legal acts constituting or transferring trusts in or to Monaco must be registered with the tax authorities. Registration entails payment of a registration fee proportional to the trust's assets. Information contained in the founding act is therefore available from the tax authorities on the basis of the applicable foreign law. The legal acts constituting or transferring trusts in or to Monaco are registered in the Register for public civil acts and a paper copy is kept with the Register. The information is therefore easily accessible by the DSF through the database. In 2009, one trust was registered, five in 2010 and three in 2011.

Information held by trustees and service providers

142. Under Monegasque legislation, the prudential rules instituted by Law No. 1.362 of 3 August 2009 on the fight against money laundering, terrorist financing and corruption described above apply to trustees acting in a business capacity.

143. Pursuant to article 3 of the Law as supplemented by the Sovereign Order No. 2.318 of 3 August 2009, when establishing a business relationship a professional acting as trustee must identify his(her) customers (art. 3 of the Law) and verify his(her) identities. The definition of professional, as provided by article 1 and 2 of the Law, is very broad and includes a large number of professions and in particular notaries, bailiff, accountants, lawyers and trust service providers. The elements needed to provide for identification are:

- in respect of natural persons: first name, last name, date of birth and address. An official document showing a photograph must be provided (art 6 of the Sovereign Order);
- in respect of legal entities: the official name, head office, list of officers, knowledge of provisions governing the power to make commitments on behalf of the legal person. A copy of an official registration document as well as the status of the legal entity must be provided (art. 7 of the Sovereign Order);
- the professional must ascertain the existence, the nature, the intended purpose and the management and representation arrangements of the trust concerned.

144. In relation to trusts, the economic beneficial owners of the trust must also be identified and this identity further verified (articles 3 and 5 of the Law). Whenever a transaction or an operation is carried out, article 5 of Law 1.362 in conjunction with article 15 of Sovereign Order No. 2.318 as amended by the Sovereign Orders No 3.450 of 15 September 2011 and n° 4.104 of the 26 December 2012 provides that when the client is a trust, economic beneficial owners must be understood as:

- when actual or future beneficiaries have already been designated, the natural persons who are the beneficiaries of the assets of the legal entity or of the trust;
- when beneficiaries have not yet been designated, the group of persons for the principal interest of which a legal entity or a trust has been created or has an effect;
- the natural persons who exercise a control over the assets of a legal entity or of a trust;
- the settlor(s) of a legal entity or of a trust;
- if any, natural persons in the capacity of protector.

145. By virtue of the amendments made to its AML framework, Monaco ensures information that identifies the settlors, trustees and beneficiaries of express trusts administered in Monaco or in respect of which a trustee is resident in Monaco is kept in all circumstances by trustees acting in a business capacity.

146. In application of the Law No. 214 dated 27 of February 1936 amending the Law No.207 of 12 July 1935 on trusts, only legal entities and individuals (individuals can act as co-trustee or legal representative) taken from a special list compiled and updated by the Chief Justice of the Court of Appeal on the proposal of the Public Prosecutor can act as a trustee in Monaco (15 persons are on the list). This list is updated on an on-going basis. All these persons, as professional trustees are subject to AML obligations. Moreover, since the deed establishing or transferring trusts in or to Monaco must be registered with the tax authorities, information on foreign created trusts transferred to Monaco is directly available to public authorities.

147. Compliance of trustees with their AML obligations is, under the supervision of the anti-money laundering authorities, the SICCFIN, that performs regular controls to verify the respect of such AML obligations. If the legal entity or the professional acting as a trustee is subject to AML verification for its other professional activities, the verification of the AML rules in relation to its trustee activities will be done at the same time as the verification of its other professional activities. However, control of AML obligations by the SICCFIN can also be performed only for the trustee activities: one on-site visit was performed in 2009, none in 2010 and two in 2011 (these figures reflect controls made specifically for trustee activities of the professional). So far, the SICCFIN has reported that no sanctions have ever been applied for breach of AML obligations by a trustee in Monaco.

148. Anti-money laundering authorities, as well as notaries and chartered accountants have confirmed that although the business of trustee exists in Monaco, it is neither frequent nor developed. Monaco's authorities have indicated that no EOI request pertaining to a foreign trust managed from Monaco was ever received but should a request arises, its authorities are ready to use their collection of information powers to provide an answer to the partner.

149. Nothing prevents individual trustees from acting in a non-business capacity in Monaco. In these instances, they do not have to be recorded on the special list compiled and updated by the Chief Justice of the Court of Appeal. However, Monaco's authorities have reported that they are not aware of such situations which are likely to be very limited. Monaco has never received any request pertaining to a trust but stands ready to act with diligence in the event this would arise. The existence of trustees not acting by way of business has not affected EOI to date but the effect of this on EOI in practice should be monitored by Monaco on an ongoing basis.

Foundations (ToR A.1.5)

150. In the Principality of Monaco, foundations are governed by the amended Law No. 56 of 29 January 1922. The law provides for only one type of foundation. Foundations, which may not pose a threat to the peace and must be in the public interest, must receive prior authorisation from the government, after it receives the opinion of the Foundations Supervisory Commission, the Municipal Council and the Council of State. They must be constituted via a notarial act and are subject to a registration requirement.

151. The constituent act and the articles of association are published in the *Journal de Monaco* at the same time as the authorising Sovereign Order. Any change to the articles of association or to the way in which a foundation operates must also be authorised by a Sovereign Order. Directors must have been habitually resident in the Principality for at least one year. If the directors are appointed by the founder him or herself, then only two-thirds of them need to satisfy that condition.

152. Foundations are administered under the supervision of the Supervisory Commission, which operates under the aegis of the Minister of State and was instituted by article 13 of the amended Law No. 56 of 29 January 1922, and which meets at least once a year.

Information held by the administrative authorities

153. Throughout the entire lifetime of a foundation, the Supervisory Commission is in possession of information about the identity of founders and beneficiaries, since foundations are subject each year to the Commission's supervisory procedure. Moreover, by law, any changes in this area must receive administrative authorisation and be published in the *Journal de Monaco* (article 22 of the Law).

154. Each year the Commission reports to the Minister of State on the activity and financial position of each foundation. To this end, it is entitled to be informed of and receive a copy of any evidence, decisions or documents involving the foundation's administration and bookkeeping (article 17 of the Law).

Information held by other persons

155. The prudential rules instituted by Law No. 1.362 of 3 August 2009 on the fight against money laundering, terrorist financing and corruption also apply to services provided by foundations. The requirements described above apply here *ipso facto*.

In practice

156. In Monaco, foundations must be created by notaries, which are subject to AML obligations. Upon creation, the notary verifies the identity of the founders and the directors as well as the origin of the funds. In addition, foundations must obtain an authorisation from the government and are registered with the Department of the Interior. During both the authorisation and the registration processes, all information about the foundation is again verified. The Sovereign Order authorising the creation of the foundation, the articles of association and their subsequent modification, the foundation's revocation or declaration of dissolution are information publically available. Monaco's authorities have reported that during the creation process, they have many contacts and discussions with the founder(s) and any queries about the foundation, receive an answer at that time. Only foundations for which all information required by law has been received will be authorised by the government.

157. Every year, foundations must provide an annual report, financial statements, bank statements and when applicable, an assessment of the fair market value of the assets held. All information is verified annually by the Supervisory Commission including modifications of statutes, increase of funds, real estate transactions and whether the object of the foundation is respected. In addition, financial information is verified by the government auditor. The level of compliance is good, for the period under review only two foundations were late in providing information for the annual verification. These two foundations no longer have any activities.

158. The Supervisory Commission makes sure that the required information is filed during the annual supervision. Reminders will be sent out if a foundation does not comply with its legal obligations. Sanctions for late filing can also be applied by the Minister of State based on a proposal made by the Commission. If any issues are found by the Supervisory Commission or by the government auditor during the verification process, the foundation will be contacted for clarification or correction. If no correction measures are implemented, the authorisation of the foundation will be revoked. Until now, all foundations have made the necessary corrections when asked by the Monegasque authorities and no authorisation has ever been revoked on this basis.

159. There are currently 20 foundations in Monaco, and only one was created recently. The legal obligations applicable upon the creation of foundations and the very complete authorisation and verification process in Monaco mean that information on foundations is available if requested. No EOI request in relation to a foundation has been received in Monaco so far.

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

160. Any person who engages in an activity in Monaco without first having reported that activity or obtained administrative authorisation is subject, under article 26-4 of the Criminal Code, to a fine of between EUR 18 000 and EUR 90 000, up to the amount of profit made, and/or imprisonment for six months. No cases of failure to obtain an authorisation were reported for the period under review. Three cases were reported for 2012, one leading to a fine.

161. For their part, articles 22 to 25 of the law instituting a Directory of commerce and industry provide for fines for non-registration of FRF 16 to 22 (EUR 2.44 to EUR 3.35) and from FRF 24 to 100 (EUR 3.66 to EUR 15.24) for failure to update information that must be recorded in the Directory. There were no cases of failure to register during the period under review.

162. If a company does not comply with its obligation to keep a share register updated or is not in a position to provide on request to the Department for Economic Development the identity of all holders of shares listed on a foreign regulated stock exchange, its administrative authorisation can be withdrawn or revoked. In the most serious situations, Monaco's authorities can ask the General Prosecutor to strike-off this company from the Directorate of Commerce and Industry.

163. While Monegasque legislation imposes no penalties if foundations fail to supply all the information required by law, it must be noted that any such failure would lead to an absence of administrative authorisation and, as a direct result, the foundation would be unable to pursue its objective. No authorisation to constitute a foundation has ever been revoked in Monaco.

164. Non-compliance with these identification and verification of identity requirements is also addressed in article 39 of Law No. 1.362 on the fight against money laundering, terrorist financing and corruption, which provides that any infringements of these obligations shall be punishable by one of the following:

- a warning;
- a reprimand;
- a fine proportional to the seriousness of the infringement, the maximum amount of which cannot exceed EUR 1.5 million;
- prohibition from carrying out certain operations;
- temporary suspension of the authorisation to exercise;
- withdrawal of that authorisation.

165. Any sanction imposed by virtue of article 39, with the exception of a warning, shall be published in the *Journal de Monaco*. For 2009, one warning and two reprimands were applied. No sanction was applied in 2010 and there were one warning, two reprimands and two fines applied in 2011.

166. When relevant entities are required to make ownership information available under Monaco's laws, these requirements are supplemented by sanctions in cases where the obligations are not complied with. On-site visits are carried out to ensure respect of these requirements, including interviews with staff and review of documents. For the period under review, sanctions were applied in eight cases for failure to maintain appropriate ownership information (three cases in 2009, two in 2010 and three in 2011); in two of these cases sanctions were pecuniary (both in 2011).

Other entities and relevant arrangements

167. By virtue of the legislation governing associations (Law No. 1.355 of 23 December 2008), any association wishing to acquire legal personality and legal capacity must be reported and made public. In this case, it must file a report with the Minister of State along with a copy of its articles of association and a list of its directors or officers.

168. These documents and the receipt for the report issued by the Administration are kept at the Department of the Interior.

169. To ensure that the public has information on groups like these, a computer file accessible to third parties via the government's internet site compiles all associations constituted under Monegasque law. Information on the purpose, date of authorisation or issue of a receipt, the head office and telephone/electronic contact information are included in the database. Furthermore, any person may obtain a copy, upon payment of a fee, of the statutes and a record of all changes that have occurred in the articles of association of a company.

170. An association is required to report any change regarding the address of its head office, the composition of their administrative bodies or its articles of association.

171. Since associations wishing to acquire legal personality and capacity must be reported and made public, and since its report (including its articles of incorporation and a list of its directors or officers) as well as information on changes made to its articles of association are filed with the Minister of State and are kept at the Department of the Interior, it is concluded that information in relation to associations is available if requested. Moreover, no issue was raised by Monaco's treaty partners with regard to information on associations in Monaco.

Determination and factors underlying the recommendations

Phase 1 Determination		
The element is in place		
Phase 2 Rating		
Compliant.		

A.2. Accounting records

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

Analysis and assessment

172. The Terms of Reference set out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should: *(i)* correctly explain all transactions; *(ii)* enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and *(iii)* allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, etc. Accounting records need to be kept for a minimum of five years.

173. With regard to the keeping of accounting records, Monegasque legislation subjects legal persons and other entities to transparency obligations that comply with international standards, with respect to the level of requirements imposed on accounting systems and the records to be kept as well as the length of time during which they must be kept.

General requirements (ToR A.2.1)

Trading companies and partnerships

174. Under articles 10 of the Commercial Code, any trader, which includes joint stock trading companies and trading partnerships, is required to keep a ledger book and an inventory book which are referenced, initialled and approved either by a judge of the Court of First Instance or by the Mayor or Deputy Mayor.

175. Joint stock companies (SAMs and SCAs) are also required to establish a balance sheet and a profit and loss account for each financial year. It is imperative that these documents be filed with the Department of Economic Development within three months after the general meeting at which the accounts for the year are approved, along with the external auditors' report and a copy of their certification that the company's activity is compliant and its accounts in order (Law No. 408 of 20 January 1945 as amended). The penalty for a company's non-compliance with these obligations may rise to withdrawal of its administrative authorisation to do business.

176. For their part, managers of SARLs, SNCs and SCSs must convene a general shareholders' meeting within six months of the close of the financial year in order to submit for approval the company's inventory, balance sheet,

profit and loss account, annual report, procurement report and a listing of contracts and undertakings, either directly or through an intermediary, between the company and any of its officers or associates (article 22 of Law No. 1.331 of 8 January 2007; article 51-6 of the Commercial Code). Within three months after that general meeting is held, the manager must file the balance sheet and the profit and loss account with the Directory of Commerce and Industry (article 51-7 of the Commercial Code).

177. In the event a manager refuses or neglects to prepare accounting statements, or if the statements are not filed with the Directory of commerce and industry, the manager is liable for a fine of between EUR 18 000 and EUR 90 000 and/or imprisonment for six months (article 26-4 of the Criminal Code). No sanctions for failure to file accounting statements were applied for the period under review. Four fines were applied in 2012 (of EUR 500 each).

178. With regard to taxation, firms subject to corporate profit tax must file an annual tax return with the DSF within three months of the close of each financial year, or, if no financial period ends within a given calendar year, by 1 April of the following year (article 23 of Sovereign Order No. 3.152 of 19 March 1964). Among other requirements, the accounting systems of Monegasque companies must be able to determine net earnings for the year and the base for the tax liability. It must be noted here, however, that this requirement applies only to legal entities and individuals exercising a business that derive over 25% of their turnover from outside Monaco.

179. In respect of turnover tax, businesses are required to maintain an accounting system or, as the case may be, to keep a ledger with numbered pages containing daily entries, with no blanks or erasures, of the amounts of each operation, distinguishing between those that are taxable and those that are not.

180. Associations that are not non-profit are subject to the same accounting requirements as trading companies.

Non-trading partnerships and associations

181. Article 6 of Law No 1.385 of 15 December 2011 provides that "partnerships under civil law (non trading partnerships) are required to keep accounting records as provided by Ministerial Order. All accounting records as well as the underlying documentation must be kept at the headquarters for at least five years".

Trusts

182. A provision requiring the keeping of accounting records (including underlying documentation) is provided for trusts by article 7 of the Law No 1.385 of 15 December 2011. Accounting records are required to be kept by the trustee.

Foundations

183. Each year, foundations must submit their accounts to the Foundations Supervisory Commission. Article 1 of Sovereign Order No 3.449 of 15 September 2011 provides that foundations must keep a balance sheet where all endowment funds are recorded, a profit and loss account and, when applicable, an assessment of the fair market value of the assets held.

184. Strict legal rules in Monaco require legal entities (including companies, trading and non-trading partnerships, trustees, and foundations) to keep accounting records at their headquarters. In addition, SAMs and SCAs must file the balance sheet and the profit and loss account with the Department of Economic Development, SARLs, SNCs and SCs must file their accounts with the Directory of Commerce and Industry and finally foundations must file their accounts with the Foundation Supervisory Commission. Moreover, legal entities and individuals having a business activity and subject to corporate taxation in Monaco must file their accounts along with their tax return.

In practice, Monegasque authorities have put in place a follow up 185. process to determine which accounts need to be filed and systematic reminders are sent out to entities that are late in filing the required accounts. The Monegasque authorities have confirmed that the compliance rate is high and accordingly few administrative penalties are applied. In 2012, 800 legal entities were late in filing their annual accounts with the Directory of Commerce and Industry and received a first reminder (from a total of approximately 2 700 legal entities that have to file their annual accounts). A second reminder was sent to 300 legal entities. After the second reminder, administrative penalties are applied, if decided by the Court. For 2009, 95 cases were transferred to the Court for penalties, 36 in 2010 and 56 in 2011. In all cases, legal entities have finally complied and filed their accounts but fines for late filing were applied. A revocation of the authorisation can also be requested for non filing of the accounting information. However, as of now, no authorisation has ever been revoked for non filing of accounting information which is an indication of the high level of compliance with obligations to provide accounting records

186. The Monegasque tax authorities also monitor the compliance of legal entities subject to corporate tax (a legal entity must file a tax return along with its accounts to the DSF if it is carrying on a commercial activity and

derives more than 25% of its turnover outside Monaco). The DSF has its own system of control to monitor the returns that are late or not complete and to send reminders to the taxpayers. In 2009, on a total of 1 415 legal entities subject to taxation in Monaco, 65 received a fine of EUR 700 for late filing. 93 legal entities received this fine for late filing in 2010 on a total of 1 436 entities subject to taxation and 97 fines for late filing were applied in 2011 on a total of 1 512 legal entities subject to taxation.

187. As for non-trading partnerships and trustees, legal requirements to keep accounting records are more recent and Monaco's experience in this respect is rather limited. No requests pertaining to such entities and persons have been received so far. Monaco should monitor, on an on-going basis the availability of these records. Fines are applicable for default to keep accounting records for non-trading partnerships and trusts pursuant to article 26 of the Penal Code.

For records that must be kept by other entities, the Monegasque author-188 ities have confirmed that they are available and provided when requested. Five EOI requests dealing with accounting information were received in 2009 and in all cases the information was available internally to the tax authorities (i.e. it was directly available to the competent authority without the need to collect it). Eight requests were received in 2010 and in two cases the information was collected from the person concerned during an on-site visit. Five requests were received in 2011 and in two cases, the information was collected from the person concerned during an on-site visit. All the on-site visits were performed in relation to requests received from France. The possibility to conduct on-site visits to collect information is also available in relation to requests received from other jurisdictions than France, but there have been no instances of this vet. No issues were raised by Monaco's treaty partners with regard to obtaining accounting information. Hence, considering the record keeping requirements for trading legal entities and foundations to file their accounting information the Foundation Supervisory Commission as well as annual tax returns for firms subject to corporate profit tax, accounting records are properly maintained in Monaco and this ensures the availability in practice of such information in accordance with the standard

Underlying documentation (ToR A.2.2)

Trading companies and partnerships

189. With regard to accounting, and as stipulated in articles 10ff of the Commercial Code, all traders, which includes joint stock companies and partnerships engaging in trade, are required to keep a ledger containing day-to-day records of trading operations, negotiations, occupations or endorsements of instruments and, generally, everything that the trader receives and disburses for any purpose, as well as an inventory book establishing an annual list of moveable and immoveable assets and active and passive debts. Sovereign Order No. 3.167 of 29 January 1946 defines and lays down rules for the preparation of balance sheets and profit and loss accounts and provides a model format for these documents.

190. With regard to taxation, and more specifically turnover tax, businesses are required under articles 66ff of the Tax Code to:

- maintain an accounting system or, as the case may be, keep a ledger with numbered pages containing daily entries, with no blanks or erasures, of the amounts of each operation, distinguishing between those that are taxable and those that are not;
- file monthly or quarterly reports including a breakdown of tax bases by rate;
- file reports of their trade in goods with Member States of the European Union other than France;
- submit invoices or a substitute document listing information on goods delivered and services rendered, and on the calculation of VAT (pre-tax base, rate, amount of tax).

191. Profit-making associations are subject to the same record-keeping requirements as any other Monegasque undertaking.

Non-trading partnerships and associations

192. Ministerial Order No 2012-182 provides in its article 10 that partnerships under civil law and companies not considered traders under the Commercial Code must record all their transactions in a profit and loss account and keep the underlying documentation, including banking information.

Trusts

193. Article 11 of the Ministerial Order No 2012-182 provides that trustees of trusts are required to establish an annual balance sheet where all endowment funds must be recorded, as well as a profit and loss account and, when applicable, an assessment of the fair market value of the assets held. The profit and loss account must be filed annually with the Directorate of Industry and Commerce within three months of the end of the business year. All accounting records and underlying documents must be kept including a record of the book value of all assets.

Foundations

194. Pursuant to article 2 of Sovereign Order No 3.449 of 15 September 2011, the accounting documents, as well as the underlying documentation, must be kept for at least five years at the foundation's headquarters.

195. Given Monaco's legal requirements and practices, including its practice in exchange of VAT information (Monaco answers approximately 15 incoming VAT requests each year) and considering that VAT requests rely on accounting information and underlying documents such as invoices, contracts and other documents, it can be concluded that the underlying documentation kept by all entities in Monaco reflects the details of all sums and money received, all sales and purchases and other transactions, as well as their assets and liabilities. For the period 2009-11, 15 EOI requests asking for underlying information were received by Monaco and they were all answered within 90 days.

Five-year retention standard (ToR A.2.3)

196. For trading companies, the Monegasque Commercial Code imposes a 10-year record-keeping requirement. As for trusts, non-trading companies and partnerships as well as for foundations, they have a five-year record keeping requirement, pursuant to Article 6 and 7 of Law No 1.385 of 15 December 2011. In case of default, a fine is applicable (article 26 of the Penal Code).

197. Administrators of partnerships under civil law, of companies not considered traders under the Commercial Code, trustees of foreign trusts and administrators of foundations failing to comply with these record keeping requirements are subject to the sanction provided by article 26-4 of the Criminal Code, that is, a fine of between EUR 18 000 to 90 000. No authorisation to constitute a foundation has ever been revoked in Monaco. There has never been a case of failure to comply with these requirements.

198. Considering the retention period provided for by legal requirements and considering that none of Monaco's treaty partners has indicated that they have not received accounting information they had requested because it was not available, the time period during which accounting records must be kept by Monegasque entities is fully consistent with the Terms of Reference.

Determination and factors underlying the recommendations

Phase 1 Determination

The element is in place.

Phase 2 Rating		
Largely Compliant.		
Factors underlying the recommendations	Recommendations	
Record keeping requirements for non- trading partnerships and trusts are recent and Monaco's experience in this regard is limited.	Monaco should monitor, on an on-going basis, the availability of accounting records for civil partnerships and trustees covered by the law No 1.385 of 15 December 2011.	

A.3. Banking information

Banking information should be available for all account-holders.

Analysis and assessment

199. With regard to banking, Monegasque legislation, under the aimed at combating money laundering, ensures the availability during 5 years of financial or transactional information, including copy of records, account books and business correspondence.

Record keeping requirements (ToR A.3.1)

200. Like any commercial company, banks are obliged to keep accounts and to conserve all their accounting documents for 10 years. Furthermore, in application of the Franco-Monegasque Convention of 14 April 1945 and the exchanges of letters in 1963 and 1987 (and updated in 2010) between Monaco and France, Monegasque banks are subject to French regulations regarding financial statements and statistics and are required, in accordance with those regulations, to provide the French Prudential Control Authority with the relevant statements.

201. In addition, under article 10 of Law No. 1.362 of 3 August 2009 on Money Laundering, Financing of Terrorism and Corruption, financial institutions must in particular:

- keep a copy for at least five years after ending relations with habitual or occasional customers of all probative documents successively used to establish and verify customer identity, as well as all documents collected for identification purposes;
- keep, for a period of at least five years from the time of performing the operations, a copy of records, account books, business

correspondence and documents relating to the operations carried out to ensure that they can be accurately reconstituted.

202. In Monaco, banks and financial institutions are licensed and supervised (for prudential control) by the French authority, the ACP (*l'Autorité de Contrôle Prudentiel*) whilst AML/CFT supervision is performed by the SICCFIN (*Service d'Information et de Contrôle sur les Circuits Financiers* – the Monegasque FIU). Hence, banks and other financial institutions (credit institutions), need a license from the ACP to start their banking activities (except branches of French banks that are operating under a French license). In order to obtain this license, a meeting with the Department of Finance and Economy and the Director of the budget and treasury (DBT) is required to obtain their opinion. Then, the bank must meet with the anti-money laundering authorities (SICCFIN) and the French prudential authorities (ACP). The final decision is taken by the board of the ACP (after consultation with the home supervisor of the banking group), in presence of one Monegasque member.

203. As for other commercial entities, all banks (including branches of foreign banks) require an authorisation from the Department of Economic Development before starting the business activity. The process for authorising is the same for all type of activity, as described under section A.1.1 above.

204 202.36 banks (24 Monegasque subsidiaries or branches of foreign banks and 12 branches of French banks). 3 financial companies (credit institutions) and 49 asset management companies are operating in Monaco. All the banks and financial companies are licensed in Monaco and are under the double supervision of France for prudential control (ACP) and Monaco (SICCFIN) for anti-money laundering purposes. The asset management companies are under the supervision of the CCAF (Commission de Contrôle des Activités Financières - Financial Activities Supervisory Commission) for their activities and of the SICCFIN for anti-money laundering purposes. Since the Franco-Monegasque convention on exchange control of the 14th of April 1945, updated in 1963, 1987, 2001, 2005 and 2010, that settles the means of enforcing banking laws in Monaco, credit institutions are subject to current French banking regulation. These agreements, renewed in 2010, state that French laws come into force in Monaco when they deal with the regulation and the organisation of credit institutions.

205. Each year, a plan of audits of all the banks (except branches of French establishments) is decided by ACP in collaboration with the Budget and Treasury Direction and SICCFIN. The CCAF determines the plan of audits of asset management companies. Six agents of the SICCFIN are in charge of the specific supervision of banks and other financial institutions, with the assistance of three experts. Generally, each bank is controlled every three years, unless issues have been raised.

206. Two types of AML controls are performed by the SICCFIN: desk based audits and on-site visits. Desk based audits are performed every year based on a questionnaire, an annual report and an AML compliance report filed by the financial institution with the SICCFIN. On-site visits are carried out for various reasons, such as denouncements received by the SICCFIN concerning the institution or any issues since the last visit. On-site visits can also be randomly decided.

207. During the on-site visit, agents have access to all documents and files. They proceed by samples and interviews, but they also consider the types and amounts of transactions that were made on accounts. They systematically verify customer due diligence requirements, whether the identity information is available in the files, including beneficial ownership, and whether it is updated. They also systematically verify trust activities performed by the institutions and the accounts of politically exposed clients. Both electronic and paper files are reviewed.

208. Numbered accounts, whose holding is allowed under Monaco's law, are also systematically and specifically verified during controls given that they are considered as a more risky activity. Identity and ownership information in relation to numbered accounts must always be available in the files and made available to the managers of these accounts, the internal AML officer and for the SICCFIN. In practice, the Monegasque authorities have confirmed that information on numbered accounts is maintained and made available when requested.

209. Following the on-site visit a pre-report is drafted and sent to the financial institution for discussion. Generally, institutions reply to this report within three weeks mentioning the corrective measures already put in place or to be implemented. Nevertheless, recommendations and sanctions are not influenced by these measures and are based solely on the outcomes of the visit. Recommendations [and correctives measures] are attached to the report in a spreadsheet which includes deadlines to implement the measures.

210. Sanctions in case of non-compliance of AML obligations include warning, reprimand, pecuniary fines (maximum EUR 1.5 million), ban on carrying out certain activities and transactions, temporary suspension of the authorisation from the Minister of State and complete withdrawal of authorisation. A simple warning can be made directly by the SICCFIN without going through the Minister of State. Any other sanctions are decided by the Minister of State. Following the issuance of the report, the institution will be entitled to give its comments, and then if a disciplinary sanction is initiated the report is sent to the Minister of State. There is also a possibility of criminal sanctions by the Court, but it has never been used so far.

211. A report is sent to the institution after each visit even if no recommendation or sanction is applicable. An on-site visit will be scheduled to verify whether corrective measures have been implemented, as recommended. In 2009, two institutions received a reprimand, in 2010 one warning was issued and two pecuniary fines were imposed in 2011 (of respectively EUR 35 000 and EUR 8 000). The main issues found during AML controls were insufficient denouncements and breach within the internal AML system of the institution. AML authorities have mentioned that penalties are efficient and generally, corrective measures are implemented within the allocated timeframe. Sanctions can also be made public, but this has never been the case in practice. It is considered by financial institutions as the most severe sanction given the impact on the reputation of the institution.

212. In 2009, 24 on-site visits of banks and other financial institutions were carried out, 18 in 2010 and 11 in 2011. As a result, each bank receives an on-site visit every three or four years, which is a very thorough process of verification. Monegasque authorities have reported a very high level of compliance with AML obligations by financial institutions. In 2009, 21 requests for banking information were received by Monaco, 19 in 2010 and 33 in 2011 and in all instances the information was available and provided on time. To collect banking information in these instances, Monaco's authorities exercised a communication right and requested both the financial institution and the person concerned to provide the information needed (as described in Section B.1 below). In all cases, the information was provided by the financial institution in due time.

213. As a result of Monaco's AML obligations, their implementation by the financial institutions and the supervision performed by the SICCFIN, Monaco ensures that banking information in relation to any account holder is maintained by financial institutions. Moreover, comments received from Monaco's treaty partners indicate that banking information is provided by Monaco when requested.

Phase 1 Determination		
The element is in place		
Phase 2 Rating		
Compliant.		

Determination and factors underlying the recommendations

B. Access to Information

Overview

214. A variety of information may be needed in respect of the administration and enforcement of the relevant tax laws and jurisdictions should have the authority to access 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 assesses the effectiveness of Monaco's legal and regulatory framework in practice and whether it gives the authorities access powers that cover the right types of persons and information and whether taxpayers' rights and safeguards that are in place would be compatible with effective exchange of information.

215. There is no legislation in Monaco which grants specific powers to the competent authorities to collect information that should be exchanged as part of the international exchange of information. The reason for this is that the lack of reference to domestic interest allows the competent authorities in Monaco to use domestic information-gathering powers granted to tax administration officials under Sovereign Order No. 3.085 of 25 September 1945 for the purposes of administrative co-operation.

- 216. The text of the Sovereign Order thus allows the tax authorities to obtain:
 - under article 2 bis, any information held by government administrations and establishments and enterprises under the control of the administrative authority;
 - under article 3, any information held in particular by firms, companies, insurers, bankers, business agents, and estate agents so that officials from the tax administration can check that the legislation for which they are responsible is properly enforced. This provision also enables them to receive information held by the same persons under legislation relating to money laundering.

217. Even though this Sovereign Order does not explicitly mention that information maintained by other persons such as foundations and individuals acting as trustees can be accessed by the Monegasque authorities, there is, in article 7 of Sovereign Order of 23 March 2010 a clear reference to the possibility, for the Monegasque authorities, to use the information gathering powers granted by Order 3085 to access all types of information requested by a treaty partner. Therefore, the Monegasque authorities can access all type of information to be kept by persons situated within the Monegasque territory.

218. Furthermore, under Sovereign Order No. 2.693 of 23 March 2010, persons providing information for the purposes of an international exchange of information cannot be subject to the sanctions regarding professional confidentiality provided for in article 308 of the Monegasque criminal code which guarantees free access to information.

219. For the application of this Order, the sanctions for failure to disclose information to the tax authorities would seem to be a sufficiently severe deterrent to ensure that information is supplied to the Monegasque authorities. Even though no provision exists to sanction an administration which refuses to provide information, it would seem reasonable to think that such situations do not arise since all the administrations are dependent on and are part of the hierarchy of the Minister of State.

220. Over the last three years, Monaco has received 202 EOI requests. The vast majority of incoming requests come from France with whom a longstanding EOI relationship exists. Monaco uses its efficient access powers to collect the requested information. Based on comments received from France, Monaco has been able to collect the requested information in all instances and irrespective of the type of information requested. Monaco is ready to use its information gathering powers to collect information on request for its more recent treaty partners.

221 However, a prior notification process exists under the procedure to exchange information with all jurisdictions other than France. This procedure does not provide for any exceptions 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. Under this notification process, the person concerned by an EOI request has the right to be informed of the request and a right to appeal the decision of the Monegasque authority to collect and exchange the requested information. The prior notification procedure has been applied for each request and the 90 day timeframe has always been met. Effective surveillance is carried out electronically using an interactive data file to ensure that deadlines are met and that the notification procedure does not unduly delay the exchange of information. Considering that this prior notification is recent and that Monaco's experience in this regard is limited, Monaco should monitor this procedure to make sure that it does not unduly prevent or delay exchange of information.

B.1. Competent authority's ability to obtain and provide information

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

The Monegasque competent authority

222. In Monaco, there are two procedures to process incoming EOI (exchange of information) requests: one for requests received from France and another one for requests received from all other treaty partners.

223. The *Conseiller de Gouvernement pour les Finances et l'Economie* (the Minister of Finances and Economy) is the competent authority for incoming EOI requests received from all jurisdictions but France. The International Division of the Department of Finance and Economy is in charge of processing incoming requests in collaboration with the tax authorities, the Department of Economic Development and the Department of Legal Affairs. It is also competent for all international matters such as the negotiation of tax treaties and OECD-related work.

224. The competent authority for all jurisdictions other than France is clearly identified in each agreement as well as on the Global Forum competent authority database. In addition, Monaco's competent authority participates in all competent authority meetings organised by the Global Forum.

225. The Director of the Department of Tax Services (*Direction des services fiscaux*, Monaco's tax authorities, the "DSF"), which is under the direct authority of the Minister of Finances and Economy, acts as the competent authority for incoming requests received from France whether these requests relate to direct taxes or VAT. Within the DSF, requests are processed by the administrative assistance unit, in collaboration with other tax units (corporate tax unit, real estate tax unit, savings unit and VAT unit), the Department of Economic Development and the Department of Legal Affairs. The administrative assistance unit is staffed with three persons. The processing of incoming request will be further described under section C.5 of this report.

Ownership, identity and bank information (ToR B.1.1)

226. In the Principality of Monaco, information regarding the ownership of companies, limited partnerships and foundations can be obtained from the Monegasque authorities in charge of issuing operating licences, from the Department of Economic Development, which is responsible for managing the Directory of commerce and industry or directly from the company. Banking information is available from banks and financial intermediaries. Lastly, a certain amount of information is available under Law No. 1.362 of 3 August 2009 on the fight against money laundering, terrorist financing and corruption.

227. There is no legislation in Monaco granting specific powers to the competent authorities to collect from third parties the information needed to respond to requests for administrative assistance. Accordingly, the provisions of Sovereign Order No. 3.085 of 25 September 1945, which sets out the general conditions for access by the tax authorities to information held by taxpayers or third parties, apply. These search powers, which are primarily used by the Monegasque tax authorities to meet their own domestic needs, are also used to deal with requests for exchanges of information received from Monaco's partners.

228. Article 2 bis of this Order permits access to all documents held by government administrations, the Commune, firms sold or controlled by the State or the Commune, as well as all establishments or bodies of any kind subject to oversight by the administrative authority. Article 3 provides for access by tax officials, to information held by firms, companies, insurers, exchange agents, money changers, bankers, discounters, public or ministerial officers, carriers, business agents, and estate agents, so that the tax officials can ensure that the legislation which the tax authority is responsible for applying is properly enforced.

229. This Order therefore provides for access to all information held by firms, of whatever nature, and information held by the administrative authority in charge of issuing administrative licences to exercise an activity, managing the Directory of commerce and industry, or overseeing the operation of foundations. Even if not explicitly mentioned in this Sovereign Order, information maintained by other persons and, in particular foundations and natural persons acting as trustees, can be accessed as well, as article 7 of Sovereign Order 2.693 of 23 March 2010 states that the Monegasque authorities, to answer an incoming request made pursuant to an EOI arrangement, have the same information gathering powers as those granted by Sovereign Order 3.085 of 25 September 1945.

230. Furthermore, this Order does not prohibit the collection of information held in application of the Law on the fight against money laundering, provided that the tax authorities are required to have access to such information in order to comply with commitments entered into under international treaties signed by the Principality of Monaco. In such situations, article 3 of the Order explicitly provides for the possibility of gaining access to all information held by the persons listed in this article.

Information gathering in practice

Information internally available to the Monegasque authorities

231. When an EOI request is received, the person in charge of the request (either the administrative assistance unit for requests received from France or the EOI division of the Department of Finance and Economy for requests received from other jurisdictions) first considers whether the information is available within the files or databases of one of the government authorities.

232. As described under section A.1.1 of the report, ownership information in relation to legal entities, including ownership of trading companies, trading partnerships as well as all requests for authorisation (including requests that were rejected) is available internally through the Department of Economic Development. Accounting information filed with this Department by trading companies and partnerships as well as accounting information filed by foundations with the Foundations Supervisory Commission is also available. In addition, information on real estate is available in the land registry maintained by the Department of Equipment, Environment and Urban Planning¹⁰ or in the files kept by the municipality.

233. The DSF also has direct access to a broad range of tax information. This includes information on professionals registered for tax purposes and on French individuals living in Monaco (e.g. salary, dividend, pension and other income) as well as information kept for VAT purposes. Information is also available on other databases such as information on lease agreements (including the tenant, the lessor and the rent) and real estate ownership and transactions for both individuals and legal entities, which is accessible by the DSF.

234. There is no formal procedure between these different departments to organise across them the provision of information to answer incoming requests, although the sharing of information between departments is made possible by virtue of Sovereign Order No. 3.085 of 25 September 1945. Moreover, since they are all under the authority of the Minister of State, the practices of Monaco's authorities show that all types of available information are shared and easily exchanged within a few days of the receipt of a request from the competent authority. Ministers and Director Generals of departments meet every week (there are 6 Ministers, 5 Director Generals and one General Secretary in Monaco), which is also a means to speed up the exchange of information to another. The Monegasque authorities have confirmed that in practice, the information is always provided rapidly between

^{10.} This department is responsible, amongst other things, for public equipment, construction, parks and other urban planning.

administrations and informal reminders, if any, are made by telephone calls and always lead to prompt answers.

235. In cases where information is not available within one of the government departments, the collection process will vary depending on whether the incoming EOI request is received from France or from another jurisdiction. For 2009, 73% of the requests needed information that was not available within one of the government department, 40% of the requests for 2010 and 18% of the requests in 2011.

Collection process for EOI requests received from France

236. When an incoming request is received from France by the Director of the DSF, the request is handled by the administrative assistance unit, which will check first whether the request is complete and valid and whether the requested information is available within the DSF or in another administrative department. When the request is available internally, the requested information is provided to the French authorities within two to three weeks. As there is no prior notification requirement for requests received from France, the information can be transmitted directly to France without advising the person concerned.

237. If the information is not available internally, the administrative assistance unit will always send a letter to the person concerned to request the information (communication right¹¹) and/or to a third party that is in possession of the information (for instance, a financial institution). This notice must detail: the information/documents requested, the other persons from whom the information has been requested (if the information is not solely requested from the person concerned), the taxation years, the legal basis, the fact that information must be provided to the DSF and that sanctions are applicable in case of failure to answer. A communication right can be exercised to collect any type of information including ownership, accounting or banking information (see below).

238. This notice provides for a 30-day deadline to answer. In general, the agent from the administrative assistance unit will follow up if no answer is received in the allocated 30-day period. The first reminder is generally done by phone, or a new letter is sent. On-site visits to legal entities (on-site visits are not allowed for individuals) can also be performed if no answer has been received after a communication. In practice, on-site visits are always notified a few days in advance but this prior notice is not mandatory by law.

^{11.} The "communication right" is the right for the tax administration to request any tax information and to force the person from whom the information is requested, to provide it, subject to penalties. Only tax inspectors can exercise this right.

Monegasque tax authorities generally undertake between four to eight onsite visits each year specifically to answer EOI requests (received either from France or from another jurisdiction). When a request concerns the address of a person, the tax authorities will ask the police to obtain that information.

239. The process for answering requests received from France has been in place for 50 years and is extremely efficient. Answers are in many instances received by the DSF within the 30-day timeframe which allows them to provide the requested information to France within 90 days in almost all cases. France confirmed that the information requested is provided by Monaco in all instance and on time (see section C.5 below on the timeframe). For the period under review, 199 of the 202 requests were received from France. On average, the Monegasque authorities fully answered incoming requests within 90 days in 98% of cases. Three requests were fully responded to in between 90 and 180 days and one between six months and one year. None of the requests received was answered in more than one year.

Collection process for EOI requests received from other jurisdictions

240. EOI requests from other jurisdictions are first received by the Minister of Finances and Economy who is the competent authority under the terms of the applicable treaties. They are then transferred to the DSF which verifies, within 48 hours, whether these requests are complete¹². This first verification is done by the DSF because they have the technical training and experience, since they are in charge of requests received from France. The request then goes through a process of prior notification (described under section B.2.1 of this report) and validation that is described under section C.5.2. The purpose of these two processes is to assess whether the request conforms to the terms of the agreement.

241. If the information is available internally (to the Department of Finances and Economy or to another administrative department), the EOI division will wait for a 30 day-period following the prior notification's letter before sending the information to the partner jurisdiction as the person concerned has this timeframe to challenge the provision of information (see section B.2.1 below on the prior notification process). Once the 30-day dead-line is over, if the person concerned has not appealed the decision to exchange information, the EOI division will send the information to the requesting jurisdiction. When the information is available internally, the requests can

^{12.} When creating the new procedure, it was decided that incoming requests will first be passed on to the DSF as this department has the technical knowledge to properly analyse incoming requests based on its longstanding experience with France.

therefore be answered within the 90-day period and often faster (generally within 60 days).

242. If the information is not available internally, and once the prior notification and validation procedures are completed, the EOI division of the Department of Finances and Economy will send a letter to the person concerned together with a letter to any third party that is in possession of the information giving a 30-day period to provide the information. At the expiration of the 30-day deadline, if the information has not been provided, the EOI division will ask the administrative assistance unit of the DSF to collect the information from the person concerned and the third party (if any) using its communication right. At this stage, the collection process by the administrative assistance unit is the same as for requests received from France (see above). Although the new procedure has not yet been applied in practice, as no cases have been received requiring its complete use, should Monaco need to collect information for EOI purposes under this new procedure, the experience gained from exchange with France suggests that its authorities will be able in all instances to efficiently collect the requested information.

Collection of banking information

243. Monaco has long experience of access to banking information for EOI purposes. Banks in Monaco are aware of the process and have worked with the Monegasque authorities for many years. Monegasque authorities have confirmed that they can obtain banking information even if they do not have the bank account number, provided they have the name of the person and the name of the bank. They can also access the information only with the bank account number.

244. To collect banking information, Monaco's authorities will exercise a communication right and will request the financial institution concerned to provide the information needed. Monaco's authorities have reported that they always swiftly obtain the information needed. In 2009, 21 requests for banking information were received by Monaco, 19 in 2010 and 33 in 2011 and in all instances Monaco's authorities were able to provide the requested information within 90 days.

Accounting records (ToR B.1.2)

245. Accounting records, in cases where Monegasque legislation requires that such data be held and conserved, can be obtained in Monaco either from the administrative authority responsible for issuing licences to exercise an activity – as in the case of companies with a commercial activity – or from the overseeing authority – as in the case of foundations – or directly from firms and companies themselves.

246. The conditions for obtaining the above-mentioned records apply here under the same conditions, and are subject to the same provisions for access and the same limits.

247. The collection of accounting information is subject to the same collection process as for ownership and banking information, depending whether the request is received from France or from another jurisdiction. Five EOI requests dealing with accounting information were received in 2009 and in all cases the information was available internally to the tax authorities, eight in 2010 and in two cases the information was collected from the person concerned during an on-site visit and five in 2011 and in two cases the information was collected from the person concerned during an on-site visit and five in 2011 and in two cases the information was collected from the person concerned during an on-site visit. Monaco has been able to provide the requested accounting records within 90 days of the receipt of the request in all cases.

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

248. To ensure compliance with bilateral agreements on information exchanges, the DSF has the rights of disclosure and investigation set out in the provisions of Sovereign Order No. 3.085 of 25 September 1945 (see above). Monegasque legislation relating to access to information does not require that there be a domestic interest with regard to the gathering of information for the purposes of information exchange.

Compulsory powers (ToR B.1.4)

249. Articles 3 and 4 of Sovereign Order 3.085 of 25 September 1945 state that any refusal to provide information must be recorded in a report which, after notification, is submitted to the Public Prosecutor's office which refers the matter to the criminal court for prosecution. Moreover, article 6 of this Sovereign Order provides that any refusal to provide information may be punished by a fine (from EUR 10 000 to EUR 50 000) and if legal action is taken, offenders are served with a court order to resubmit the documents or items they had failed to provide (EUR 20 fine per day of lateness).

250. In practice, penalties for refusal to provide information have to be applied through the General Prosecutor. It is possible to proceed with a tax audit to obtain the requested information and administrative penalties can be applied directly by the tax authorities in these instances. The Monegasque authorities have confirmed that information requested is generally provided as there has been no penalty for failure to answer for many years (and none applied during the period under review). It seems clear that sanctions provided by the Monegasque legal framework for failure to comply with these requirements are adequate. 251. In contrast, Monegasque legislation makes no provision for sanctions with regard to information which State administrations, the Commune, firms licensed or controlled by the State or the Commune, as well as all establishments or bodies of any nature subject to the oversight of the administrative authority, are obliged to provide. Since these are public entities or entities controlled by the public authority and consequently dependent on the Secretary of State, the risk of such entities refusing to provide information would appear to be non-existent.

252. As previously said, exchange of information between government authorities takes place when necessary and as of now, there have been no cases where a department has refused to provide information to the DSF or the Department of Finance and Economy on request. Moreover, the informal contacts and reminders are efficient since the information is generally provided within 15 days between departments (it can be reduced to three days in urgent matters).

Secrecy provisions (ToR B.1.5)

253. The rules on professional secrecy in Monaco are set out in article 308 of the Criminal Code. This article provides that "any person who, by his position or profession, is the depository of the secret entrusted to him, and who discloses that secret information, other than in cases where the law obliges or permits him to do so, shall be punished by one to six months of imprisonment and fined the amount provided for in figure 2 of article 26 (from EUR 2 250 to EUR 9 000), or to only one of these two penalties".

254. In Monaco, lawyers cannot disclose information received during discussions with their clients or received by letters from their clients when defending the client. Thus, the professional secrecy of a lawyer is not applicable to other legal activities. The Monegasque authorities have advised that the professional secrecy of lawyers has never hindered the access to information for tax purposes.

255. However, article 11 of Sovereign Order No. 2.693 of 23 March 2010 provides that any person holding information who in good faith provides the Director of the DSF with documents and information requested by the latter in order to respond to a request for exchange of information is not liable to prosecution for breach of secrecy under article 308 of the Monegasque Criminal Code.

256. Monaco's authorities have reported that there have been no instances in which professional secrecy was invoked to refuse to provide information on request. This has also been confirmed by notaries, lawyers and accountants who during the on-site visit indicated that they always provide information when requested by the tax authorities when the information requested is not acquired in their capacity of legal representatives. It is clear from this that professional secrecy in Monaco cannot prevent its authorities from collecting information for EOI purposes and exchanging it with treaty partners.

Determination and factors underlying the recommendations

Phase 1 Determination		
The element is in place		
Phase 2 Rating		
Compliant.		

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.

Analysis and assessment

257. Under Sovereign Order No. 2 693 of 23 March 2010, the Monegasque authorities have put in place a new procedure for prior notification of taxpayers in the event that the authorities receive a request for an exchange of information. This new procedure (it does not apply in relations with France – article 12 or the Sovereign Order) does not conflict with international standards regarding transparency and information exchange.

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

258. Under Sovereign Order No. 2.693 of 23 March 2010 on international co-operation, as amended by the Journal de Monaco on 4 June 2010, Monaco has put in place a notification procedure. The exchange of information with France is not affected by these new rules.

259. The procedure can have up to four stages:

• prior notification of the taxpayer takes place upon receipt of a request for exchange of information and request for his comments within 15 days. The competent authority must issue a decision on whether the request is accepted or rejected within a period of 45 days, which can be reduced to 20 days if the requesting State indicates that the request is urgent.

- issuing of a second notification to the person concerned and to the person holding the information once the request has been judged to be admissible to request the information to be provided (Section IV, article 6). The information must then be provided by the person concerned within a period of 30 days from the issuance of the second notification.
- the person concerned by the exchange of information has a period of 30 days in which to make an appeal to the Court of First Instance. This appeal has the effect of suspending the case. The competent authority must then submit its comments within a period of 30 days and the ruling must be made within the following 30 day period. Once the ruling is issued, the person must provide the information immediately.
- the ruling made in the first instance can be appealed (either by the person concerned or by the tax authorities) within the following 15 days to the Appeal Court in the same time limits. This appeal also has the effect of suspending the case.

260. With the prior notification procedure, the information has to be provided by the person concerned or the person in possession of the information within a timeframe of 90 days. This timeframe is reduced to 55 days in cases where the request is of urgent nature.

261. In case where the right to appeal is exercised by the person concerned, Monaco' competent authority advises the requesting jurisdiction and indicates the timeframe needed to complete the procedure. If the Court rejects the exchange of information or partially accepts it, the requesting jurisdiction will also be informed of the decision with explanations, if needed. If the Court confirms the validity of the exchange of information request, it will issue an injunction to provide the information to the person concerned or the third party in possession of the information. This has never happened so far.

262. The Order does not allow for any exceptions to this prior notification and it may be contrary to the standard. Indeed, when a prior notification would jeopardise or unduly delayed the procedure followed in the requesting State, it should be suspended. Monaco's authorities have reported that they are currently working on this issue with a view to introducing exceptions to the prior notification procedure in cases where 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.

263. Considering that this procedure is recent and considering Monaco's limited experience in this respect, Monaco should monitor its prior notification procedure to make sure it is compatible with effective exchange of information.

Determination and factors underlying the recommendations

Phase 1 Determination		
The element is in place, but certain aspects of the legal implementation of the element need to be improved.		
Factors underlying recommendations	Recommendations	
The prior notification procedure does not allow for any exception and therefore apply to any incoming requests sent by Monaco's partners, to the exception of the ones sent by France.	It is recommended that certain exceptions from prior notification be permitted (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).	
Phase 2 Rating		
Partially Compliant.		
Factors underlying the recommendations	Recommendations	
The procedure for collecting information to answer incoming requests received under treaties signed since 2009, including the prior notification procedure, is recent and Monaco's experience in applying it is limited.	Besides introducing exceptions consistent with the international standard, Monaco should, in instances where the prior notification procedure can be applied in compliance with the international standard, monitor this procedure to make sure that it does not unduly prevent or delay effective exchange of information	

C. Exchanging Information

Overview

264. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanisms for doing so. In Monaco, the legal authority to exchange information is derived from bilateral mechanisms (double tax conventions (DTCs) and tax information exchange agreements (TIEAs)), as well as domestic law to a lesser extent. This section of the report examines whether Monaco has a network of information exchange arrangements that would allow it to achieve the effective EOI in practice.

265. Since its commitment to the principles of transparency and exchange of information, made on 24 March 2009, Monaco has made a lot of progress in extending its EOI treaty network by signing agreements consistent with the international standard. Currently, Monaco has 27 EOI agreements, 24 of which are in force. Monaco has recently concluded agreements with Mali, Mauritius and India. The agreement with Spain was initialled on 14 February 2013. TIEA negotiations are currently underway with, amongst others, Poland and the United Kingdom.

266. While this report is focused on EOI on request in the field of direct taxations, Monaco is also exchanging information on VAT with other European jurisdictions under the EU regulation (EC) 904/2010 (and is involved in automatic exchange of information with France under the DTC between France and Monaco).

267. With regard to confidentiality, no issues were raised as the confidentiality of information is ensured throughout the collection and exchange process.

268. In practice, comments received by Monaco's main treaty partner (France) are very positive and reflect the efficient EOI process in place in Monaco and the appropriate resources devoted to it, including the new resources and organisation that have been implemented recently to answer requests received from jurisdictions other than France. Monaco's long time experience is reflected in its ability to provide information in the form requested and within the timeframe provided by the Terms of Reference.

C.1. Exchange of information mechanisms

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

Analysis and assessment

269. The network of tax conventions and tax information exchange agreements signed by Monaco as of May 2013 cover the following jurisdictions: France, Luxembourg, Mali, Mauritius, the Seychelles, Saint Kitts and Nevis, Qatar (States with which Monaco has signed tax conventions – DTCs), Andorra, Argentina, Austria, Bahamas, Belgium, United States, Liechtenstein, San Marino, Samoa, Netherlands, Australia, Finland, Sweden, Denmark, Norway, Iceland, Greenland, Germany, the Faroe Islands and India (States with which tax information agreements – TIEAs – have been signed).

270. The 27 information exchange mechanisms that Monaco has signed with its partners meet international standards in that they allow all types of foreseeably relevant information to be exchanged, with no domestic restrictions or formalities that might curtail the provisions agreed to in recently signed agreements, except for the agreement with Mali, where a section of the text negotiated was mistakenly included in the wrong place and for which Monaco is trying to negotiate an exchange of letter to correct it so that the agreement could be in line with the standard (see section C.1.2 below).

271. Monaco also exchanges information on VAT with other European jurisdictions (through France) under the EU regulation (EC) 904/2010 that has entered in force on 1 January 2012 (previously (EC) 1798/2003). For the period 2009-11, Monaco answered 39 EOI requests with regard to VAT. In addition, more than 3 000 pieces of data are automatically exchanged with France based on the DTC concluded in 1963 (Monaco exchange information on salary, dividend income, pension income of French nationals in Monaco).

272. Finally, Monaco participates in the Savings Directive framework pursuant to an agreement concluded in Brussels on 7 December 2004 between Monaco and the European Union and providing measures equivalent to the EU Savings Directive 48/2003/EC.

Foreseeably relevant standard (ToR C.1.1)

273. The international standard for EOI envisages information exchange to the widest possible extent. Nevertheless it does not allow "fishing expeditions", i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in article 26 of the OECD Model Tax Convention and article 1 of the OECD Model TIEA.

274. All TIEAs and DTCs signed by Monaco contain provisions capable of allowing the exchange of foreseeably relevant information for the application of domestic legislation. The treaties signed with Argentina, France, Qatar and Seychelles refer to "relevant" or "necessary" information which makes it possible to conclude, on this point, that the Monaco's network of treaties meets international standards on the exchange of tax information.

In respect of all persons (ToR C.1.2)

275. For EOI to be effective it is necessary that a jurisdiction's obligations to provide information are 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 EOI envisages that EOI mechanisms will provide for exchange of information in respect of all persons.

276. The agreements signed by Monaco, except for the one signed with Mali, contain provisions similar to those in article 5 (4) of the Model TIEA, so that they allow exchange of information in respect of all persons. The DTC with Mali does not explicitly provide for the exchange of information in respect of all persons, due to a provision being placed in the wrong section.

277. Monaco's authorities have clarified that they always negotiate agreements that have an exchange of information provision that conforms to article 26 of the OECD Model Tax Convention or article 1 of the OECD Model TIEA. This was initially the case for the agreement with Mali. However, at the time of the signature some text which was not in line with the standard was added. Monaco asked for the deletion of this text but when removing it, a part of the valid text was inadvertently put in the wrong place at the same time.

278. Monaco has since been in contact with Mali to have the text corrected.

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

279. 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. 280. The provisions made in all treaties signed by Monaco are similar or broader than those in the Model TIEA. Some of them explicitly provide for the possibility of exchanging information regarding shares, units and other interests held in companies listed on the stock exchange and in collective funds and investment vehicles.

Absence of domestic tax interest (ToR C.1.4)

281. 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.

282. With regard to either Monegasque domestic legislation or international treaties providing for mutual assistance mechanisms, the exchange of tax information is not restricted by any references to domestic tax interests.

Absence of dual criminality principles (ToR C.1.5)

283. 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.

284. The EOI agreements signed by Monaco do not contain any provisions aimed at restricting exchanges through application of the dual criminality principle in the network of treaties for the exchange of information signed by Monaco.

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

285. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

286. Moreover, the agreements signed by Monaco allow both civil and criminal tax information to be exchanged.

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

287. 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.

288. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

289. The Monegasque competent authorities have confirmed that they are ready to provide information in the specific form requested to the extent permitted under Monegasque laws and administrative practices. In addition, according to the comments received from Monaco's treaty partners, there do not seem to have been any instances where Monaco 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)

290. The exchange of information cannot occur unless a jurisdiction has information exchange mechanisms in force. Where such mechanisms have been signed, the international standard requires a jurisdiction to complete the measures needed for them to take effect.

291. Monaco's network of exchange of information agreements covers to date 27 jurisdictions, of which 24 tax conventions and tax information exchange agreements in line with the standard have entered into force. Three agreements are not in force yet (Belgium, Mauritius and Mali).

292. In Monaco, treaty negotiations generally take place in English and once the text is agreed, the English version is initialled. The text is then translated into French by the Department of Finance and Economy as the use of the French language is mandatory pursuant to Monaco's Constitution. The translation relating to French and English is implemented quickly. However, the process may take up to three months in the case of translation from another language because of the time needed to check the consistency between the different versions and because of the communication with the other jurisdiction in order to validate the consistency. The translated text then needs to be checked and approved by the Minister of Finance and then sent to the treaty partner. If another official version is needed in addition to the French version, it will also need to be approved, which will take longer.

293. Once all official versions of the treaty are accepted, the method of signature of the treaty must be approved by the Council of Government, which is a simple formality that takes approximately three weeks to a month (which means that the Prince has officially delegated his signing powers in a legal act that has been approved by the Government Council). The treaty is then transmitted to The Prince, who approves it within three weeks to a month under two prerequisites: (1) the treaty has to be in line with the Constitution and (2) the Council of Government has approved it beforehand. The approval of The Prince is also needed for signature and ratification which usually takes 15 days and he has the discretionary power to refuse to sign or ratify a treaty that has been negotiated. After notification of the ratification by Monaco and the other contracting State the Sovereign Order is signed by The Prince and is then published in Monaco's Official Gazette (*Journal de Monaco*) along with the bilateral Agreement.(which is published every Friday).

294. A Sovereign Order signed by The Prince is needed for the treaty to become enforceable. This Sovereign Order indicates the date on which the treaty enters into force and the fact that the Sovereign Order 2.693 on International Cooperation in tax matter is applicable (which explains the general rules applicable to all treaties). When a treaty has entered into force, it is directly applicable and no transposition into domestic legislation is required.

In effect (ToR C.1.9)

295. In order for information exchange to be effective, the contracting parties have to take the necessary measures to comply with their commitments.

296. Monaco has created a domestic framework for exchange of information based on the EOI agreements signed. Monaco's competent authority has powers to access information to give effect to the terms of its international EOI agreements.

	Phase 1 Determination
The element is in place	
	Phase 2 Rating
Compliant.	

Determination and factors underlying the recommendations

C.2. Mechanisms for exchanging information with all relevant partners

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

297. The 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 with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

298. In Monaco, three persons from the Department of Finance and Economy are in charge of negotiating tax agreements with one person from the Department of Foreign Affairs, under the supervision of the Minister of State and with the assistance of local embassies and diplomatic staff. Since its commitment to the international standard in 2009, Monaco has made significant progress in increasing its treaty network by concluding 27 EOI arrangements. Monaco has prioritised jurisdictions that have contacted it to enter into treaty negotiation and considering the number of agreements in negotiation. The agenda for negotiation depends on workload and complexity since the size of the team is limited.

299. Monaco has signed both DTCs and TIEAs. It will generally conclude DTCs with jurisdictions if it considers that it has or will have a financial relationship with that jurisdiction. In certain cases, it has also accepted to first sign a TIEA and to negotiate a DTC at a later stage.

300. Currently, Monaco has 27 EOI agreements signed (as reflected in Annex 2 of which 24 are in force and in line with the standard. Monaco's relations with France are longstanding and are covered by two tax treaties relating to inheritance taxes (1950 treaty) and to direct taxes and wealth tax (1963 treaty).

301. The Monaco treaty network covers to date:

- 9 of EU members;
- 3 European Economic Area (EEA) jurisdictions;
- 13 OECD members;
- 23 of the Global Forum member jurisdictions.

302. Monaco has continued to expand its EOI network by concluding a TIEA with India and a DTC with Mauritius. For the seven agreements that have been initialled with Brunei (DTC), Cyprus¹³ (DTC), Spain (TIEA), Mexico (TIEA), New Zealand (TIEA), the Czech Republic (TIEA) and South Africa (TIEA), the method of signature has been determined. Negotiations of TIEAs are underway with Poland, Malta, the Slovak Republic and the United Kingdom. The agreement with Spain was initialled on 14 February 2013. EOI agreements are also being negotiated with the Czech Republic, Guernsey, Kenva, Montenegro, UAE and Vietnam. In addition, the Monegasque authorities met an Italian delegation in July 2012. The framework for the coming negotiations between the two countries was specified during this meeting. A meeting with Italy also took place in November 2012 and a joint press communiqué was published. Both jurisdictions have agreed to continue the dialogue and Monaco confirmed that the agreement will include an EOI clause which is consistent with the international standard

303. Monaco has made a lot of progress since 2009 in its efforts to update its treaty network. Comments were sought from Global Forum members and no Global Forum members have indicated that they have been unable to conclude an EOI agreement with Monaco. Monaco's negotiation policy is now clearly in place, with a priority given to jurisdictions that have contacted it to enter into treaty negotiation.

304. However, one jurisdiction, Kenya, has reported that it has experienced difficulties in negotiating an EOI arrangement with Monaco because of Monaco's proposal to include certain provisions in the agreement that are not included in the OECD Model TIEA (non-discriminatory and non-prejudicial provisions). Monaco is encouraged to continue negotiating with a view to concluding negotiations with Kenya as soon as possible.

305. Whilst putting considerable effort on treaty negotiations, the network of treaties containing provisions on exchange of information does not currently cover all of those jurisdictions who have indicated that they would like

Footnote from all European Union states members of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations except Turkey. The information shown in this document concerns the zone under the effective control of the Government of the Republic of Cyprus.

^{13.} Footnote from Turkey: the information contained in this document refers to "Cyprus", meaning the southern portion of the island. There is no single authority representing both Turkish and Greek Cypriots on the island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until such time as a lasting and equitable solution is found in the United Nations context, Turkey will maintain its position on the "Cyprus question".

to enter into such a relationship with the Principality as some negotiations are not yet finalised or the treaties have not been signed or ratified. Monaco should continue working toward the conclusion of agreements with all treaty partners who have shown an interest in entering into an information exchange arrangement with Monaco.

Determination and factors underlying the 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					
The network of treaties containing provisions regarding the exchange of information does not currently cover all of those jurisdictions who have indicated that they would like to enter into such a relationship with the Principality.	Monaco should enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it, including Italy, Poland and the United Kingdom.				

Phase 2 Rating

Largely Compliant.

C.3. Confidentiality

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

Analysis and assessment

306. 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, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

307. The rules provided for in the applicable international agreements and domestic legislation in Monaco ensure the confidentiality of information received in.

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

308. The information exchanged is subject to the rights and safeguards that are given priority in the wording of information exchange agreements. From this standpoint, all agreements signed by the Principality of Monaco with its partners follow the principles set out in international standards regarding the exchange of information, with the notable exception of the tax convention between Monaco and France.

309. Article 1 of Sovereign Order 3.085 of 25 September 1945 states that the tax officials are bound by professional secrecy under the conditions and subject to the sanctions set out in article 376 of the Penal Code. Article 376 of the Penal Code is now codified in article 308 of the Penal Code, which provides that all persons entrusted, by state or by profession, with secrets and who, with the exception of cases in which the law requires or authorises the disclosure of the secret, reveal the secret will be liable to imprisonment for a term of six months and a fine set out in article 26, number 2, or to one of these two punishments.

310. Monaco has implemented strict confidentiality measures in its EOI process and practices. When a request is received, it is registered and confidentially filed in the archives. A paper copy is also stored in the office of the Director of the Department of Finances and Economy, in a locked cabinet. Access to the buildings as well as the computer area are restricted to authorised persons. The building is under surveillance and authorised persons require a special magnetic card to enter the premises.

311. The same type of security measures also exist at the DSF. All requests received are treated confidentially and filed as such, both electronically and on paper. The requests stored on the electronic system are only accessible by the agents in charge of such requests and the Director of the department. The building also has limited and secured access (with magnetic card) to authorised persons.

312. The only persons with access to the requests are those in charge of processing incoming requests (EOI division of the Department of Finance and Economy or the administrative assistance unit of the DSF). They are, like all civil servants in Monaco, bound by professional secrecy subject to sanctions for default. However, no sanction for breach of confidentiality has ever been applied.

313. The Monegasque 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 the Monegasque authorities to respect confidentiality nor have any cases been reported where this obligation was violated.

All other information exchanged (ToR C.3.2)

314. With regard to other information exchanges, the provisions described above apply *ipso facto*.

Determination and factors underlying the recommendations

	Phase 1 Determination
The element is in place	
	Phase 2 Rating
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.

Analysis and assessment

315. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other listed secret may arise.

316. The mechanisms provided for in international agreements and the applicable domestic legislation in Monaco allows the rights and safeguards of taxpayers and third parties to be guaranteed.

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

317. The bilateral agreements on the exchange of information for tax purposes provide that the competent authority may refuse assistance in cases where the provision of information would be contrary to public policy. Moreover, they do not oblige a requested party to provide information which would disclose a commercial, industrial or professional secret or a commercial process.

318. Sovereign Order No. 2.693 of 23 March 2010 on international cooperation in tax matters sets out a notification procedure for use in Monaco. This procedure provides for a number of safeguards protecting the taxpayer in that the latter:

- must be informed of the receipt by the Monegasque authorities of a request for information concerning him and may make his comments known during the initial examination of the request by the competent Monegasque authority. At this stage it might be argued that the information request received does not comply with the limits set on exchanges of information under international treaties;
- if the taxpayer does not agree that the Monegasque authorities are obliged to provide the third party with information, he can pursue the matter in the Court of First Instance which will rule on the lawfulness of the injunction to provide information. The ruling handed down by this Court may give rise to an appeal.

319. The provisions mentioned above do not apply within the framework of relations between France and Monaco.

320. The prior notification process in Monaco for requests received from other jurisdictions than France does not provide for any exception, which is not in line with the Terms of Reference. See section B.2 on this element.

Determination and factors underlying the recommendations

Phase 1 Determination				
The element is in place				
	Phase 2 Rating			
Compliant.				

C.5. Timeliness of response to requests for information

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

Response within 90 days (ToR C.5.1)

321. For exchange of information to be effective, it needs to be provided in a timeframe which allows tax authorities to apply the information 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 cooperation as cases in this area must be of sufficient importance to warrant making a request.

322. For the period under review (2009 to 2011), 202 requests for exchange of information has been received and answered by Monaco (calculation based on the number of letters received). Monaco exchanges information mainly with European jurisdictions, its most significant partners being France, from whom 98.5% or the requests are received.

323. For the period under review, three requests were received from jurisdictions other than France. The first request was founded on the absence of an income tax declaration. Out of the 3 executive persons of a company two had Monegasque residency and one was a resident of the requesting authority. This request was answered in 88 days. The second request was in relation to a citizen from the requesting jurisdiction resident in Monaco and dealt with the sale of a property located in the territory of the requesting jurisdiction and the related tax declaration. Reply was provided within 63 days. The third request concerned a company purported to be based in Monaco in relation to its affairs with a company from the requesting jurisdiction. It appeared that no such a company has ever been in existence in Monaco and that the address did not exist. Reply was provided within 19 days.

					,				
		2	009	2	010	2	011	Total	Average
		nr.	%	nr.	%	nr.	%	nr.	%
Total number of requests received** (a+b+c+d+e)		59	100%	52	100%	91	100%	202	100%
Full response*: <90 days		58	98%	52	100	88	97%	198	98%
<180 days (cumulative)		59	100%	52	100%	90	99%	201	99.5%
<1 year (cumulative)	(a)	59	100%	52	100%	91	100%	202	100%
1 year+	(b)	0	0%	0	0%	0	0%	0	0%
Declined for valid reasons	(C)	0	0%	0	0%	0	0%	0	0%
Failure to obtain and provide information requested	(d)	0	0%	0	0%	0	0%	0	0%
Requests still pending at date of review (e)		0	0%	0	0%	0	0%	0	0%

324. For these years, the percentage of requests where Monaco answered within 90 days, 180 days, one year or more than one year, were:

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

** Monaco counts each written request from an EOI partner as one EOI request even where more than one person is the subject of an inquiry and/or more than one piece of information is requested.

325. Out of 202 requests received during the period under review, 199 were received from France and were therefore not subject to the notification procedure which may add to the time taken to answer the request, although in practice this has not been the case. On average, the Monegasque authorities fully answered incoming requests from France within 90 days in 98% of cases. Approximately 1.5% of requests received from France were fully responded to within a period between 90 and 180 days and 0.5% in between six months and one year. None of the requests received from France were answered after more than one year and there is no case where requests were unanswered or partially answered. With regard to the three requests received from jurisdictions other than France, all three requests were answered within 90 days. The answering period is calculated from the moment the EOI request is received and includes, when necessary, requests for clarifications.

326. In general, EOI requests in relation to direct taxes are responded to within the 90-day timeframe. Most delays concern EOI requests in relation to valuation of real estate. This type of request is received from France for the purposes of determining the French wealth tax. In such cases, Monaco is not only exchanging existing information but the agent in charge of the case has to make an enquiry, based on various elements (such as the real estate transfer tax, the registry of mortgages and lease agreements) in order to determine the value of real estate owned by French individuals in Monaco. Since the Monegasque tax agents performing this valuation can be called to participate in litigation on the matter in France, the enquiry must be precise and generally takes longer than 90 days. In 2009, one EOI request received from France was in relation to the valuation of real estate, three in 2010 and four in 2011.

327. No status update is sent to France for delays in processing an EOI request in relation to real estate valuation, since France is aware that a longer timeframe is needed for such requests. Otherwise, Monaco sends status update when the information cannot be provided within 90 days of receipt of the request. For the period under review, and with requests received in almost all instances from France, Monaco answered more than 98% of incoming requests within 90 days and status updates were rarely needed.

328. Monaco's answering timeframe is excellent and shows an appropriate working organisation, an efficient collaboration between the several administrative authorities and a good response from the person concerned and/or third party during the collection process. No comment received by Monaco's treaty partners raised an issue with regard to the answering timeframe.

Organisational process and resources (ToR C.5.2)

Process for requests received from France

329. When an EOI request from France is received by the Director of the DSF, the incoming request is transferred to the administrative assistance unit that first registered the request in the system with the date of reception and the name of the agent in charge. A paper file is also created and confidentially archived. The agent verifies whether the request is complete, valid, was sent by the partner's competent authority, and contains all information and material needed and that it is foreseeably relevant.

330. When a request is not complete, the tax authorities first try to find the information by themselves; if they can't they will then ask the requesting jurisdiction for additional information. In 2009, five requests required additional information from the treaty partner, two in 2010 and none in 2011. Monaco's authorities have confirmed that they do not reject a request solely because it is not complete; they always try to obtain additional information either internally or from the treaty partner.

331. If the information is available internally (to the DSF or another administrative department), the information is obtained internally by an informal process within 15 days. If the information is not available internally, the administrative assistance unit is in charge of collecting the information from the person concerned or the third party, by sending a letter to the person concerned and/or to third party that might be in possession of the information, to request the information (communication right) giving a 30-day deadline to answer and by other means if no answer is received. The communication right includes the information/documents requested, the other persons to whom the information has been requested (if the information is not solely requested from the person concerned), the taxation years, the agreement on which the request is based, the fact that information must be provided to the DSF and the fact that sanctions will be applied in case of default to answer. The answer is generally received within 30 days.

332. Once the information is received by the administrative assistance unit, the agent in charge of the file verifies the information to make sure it is complete, which is generally the case. The information is then reviewed by both the Deputy of the Director and the Director of the department himself before the answer is sent to the requesting partner. This verification process takes approximately one week.

Process for requests received from other jurisdictions

333. When an EOI request from another jurisdiction is received by the Minister of Finance, the request is transferred to the EOI division of the Department of Finance and Economy to be registered and treated. Requests are registered in a chart that enables the Director of the Department of Finance and Economy to closely monitor the procedure and make sure that all steps and deadlines are respected. This chart also allows statistics to be drawn in order to monitor the performance of the department with regard to the processing of incoming EOI requests.

334. Requests received in French and English are treated as such and are not translated. Answers are always provided in French unless the requesting Competent Authority expressly requests a response in English. In the past, requests received in another language were translated by the Monegasque authorities, within a few days. Monaco's authorities have indicated that they will not accept requests in a language other than French or English in the future, given the risks of wrong translation, and that this information was communicated to treaty partners. As soon as the request is received, a prior notification is sent to the person concerned (by registered mail with acknowledgment of receipt) and the person concerned has a 15-day period to give its comments (as explained under Section B.2).

335. The EOI request is sent to the DSF to verify whether the request is complete and valid, in the same manner as for requests received from France. The DSF provides its answer within 48 hours and an acknowledgment of receipt is sent to the requesting jurisdiction by the EOI division. In cases the DSF is of the opinion that the incoming request should not be processed because the conditions stipulated in the applicable agreement are not met, the requesting jurisdiction is informed and the procedure ends. No further analysis of the validity of the request is needed in such a case. For the period under review, no request was rejected or required additional information because it was incomplete.

336. If the EOI request is incomplete, the Monegasque authorities first try to find the information by themselves, otherwise they will ask the requesting jurisdiction for additional information the same way as for requests received from France.

337. If the request is complete, it is then examined by the Minister of Finance to determine whether it is valid. To do so, the Minister of Finance is assisted by a consultative commission and takes into account comments made by the person concerned, if any. The consultative commission is purely consultative and its conclusions only have an information purpose for the Minister of State, they are not binding. The consultative commission generally discusses interpretative issues and the types of documents that can be

requested. The conclusions of the commission are transmitted to the Minister of Finance that provides its opinion to the Minister of State.

- 338. The Minister of State then either decides
 - that the request does not meet the conditions of the agreement and should be rejected, in which case the rejection must be motivated and is generally validated by the Department of Legal Affairs with the decision communicated to the requesting party within 40 days;
 - or that the request meets the conditions of the agreement and the information must be exchanged (if available internally) or be collected from the person or the third party (if not available internally).

339. The validation process has to be completed within 45 days of the reception of the request (this deadline is reduced to 20 days if the requesting jurisdiction indicates that the request is urgent). In practice, these short deadlines are respected due to the limited number of persons concerned and due to the fact that they are all in the same location. Once the validation process is over, the collection process can start.

340. If the information is available internally, the EOI division has to wait for the expiration of the 30-day period during which the person concerned can use its appeal right, before sending the information to the requesting jurisdiction.

341. If the information is not available internally, the EOI division of the Department of Finance and Economy will send a letter to the person concerned together with a letter to any third party that is in possession of the information giving a 30-day period to provide the information. At the expiration of the 30-day deadline, if the information has not been provided, the EOI division will ask the administrative assistance unit of the DSF to collect the information from the person concerned and the third party (if any) using its communication right. Once the information has been received by the administrative assistance unit and has been verified, it is transferred to the EOI division of the Department of Finance and Economy that verifies the information before sending the answer to the requesting jurisdiction.

342. If the information collected is not complete, the Monegasque authorities try to obtain the complementary information to send a complete answer to the requesting jurisdiction, except when the 90-day deadline is imminent or in case of emergency. In such cases, the partial answer is sent to the requesting jurisdiction within the 90-day deadline before they continue the process to obtain the missing information.

343. Monaco has also considered a possibly increasing number of EOI requests in the future and stands ready to process them under the current administrative procedure, or to amend it by involving the DSF in the event this procedure is no longer be appropriate, so as to respect the 90 day timeframe.

Resources

344. In the EOI division of the Department of Finance and Economy, four persons are in charge of processing EOI requests received from other jurisdictions than France. These four persons are also in charge of the work in collaboration with the OECD and the negotiation of EOI agreements. They can rely on other administrative services such as secretariat, archives and legal services. For requests received from France, the administrative assistance unit is staffed with three persons.

345. In Monaco, tax officials are Monegasque civil servants, that have received a comprehensive and in-depth training with *l'Ecole Nationale des Finances Publiques* (the French Tax academy) and have, as such, a high level of knowledge in tax matters or are French civil servants on secondment or are civil servants that have left the French Government in order to join the Monegasque one. They have all received training in the collection of information for domestic purposes, which is the same procedure that Monaco uses to collect information for EOI purposes. They can rely on an internal document summarising the procedure and deadlines as described in the Sovereign Order n° 2.693 of 23 March 2010 in relation to international tax cooperation. A procedure manual is also available.

346. It can be concluded that Monaco has dedicated sufficient organisational, financial and human resources to its exchange of information regime as shown by its average responses timeframe and as shown by the positive comments received from its treaty partners. All competent authority staff maintain high professional standards and have adequate expertise and training specific to exchange of information.

347. However, the procedure that applies to requests received from jurisdictions other than France is very recent and was tested in only three instances during the period under review. Resources and procedures in place appear to be adequate to handle the present level of requests in a timely manner and in these cases timely replies have been provided. Nonetheless, the very recent mechanism put in place by Monaco needs to be further tested, particularly in the view of a possible increase of inbound EOI requests in the future. It is therefore recommended that the Monegasque authorities keep monitoring their resources and procedures so that its competent authority continues to provide comprehensive answers in a timely fashion.

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

348. There is no provision in Monaco's legislation or in its EOI agreements that sets out clear conditions governing the information exchange, other than those set out in article 26 of the OECD Model Convention or article 5(6) of the OECD Model TIEA.

Determination and factors underlying the recommendations

Phase 1 determination

This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.

Phase 2 Rating					
Largely Compliant.					
Factors underlying the recommendations	Recommendations				
Monaco has put in place a sound organisational process allowing to handle requests received from partners other than France timely. Nevertheless, this system has not been sufficiently tested in practice.	In relation to its new procedure for requests received from partners other than France, it is recommended that Monaco continues monitoring its resources and procedures so that its competent authorities continue to provide comprehensive answers to its partners in a timely fashion.				

Summary of Determinations and Elements Underlying Recommendations

Determination	Factors underlying the recommendations	Recommendations				
Jurisdictions should ensure that ownership and identity information for all relevant entitie and arrangements is available to their competent authorities. (<i>ToR A.1</i>)						
Phase 1 determination: The element is in place.						
Phase 2 rating: Compliant						
Jurisdictions should ensure and arrangements. (ToR)	re that reliable accounting records	s are kept for all relevant entities				
Phase 1 determination: The element is in place.						
Phase 2 rating: Largely Compliant	Record keeping requirements for non-trading partnerships and trusts are recent and Monaco's experience in this regard is limited.	Monaco should monitor, on an on-going basis, the availability of accounting records for civil partnerships and trustees covered by the law No 1.385 of 15 December 2011.				
Banking information should be available for all account holders. (ToR A.3)						
Phase 1 determination: The element is in place.						
Phase 2 rating: Compliant						

Determination	Factors underlying the recommendations	Recommendations				
subject of a request under their territorial jurisdiction	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 determination: The element is in place.						
Phase 2 rating: Compliant						
	ds (e.g. notification, appeal right Id be compatible with effective ex					
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	The prior notification procedure does not allow for any exception and therefore applies to any incoming requests sent by Monaco's partners, with the exception of the ones sent by France.	It is recommended that certain exceptions from prior notification be permitted (e.g. in cases in which the information request is of a very urgent nature or the notification is likely ti undermine the chance of success of the investigation conducted by the requesting jurisdiction).				
Phase 2 rating: Partially Compliant	The procedure for collecting information to answer incoming requests received under treaties signed since 2009, including the prior notification procedure is recent and Monaco's experience in applying it is limited.	Besides introducing exceptions consistent with the international standard, Monaco should, in instances where the prior notification procedure can be applied in compliance with the international standard, monitor this procedure to make sure that it does not unduly prevent or delay effective exchange of information				

	Factors underlying the	_
Determination	recommendations	Recommendations
Information exchange me (ToR C.1)	chanisms should provide for eff	ective exchange of information.
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdictions' network partners. (<i>ToR C.2</i>)	of information exchange mecha	inisms should cover all relevant
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	The network of treaties containing provisions regarding the exchange of information does not currently cover all of those jurisdictions who have indicated that they would like to enter into such a relationship with the Principality	Monaco should enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it, including Italy, Poland, and United Kingdom.
Phase 2 rating: Largely Compliant		
	e mechanisms of jurisdictions sho of information received. (<i>ToR</i> C.3	
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Information exchange me and third parties. (ToR C	chanisms should respect the righ 4)	nts and safeguards of taxpayers
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdiction should p manner. (<i>ToR C.5</i>)	rovide information under its net	work of agreements in a timely

Determination	Factors underlying the recommendations	Recommendations
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		
Phase 2 rating: Largely Compliant	Monaco has put in place a sound organisational process allowing to handle requests received from partners other than France timely. Nevertheless, this system has not been sufficiently tested in practice.	In relation to its new procedure for requests received from partners other than France, it is recommended that Monaco continues monitoring its resources and procedures so that its competent authorities continue to provide comprehensive answers to its partners in a timely fashion.

Annex 1: Jurisdiction's Response to the Review Report¹⁴

After adoption of the final report by the PRG, following to the discussion sessions on 27 June and 8 October 2013, Monaco would like to make the following comments.

Firstly, Monaco would once again like to reiterate its sincere thanks to the assessment team for the constructive spirit in which their visit to Monaco took place in November 2012, and also for this Phase 2 report which reflects Monaco's situation during the period under review with regard to both compliance with the Global Forum's standards, and the implementation of those regulations, particularly in relation to exchanges of information.

These thanks are also directed to the team of experts for the fairness of the ratings proposed.

An assessment of this nature is important for Monaco in that it is both a practical outcome and a positive appraisal by a body recognised internationally for its commitment to fighting for transparency in exchanges of information for tax purposes, in direct line with the will expressed by the Government of the Principality of Monaco to meet international standards while respecting the distinctive characteristics of the Monegasque institutional and socio-economic model in accordance with the instructions of our Sovereign Prince.

From Phase 1 evaluation of the Peer Review of the Principality of Monaco, the Global Forum stated in its report approved in September 2010 that, fundamentally, the legislation in force in the Principality complied with the OECD's standards and that, as of that point in time, the assessment of Monaco was such that it could move on to Phase 2.

Since then, whether it be in the follow-up report to the Phase 1 review, the progress report or the second supplementary report requested by Monaco to demonstrate its determination to implement the recommendations of the

^{14.} This Annex presents the jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's view.

previous reports, the Global Forum has been able to observe and endorse, at each stage, the progress made by Monaco.

This progress can be seen not only in the account taken of the said recommendations in Monaco's legislation, but also in the expansion of its network of agreements or conventions, the ratification and entry into force of signed bilateral agreements.

The outcome of this is that all the elements reviewed in Phase 1 have been declared to be in place, in accordance with the roadmap the Monegasque government imposed upon itself before embarking on Phase 2.

With regard to element B2, the report recommended that Monaco provide for exceptions to the prior notification procedure on the grounds of urgency or in cases where it might allow the taxpayer to avoid the procedure, which resulted in a "partially compliant" rating.

In accordance with the will expressed by Monaco to comply with international standards, such an exception now exists in Monaco's domestic legislation as an amendment to the Sovereign Order on international cooperation in tax matters published in the Official Journal of Monaco on 21 June 2013 and therefore has now entered into force.

Such an exception has in fact been sought in a request for information meeting the requisite conditions, and that request was therefore dealt with by Monaco without informing the taxpayer.

In the same spirit, given that the report refers to recommendations regarding monitoring with the rating "largely compliant" in connection with new laws in force whose effectiveness has yet to be demonstrated, verification of the points concerned has been included in the protocols of current and future control checks carried out by the Department of Economic Development, even where such verification serves no useful purpose for the control concerned with regard to the given objective of that Department, in order to ensure greater efficiency in the event of a request for an exchange of information.

Accordingly, one year after approval of the report by the Global Forum and in accordance with the procedure, Monaco will draw up not only a follow-up report but also a progress report in order to request that these ratings be revised to take account of the progress already achieved.

In this respect, Monaco is already able to mention some significant additional examples of progress during the assessment period, namely:

• the signing of a 28th agreement with South Africa;

- the entry into force of the agreement signed with Mauritius, bringing the total number of such agreements to 25;
- the settling of our difference in opinion with Mali through the signing of a codicil to ensure the compliance of our bilateral agreement with the OECD model, which should allow that agreement to enter into force as soon as possible; and
- with regard to the issue raised in Paris in June, namely the limited number of requests for an exchange of information sent by countries other than France which amounted to 3 in 2011, it can already be reported that this number currently stands at around 15 in 2013, with replies issued in less than 90 days; and lastly
- the continuation of discussions, now at an advanced stage, regarding bilateral agreements which are due to be signed shortly in order to further improve our network.

In conclusion, Monaco does not have any comments on the draft report drawn up by the assessors neither in relation to the ratings awarded to each element nor the overall rating.

Annex 2: List of All Exchange of Information Mechanisms in Force

	Jurisdiction	Type of agreement	Date of signature	Date in force
1	Andorra	TIEA	18 Sep 2009	16 Dec 2010
2	Argentina	TIEA	13 Oct 2009	7 Aug 2010
3	Australia	TIEA	1 Apr 2010	13 Jan 2011
4	Austria	TIEA	15 Sep 2009	1 Aug 2010
5	The Bahamas	TIEA	18 Sep 2009	18 Feb 2011
6	Belgium	TIEA	15 Jul 2009	
7	Denmark	TIEA	23 Jun 2010	6 Oct 2010
8	Faroe Islands	TIEA	23 Jun 2010	7 May 2011
9	Finland	TIEA	23 Jun 2010	20 Nov 2010
10	France	DTC	18 May 1963	1 Sep 1963
11	Germany	TIEA	27 Jul 2010	9 Dec 2011
12	Greenland	TIEA	23 Jun 2010	13 Apr 2012
13	Iceland	TIEA	23 Jun 2010	23 Feb 2011
14	India	TIEA	31 July 2012	3 Apr 2013
15	Liechtenstein	TIEA	21 Sep 2009	14 Jul 2010
16	Luxemburg	DTC	27 Jul 2009	3 May 2010
17	Mali	DTC	13 Feb 2012	
18	The Netherlands	TIEA	11 Jan 2010	1 Dec 2011
19	Norway	TIEA	23 Jun 2010	30 Jan 2011
20	Qatar	DTC	17 Sep 2009	15 Jun 2010
21	Samoa	TIEA	7 Sep 2009	20 Feb 2013
22	San Marino	TIEA	29 Sep 2009	3 May 2010
23	Seychelles	DTC	4 Jan 2010	1 January 2013
24	St. Kitts and Nevis	DTC	17 Sep 2009	1 Dec 2011

	Jurisdiction	Type of agreement	Date of signature	Date in force
25	Sweden	TIEA	23 Jun 2010	26 Dec 2010
26	United States	TIEA	8 Sep 2009	23 Mar 2010
27	Mauritius	DTC	13 Apr 2013	

Annex 3: List of All Laws, Regulations and Other Material Received

Constitution of 17 December 1962 (as amended by Act n° 1.249 of 2 April 2002)

International treaties

Conventions concluded with France

- Convention entre la France et la Principauté de Monaco tendant à éviter les doubles impositions et à codifier les règles d'assistance en matière successorale du 1^{er} avril 1950
- Convention fiscale entre la France et la Principauté de Monaco du 18 mai 1963
- Convention franco-monégasque du 14 avril 1945 relative au contrôle des changes, et accords interprétatifs :
 - (a) échange de lettres du 18 mai 1963 relatif à la réglementation bancaire dans la Principauté
 - (b) échange de lettres du 6 avril 2001 concernant la surveillance harmonisée des établissements de crédit,
 - (c) échange de lettres du 20 octobre 2010 remplaçant l'échange de lettres du 27 novembre 1987
- Convention franco-monégasque sur le contrôle des changes du 14 avril 1945 et échanges de lettres
- Convention douanière franco-monégasque du 16 mai 1963
- Échange de lettres du 27 novembre 1987
- Accord monétaire du 29 novembre 2011 conclu entre la Principauté de Monaco et l'Union européenne, remplaçant la Convention monétaire conclue le 24 décembre 2001

Tax treaties and TIEAs, entered into force or not, signed with others States

- Accord d'échange de renseignements conclu entre la Principauté de Monaco et le Royaume de Belgique le 15 juillet 2009
- Convention fiscale conclue entre la Principauté de Monaco et le Grand-duché de Luxembourg le 27 juillet 2009
- Accord d'échange de renseignements conclu entre la Principauté de Monaco et Samoa le 7 septembre 2009
- Accord d'échange de renseignements conclu entre la Principauté de Monaco et les États-Unis le 8 septembre 2009
- Accord d'échange de renseignements conclu entre la Principauté de Monaco et la république d'Autriche le 15 septembre 2009
- Convention fiscale conclue entre la Principauté de Monaco et l'État du Qatar le 17 septembre 2009
- Convention fiscale conclue entre la Principauté de Monaco et St-Kitts et Nevis le 17 septembre 2009
- Accord d'échange de renseignements conclu entre la Principauté de Monaco et la Principauté d'Andorre le 18 Septembre 2009
- Accord d'échange de renseignements conclu entre la Principauté de Monaco et le Commonwealth des Bahamas le 18 septembre 2009
- Accord d'échange de renseignements conclu entre la Principauté de Monaco et la Principauté du Liechtenstein le 21 septembre 2009
- Accord d'échange de renseignements conclu entre la Principauté de Monaco et la République de Saint-Marin le 29 septembre 2009
- Accord d'échange de renseignements conclu entre la Principauté de Monaco et la république Argentine le 30 octobre 2009
- Convention fiscale conclue entre la Principauté de Monaco et la République des Seychelles le 4 janvier 2010
- Accord d'échange de renseignements conclu entre la Principauté de Monaco et le Royaume des Pays-Bas le 11 janvier 2010
- Convention entre la Principauté de Monaco et la République du Mali en vue d'éviter les doubles impositions et de prévenir l'évasion fiscale en matière d'impôts sur le revenu le 13 février 2012
- Accord d'échange de renseignements conclu entre la Principauté de Monaco et l'Inde le 13 July 2012
- Convention fiscale conclue entre la Principauté de Monaco et l'Île Maurice le 13 avril 2013

Codes

- Article 10 du Code de Commerce
- Article 308 du Code pénal

Tax legislation

- Annexe au Code des Taxes sur le chiffre d'affaires
- Ordonnance Souveraine n° 3152 du 19 mars 1964 instituant un impôt sur les bénéfices
- Ordonnance Souveraine n° 10.324 du 17 octobre 1991 relative à l'impôt sur les bénéfices régime des entreprises nouvelles
- Ordonnance Souveraine n° 10.325 du 17 octobre 1991, modifiée, relative à l'impôt sur les bénéfices – crédit d'impôt recherche
- Ordonnance Souveraine n° 373 du 26 janvier 2006 relative aux rémunérations des dirigeants
- Ordonnance sur l'enregistrement, le timbre, le droit de greffe et les hypothèques du 29 avril 1828
- Ordonnance-loi n° 155 portant simplification de certaines formalités en ce qui concerne l'enregistrement et les hypothèques du 17 juin 1931
- Loi n° 223 portant codification et modification des droits d'enregistrement, de timbre et d'hypothèque du 27 juillet 1936
- Loi n° 276 portant réforme en matière de droits de mutation par décès du 2 octobre 1939
- Ordonnance-loi n° 389 sur la déclaration des successions en ligne directe du 20 juin 1944
- Loi n° 474 portant réforme en matière de droit d'enregistrement et de timbre du 4 mars 1948
- Loi n° 580 portant aménagement des droits d'enregistrement et d'hypothèques du 29 juillet 1953
- Loi n° 704 modifiant le régime fiscal des mutations à titre gratuit entre époux du 5 juin 1961
- Loi n° 842 tendant à modifier le régime des droits d'enregistrement applicable aux opérations immobilières soumises à la taxe sur la valeur ajoutée du 1^{er} mars 1968

- Ordonnance n° 101du 26 juin 2005 portant application de l'accord conclu entre la Principauté de Monaco et la Communauté Européenne prévoyant des mesures équivalentes à celles que porte la directive 2003/48/CE du Conseil en matière de fiscalité des revenus de l'épargne sous forme de paiement d'intérêts signé à Bruxelles le 7 décembre 2004
- Loi n° 1.300 relative à l'escroquerie fiscale applicable aux revenus de l'épargne payés sous la forme d'intérêts du 15 juillet 2005
- Ordonnance n° 3085 du 25 septembre 1945 relative aux droits et devoirs des agents des services fiscaux

International tax co-operation legislation

- Ordonnance souveraine n° 2.693 du 23 mars 2010 relative à la coopération internationale en matière fiscale
- Arrêté ministériel n° 2010-159 du 23 mars 2010 portant application de l'Ordonnance Souveraine n° 2.693 du 23 mars 2010 relatif à la coopération internationale en matière fiscale

Companies legislation

- Ordonnance du 5 mars 1895 sur les sociétés anonymes et en commandite par actions
- Loi n° 408 du 20 janvier 1945 complétant l'Ordonnance sur les sociétés anonymes et en commandite par actions, du 5 mars 1895, notamment en ce qui concerne la nomination, les attributions et la responsabilité des commissaires
- Ordonnance n° 3.167 du 29 janvier 1946 réglant l'établissement du bilan des sociétés anonymes et en commandite
- Loi n° 721 du 27 décembre 1961 instituant le Répertoire du Commerce et de l'Industrie
- Ordonnance Souveraine n° 2853 du 22 juin 1962 portant application de la loi n° 721 du 27 décembre 1961 instituant un Répertoire du commerce et de l'industrie
- Loi n° 1.144 du 26 juillet 1991concernant l'exercice de certaines activités économiques et juridiques
- Loi n° 1.282 du 7 juin 2004 modifiant certaines dispositions relatives aux sociétés par actions,

- Loi nº 1.331du 8 janvier 2007 relative aux sociétés
- Loi n° 1.385 du 15 décembre 2011 portant diverses mesures en matière de mise à jour de la législation sur les sociétés anonymes, les sociétés civiles, les trusts et les fondations
- Arrêté ministériel n° 2012-182 du 5 avril 2012 portant application de la loi n° 1.385 du 15 décembre 2011 portant diverses mesures en matière de mise à jour de la législation sur les sociétés anonymes, les sociétés civiles, les trusts et les fondations

Financial activities legislation

- Loi n° 1.338 du 9 juillet 2007 sur les activités financières
- Loi n° 1.339 du 9 juillet 2007 relative aux fonds communs de placement et aux fonds d'investissement
- Ordonnance Souveraine n° 1.284 du 10 septembre 2007 portant application de la loi n° 1.338 du 7 septembre 2007 sur les activités financières
- Ordonnance Souveraine 1.285 du 10 septembre 2007 portant application de la loi n° 1.339 du 7 septembre 2007 relative aux fonds communs de placement et aux fonds d'investissement

Anti-money laundering legislation

- Loi n° 1.362 du 3 août 2009 relative à la lutte contre le blanchiment de capitaux, le financement du terrorisme et la corruption
- Ordonnance Souveraine n° 2.318 du 3 août 2009 fixant les conditions d'application de la loi n° 1.362 du 3 août 2009 relative à la lutte contre le blanchiment de capitaux, le financement du terrorisme et la corruption
- Ordonnance souveraine n° 3.450 du 15 septembre 2011 portant modification de l'Ordonnance souveraine n° 2.318 du 3 août 2009 fixant les conditions d'application de la loi n° 1.632 du 3 août 2009 relative à la lutte contre le blanchiment de capitaux, le financement du terrorisme et la corruption

Trusts legislation

- Loi n° 214 du 27 février 1936 (portant révision de la loi n° 207 sur les trusts du 12 juillet 1935) modifiée par la loi n° 1.216 du 7 juillet 1999
- Ordonnance souveraine n° 14.346 du 2 mars 2000 portant application de la loi n° 1.216 du 7 juillet 1999 portant modification de la loi n° 214 du 27 février 1936 sur les trusts
- Loi n° 1.385 du 15 décembre 2011 sur les trusts

Foundations legislation

- Loi n° 56 du 29 janvier 1922 sur les fondations
- Ordonnance souveraine n° 3.449 du 15 septembre 2011 portant application de l'article 13-1 de la loi n° 56 du 29 janvier 1922 sur les fondations, modifiée

Annex 4: People Interviewed During the On-Site Visit

Representatives of the Ministry of Finance

Representative of the Department of Foreign Affairs

Representatives of the Department of Tax Services, including:

- Representative of the Corporate Tax Unit
- Representative of the Real Estate Tax Unit
- Representative of the Savings Tax Unit
- Representative of the VAT Unit
- Representative of the Administrative Assistance Unit

Representatives of the Service d'Information et de Contrôle sur les Circuits Financiers – Financial Circuits Supervisory and Monitoring Service (SICCFIN)

Representatives of the Supervisory Authority for professionals including:

- A representative of the notaries
- A representative of the Chartered Accountants

Representatives of the Department of the Interior

Representatives of the Direction of the Budget and Treasury

Representatives of the Department of Economic Development

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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Global Forum on Transparency and Exchange of Information for Tax Purposes PEER REVIEWS, PHASE 2: MONACO

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

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 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.*

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