Global Forum on Transparency
and Exchange of Information for Tax Purposes

SUPPLEMENTARY PEER REVIEW REPORT

Phase 2

Implementation of the Standard in Practice

LUXEMBOURG

OECD

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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.

List of abbreviations/Translation

AED *Administration de l'enregistrement et des domaines* or Indirect Tax Administration

ADA *Administration des douanes et des accises* or Customs and Excise Administration

ACD *Administration des contributions directes* or Direct Tax Administration

AML/CFT legislation Anti-money laundering/combating financing of terrorism Legislation

CAA *Commissariat aux Assurances* or Insurance Commission

CDD Customer Due Diligence

Circular of 31 December 2013 administrative circular modifying the practice of the tax authorities in the collection process of information for international exchange purposes (ECHA – no. 1)

CLO Central Liaison Office

Company Law Law of 10 August 1915

CSSF *Commission de surveillance du secteur financier* or Financial Sector Supervisory Commission

Multilateral Convention Convention on Mutual Administrative Assistance in Tax Matters

New Law on EOI *Loi du 25 novembre 2014 prévoyant la procédure applicable à l'échange de renseignements sur demande en matière fiscal* **or Law of 25 November 2014 organising the procedure for exchange of information on request for tax purposes (In force on 1 December 2014)**

RCS *Registre de Commerce et des Sociétés* or Register of Commerce and Companies

S.à.r.l	*Société à responsabilité limitée* or limited liability company
S.e.c.a	*Société en commandite par actions* or partnership limited by shares
S.e.c.s	*Société en Commandite Simple* or limited partnership
S.c.Sp	*Société en commandite spéciale* or Special limited partnerships
S.e.n.c	*Société en Nom Collectif* or general partnership or unlimited company
SA	*Société Anonyme* or public limited company
SE	*Société Européenne* or European Company
SICAF	*Société d'investissement à capital fixe* or Investment company with fixed share capital
SICAR	*Société d'investissement à capital de risque* or Investment company in risk capital
SICAV	*Société d'investissement à capital variable* or Investment company where the capital is not fixed
SOPARFIs	*Société à participation financière* or Financial holding companies
SPF	*Sociétés de gestion de patrimoine familial* or Family wealth management companies

Executive summary

1. In 2013, The Global Forum evaluated Luxembourg for its implementation of the standard in practice. At the end of this evaluation, Luxembourg was rated Non-Compliant overall. This supplementary report evaluates the progress made by Luxembourg since then. This report concludes that Luxembourg is now rated Largely Compliant overall.

2. The Phase 2 report concluded that Luxembourg was Compliant for elements A.2 (Availability of Accounting Information), and A.3 (Availability of Banking Information), Largely Compliant for element C.2 (Network of EOI Mechanisms), Partially Compliant for elements B.2 (Notification Requirements and Rights and Safeguards), C.3 (Confidentiality), and C.5 (Exchanging Information), and Non-Compliant for elements A.1 (Availability of Ownership and Identity Information), B.1 (Access to Information), C.1 (EOI Mechanisms) and C.4 (Rights and Safeguards of Taxpayers and Third Parties).

3. This report summarises the legal and regulatory framework for transparency and exchange of information for tax purposes in Luxembourg as well as the practical implementation of that framework. The assessment of exchange of information in practice covers the two and a half year period 1 January 2012 to 30 June 2014.

4. For element A.1, the Phase 2 report concluded that Luxembourg did not have mechanisms allowing for the identification of holder of bearer shares and partners of SICARs taking the form of S.e.c.s under all circumstances. Luxembourg introduced new legal measures to address the shortcomings identified in the Phase 2 report and actively monitored the implementation of the rules in practice. However, considering that the new provisions on the immobilisation of bearer shares are recent and are not fully effective yet, it is recommended that Luxembourg continues to monitor their implementation. As a result of these changes the rating for element A.1 has been upgraded to Largely Compliant.

5. A number of issues were raised in the Phase 2 report with regard to element B.1. A recommendation was made to ensure access to banking

information under all agreements (Phase 1), for explanations to be provided when the gathering powers are not used (Phase 2) and for Luxembourg to exercise its powers to compel production of information and apply sanctions as appropriate (Phase 2).

6. In order to address these issues, Luxembourg has increased its EOI network. Luxembourg has now 108 EOI relationships, of which, 100 are in line with the standard, which allow for the exchange of banking information and other information protected by secrecy. Luxembourg also made changes to its legal framework and practice to provide explanation to its partners when it cannot obtain the requested information, and now uses sanctions for cases where the requested person fails to provide the information. During the period under review, sanctions have been applied in ten cases when the requested information was not provided. This new practice was confirmed by comments received from the peers. However, considering the new legal obligations and elements of practice, a recommendation is made for Luxembourg to monitor the practical implementation of the recently introduced legal obligations and changes made to the practice, which were made to ensure that the requested information is obtained and exchanged in accordance with the standard in all cases. The rating of element B.1 is upgraded to Largely Compliant.

7. With regard to B.2, Luxembourg was recommended in the Phase 2 report to ensure that in all cases, its processes and procedures to collect information are clearly communicated to all its treaty partners and that these processes are followed. Luxembourg has clarified its practice with regard to notification. If the requesting partner stipulates that the request be kept confidential from the taxpayer, the information will be requested directly from the information holder. An anti-tipping off provision applicable to the information holder has entered into force on 1 December 2014. In addition, Luxembourg has abolished the right to appeal since 1 December 2014. However, a number of cases based on the old appeal procedure are still pending and it is recommended that Luxembourg ensure that the requesting partners are informed of the progress of the judicial process. The rating for element B.2 is thus upgraded to Largely Compliant.

8. In respect of element C.1, the Phase 2 report noted that Luxembourg had signed three agreements establishing restrictions which were inconsistent with the standard. Since the Phase 2 report, Luxembourg signed an agreement to the standard with two of these jurisdictions and has started the negotiation with the third jurisdiction.

9. A significant issue with regard to element C.1 of the Phase 2 evaluation was that there were only 43 agreements, out of 75 signed agreements, that allowed for exchange of information in accordance with the standard. A Phase 1 recommendation was made for Luxembourg to ensure that all

treaties signed could allow for an exchange of information in accordance with the international standard. Luxembourg now has an EOI relationship with 108 jurisdictions, of which 100 are in line with the standard.

10. There were two further issues identified in the Phase 2 report, Firstly, the interpretation of the foreseeably relevant standard in Luxembourg was considered, in the Phase 2 evaluation, as being unduly restrictive and preventing it from engaging in effective exchange of information in line with the international standard in certain cases. It was recommended that Luxembourg review its practices in this regard to align them with the international standard. Luxembourg has changed its interpretation of the concept of foreseeably relevance. Its practice in relation to the application of this concept during the period under review did not raise any concerns by its EOI partners and is in line with the standard.

11. Secondly, Luxembourg did not exchange banking information with regard to requests that related to a tax period that was after the effective date of the agreement where the information precedes that date, even in instances where the information was otherwise available. Luxembourg was recommended, in the Phase 2 report, to conform to the standard and exchange the information. Since 1 January 2014, Luxembourg has changed its practice and exchanged such information. However, at the beginning of the period under review, some requests were not answered because the information requested predates the entry into force of the agreement, even if the requests were in relation to a year after the entry into effect of the provisions of the EOI agreement. A recommendation is made for Luxembourg to monitor the implementation of the new practice and assist the jurisdictions that had not received the requested information on this basis, in case they would like to send a new request. Nevertheless, given the important progress made by Luxembourg, element C.1 is upgraded to Largely Compliant.

12. With regard to element C.2, the Phase 2 report noted that Luxembourg could not exchange information in accordance with the international standard under its EOI agreements with several partners, since only 43 of its 75 agreements were in line with the standard. Luxembourg today has a network of information exchange mechanisms covering 108[1] jurisdictions. Of these 108 relationships, 100 are in line with the standard. Accordingly, element C.2 is rated Compliant.

13. In the Phase 2 review, the unnecessary disclosure of information in injunction letters, which is not otherwise public information, was found not

1. See Annex 3 for the agreements signed, allowing for the exchange of banking information, to the standard and in force, including the jurisdictions covered by the EU Council Directive on Administrative Cooperation in the Field of Taxation 2011/16/EU and the Multilateral Convention.

in accordance with the principle that the information contained in an EOI request should be kept confidential and accordingly, a recommendation was included. Luxembourg has changed its practice and now discloses only the minimum information necessary to collect the information. However, all injunctions letters sent during the period under review were made based on the old practice. A recommendation for Luxembourg to monitor the implementation of the new practice is made. The rating of element C.3 is upgraded to Largely Compliant.

14. Regarding element C.4, the Phase 2 report found that the interpretation and application of Luxembourg's laws relating to handling of stolen data as a justification to decline to exchange information under an international treaty was unclear, had never been tested and had not been adequately explained. A recommendation was made for Luxembourg to provide the information or a clear and valid legal basis for its practice of not providing information in these cases. Since the Phase 2 report, Luxembourg has reviewed and changed its position concerning requests based on stolen data and in accordance with this new policy, during the period under review, Luxembourg's authorities answered all 37 requests that were based on stolen data. As a consequence, element C.4 is upgraded to Compliant.

15. Finally, with regard to element C.5, Luxembourg's response timeframe has greatly improved since the Phase 2 review. Luxembourg ensured timely responses within 90 days in 47% of the cases and within 180 days in 78% of the cases. While progress has been made during the period under review, some peers expressed concerns with delays in receiving responses. A recommendation for Luxembourg to monitor its timeframe for answering requests to ensure that it always replies in a timely manner is made and element C.5 is upgraded to Largely Compliant.

16. As a result of this supplementary assessment, Luxembourg's rating for each of the 10 essential elements and the overall rating have been revised. On this basis, Luxembourg has been assigned the following ratings: Compliant for elements A.2, A.3, C.2 and C.4, and Largely Compliant for elements A.1, B.1, B.2, C.1, C.3 and C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Luxembourg is upgraded to Largely Compliant.

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

Introduction

Information and methodology used for the peer review of Luxembourg

18. The assessment of the legal and regulatory framework of Luxembourg 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, and were prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The assessment is based on the laws, regulations and information exchange mechanisms in force or effect as at 24 July 2015, other information, explanations and material provided by Luxembourg and information provided by Luxembourg's treaty partners as well as information collected during an on-site visit to Luxembourg that took place in April 2015. During the on-site visit, the assessment team met with officials and representatives of the relevant Luxembourg government agencies, including the Direct Tax Administration, the Indirect Tax Administration, the Customs and Excise Duties Administration, and the Exchange of Information Division.

19. The Terms of Reference breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Luxembourg's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that: *(i)* the element is in place; *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement; or *(iii)* the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Luxembourg's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. An overall rating is also assigned to reflect Luxembourg's overall level of compliance with the standard.

20. The assessments of Luxembourg by the Global Forum are listed in the table below:

Assessment	Assessors	Peer review period	Date of adoption by the Global Forum
Phase 1 report	Ms Shauna Pittman, Counsel, Canada Revenue Agency Ms Silvia Allegrucci civil servant in the Department of Finance for Italy Mr Rémi Verneau from the Secretariat to the Global Forum	Not applicable	August 2011
Phase 2 report	Ms Shauna Pittman, Counsel, Canada Revenue Agency Ms Silvia Allegrucci civil servant in the Department of Finance for Italy Mr Rémi Verneau and Ms Mélanie Robert from the Secretariat to the Global Forum.	1 January 2009 to 31 December 2011	Adopted in June 2013. Approval of the Phase 2 rating in November 2013
Phase 2 supplementary report	Ms Heather Hemphill, Senior Counsel, Canada Revenue Agency Legal Services, Department of Justice Ms Lorraine Welch, Deputy Chief Parliamentary Counsel, Ministry of Legal Affairs, Bermuda Ms Mélanie Robert from the Secretariat to the Global Forum.	1 January 2012 to 30 June 2014	[**October 2015**]

21. The Phase 2 Supplementary assessment evaluated *(i)* the changes made to the legal and regulatory framework until 24 July 2015 and *(ii)* the implementation and effectiveness in practice of Luxembourg's legal and regulatory framework for transparency and exchange of information and of its relevant information exchange mechanisms during the peer review period (1 January 2012 to 30 June 2014).

Overview of Luxembourg

22. The overview of Luxembourg is included in paragraphs 21 to 42 of the Phase 2 report. The section below only includes a brief and updated summary of the legal and regulatory system of Luxembourg.

General information on the fiscal system

23. One feature of the Luxembourg tax system is that it embraces three tax administrations: *(i)* The Direct Tax Administration (*Administration des contributions directes*, ACD), which assesses and collects individual income tax, corporate income tax (*impôt sur les collectivités*) and the municipal business tax; *(ii)* the Indirect Tax Administration (*Administration de l'enregistrement et des domaines,* AED) is responsible for assessing and collecting VAT, stamp duties and succession taxes, and *(iii)* the Customs and Excise Administration (*Administration des douanes et des accises*, ADA) is responsible for excise duties, consumption taxes on alcohol, and the vehicle tax.

24. Individuals and legal persons resident in Luxembourg are taxable on their worldwide income. All natural persons who have their domicile or habitual abode in Luxembourg are considered residents. Legal persons are considered to be residents if they have their statutory headquarters or their central administration ("effective place of management") in Luxembourg. Non-resident individuals or legal persons are taxed on their income from Luxembourg sources.

25. As a member of the European Union, Luxembourg participates in the common VAT system. The normal rate of tax is 17%, and the reduced rate is 8%. The taxation of occupational incomes of individuals is progressive, with a maximum rate of 40%. Corporations (*collectivités*, i.e. companies and legal persons) are subject to profit tax at a rate of 20% on profits up to EUR 15 000, and 21% above this amount. They are also subject to the municipal business tax at a rate of 3% multiplied by the municipal rate (200-400%).

26. In 2013, total tax revenues amounted to 39% of GDP, with the VAT representing 23% of tax revenues, the personal income tax 30%, and the corporation tax 22%.

Overview of commercial laws and other relevant factors for exchange of information

27. At the end of 2014, the Luxembourg financial sector included 144 banks with balance sheets totalling nearly EUR 735.24 billion; 111 investment companies, with balance sheets totalling EUR 3 643 billion; 123 other "financial sector professionals" with balance sheets totalling EUR 10.8 billion; 3 905 undertakings for collective investment managing assets of EUR 3 095 billion; 288 venture capital/private equity companies (SICAR); 32 securitisation organisms, 15 pension funds, 9 payment institutions, 6 electronic money institutions, 264 Luxembourg fund managers, 634 issuers of securities whose home member state is Luxembourg pursuant to the transparency law, and 359 auditors and audit firms.

28. The financial sector is regulated by the Financial Sector Act of 5 April 1993 and various specific laws regarding each category of professionals concerned. The Financial Sector Supervisory Commission (CSSF), which operates under the authority of the Minister of Finance, is the competent authority for the prudential supervision of credit institutions, other financial sector professionals, undertakings for collective investment, pension funds taking the form of SEPCAV[2] and ASSEP,[3] approved securitisation organisms, SICARs, paying institutions, postal financial services proposed by the mail and telecommunications company, financial instruments markets, including its operators, and auditors. The CSSF also vets the license applications of banks and other financial sector professionals prior to approval by the Minister of Finance.

29. The insurance sector is governed by the Insurance Sector Act of 6 December 1991 and regulated by the Insurance Commission (CAA), which conducts prudential supervision. The CAA examines license applications for insurance companies, for granting by the Minister of Finance. At the end of 2013, the Luxembourg insurance sector included 95 direct insurance companies and 226 reinsurance companies, with balance sheets totalling EUR 182.2 billion.

30. Notaries, bailiffs, attorneys, auditors, accountants and real estate agents in Luxembourg are all regarded as constituting non-financial professions and enterprises under anti-money laundering legislation and are required, pursuant to this legislation, to perform customer due diligence.

Recent developments

31. In addition to penalties which currently can only be applied by the State Prosecutor, the Luxembourg authorities are working on a draft law to introduce administrative penalties that could be applied directly by the *Registre de Commerce et des Sociétés* (Register of Commerce and Companies – RCS). The draft law has been approved by the Government Council and is now pending for comments by the Council of State, before approval by the Parliament.

2. Open-end Pension Savings Company.
3. Pension Savings Association.

Compliance with the Standard

A. Availability of information

Overview

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

33. The Phase 1 and Phase 2 reports concluded that the determination of element A.1 was "not in place" and the rating was Non-Compliant because of some deficiencies identified regarding ownership and identity information for SICARs which take the form of limited partnerships and the existence of bearer shares. A recommendation was made for Luxembourg to ensure the availability of information regarding bearer shares and another one was made to ensure that ownership information relating to SICARs which take the form of limited partnerships is available in all circumstances. For the other aspects covered by element A.1, it was concluded that Luxembourg has a legal and regulatory framework according to which information on the identity of shareholders of companies and partnerships must be available.

34. Since the Phase 2 report, Luxembourg has amended its legislation to ensure the availability of ownership information for SICARs which take the form of limited partnerships and to immobilise bearer shares.

35. All companies and partnerships are required to register with the *Registre de Commerce et des Sociétés* (Register of Commerce and Companies – RCS) in the month following their incorporation. The articles of incorporation must be provided for registration and are published either totally or in the form of extracts. Co-operative companies (*sociétés coopératives*) are required to disclose in their statutes the names of their members and must provide to the RCS any amendment made to these statutes. The law requires limited liability companies (*sociétés à responsabilité limitée*, S.à.r.ls), general partnerships (*sociétés en nom collectif*, S.e.n.cs), limited partnerships (*sociétés en commandite simple*, S.e.c.ss) and partnerships under civil law to report the names of their shareholders and partners upon registration and to update that information thereafter in the RCS. Public limited companies (*sociétés anonymes*, SAs), European companies (SEs) and partnerships limited by shares (*sociétés en commandite par action*, S.e.c.as) are not bound by this last obligation but must keep a register of registered shares. Luxembourg has also created a new type of partnership, special limited partnership, which is a partnership without legal personality. Its legal regime is largely based on the limited partnership so that most provisions on the special limited partnership have been taken over from the limited partnership and only been modified insofar as to cater for the particular characteristics resulting from the lack of legal personality (e.g. management and dealings with third parties). Furthermore, commercial law imposes similar requirement regarding the maintenance of information concerning their owners as for S.e.n.c. and the S.e.c.s. (article 6, 7° and article 6 bis, 4° of the law of 19 December 2002 concerning the register of commerce and companies) as well as bookkeeping and annual account of companies.

36. Luxembourg is signatory to the Hague Convention on trusts. A trust may be administered from Luxembourg, or assets located in Luxembourg may be held through a trust. Luxembourg also authorises the creation of *fiducies*. The Anti-money laundering/combating financing of terrorism Legislation (AML/CFT) adopted by Luxembourg, and recently updated, requires service providers to retain information on the settlors (i.e. creators) and beneficiaries of trusts and *fiducies*.

37. Luxembourg foundations are always created for a philanthropic, usually charitable, purpose, and must be authorised by the Minister of Justice. The conditions for operation of these entities require that information on their founders and beneficiaries be available.

38. All relevant entities and arrangements, companies, partnerships, foundations and *fiducies* must keep accounting records and substantiating documentation for 10 years. This ensures the availability of such information

and allows the entities' transactions to be traced for purposes of establishing their financial positions and preparing their financial statements.

39. Pursuant to AML/CFT legislation, Luxembourg banks and financial institutions are required to perform customer due diligence and to hold records of transactions conducted by their current customers for a period of at least five years.

40. Luxembourg's legal and regulatory frameworks, as well as the practices of Luxembourg's authorities, generally ensure the availability of ownership and identity information, accounting records and banking information. Luxembourg has a strong system of supervision, performed by the tax authorities through controls and audits, and also by other authorities in charge of the supervision of AML obligations for professionals and financial institutions. Luxembourg has received 1 380 requests during the period under review, most of which were in relation to identity, accounting or banking information. The Luxembourg authorities have confirmed that in almost all cases, the information was available and exchanged.

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)

41. The Phase 2 report found that the rules regarding the maintenance of ownership information in respect of companies in Luxembourg (with the exception of the rules regarding bearer shares) were generally in accordance with the standard and were effective in practice. A recommendation regarding the availability of information in respect of foreign partners of SICARs which takes the form of an S.e.c.s was made in the Phase 1 report. Luxembourg has amended its legal framework to address this recommendation and the recommendation concerning bearer shares.

42. A summary of the conclusions from the Phase 2 report are included here, as well as a report of any changes to the legal framework and an analysis of the experience in practice since the last review. For a more detailed analysis of the legal requirements for companies in Luxembourg see Phase 2 report, paragraphs 52-134.

4. *Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information*.

Types of Companies and Requirements to Maintain Information

43. Pursuant to the company law five types of companies can be created in Luxembourg: ***société anonyme* (SA)**, or "public limited company", ***Société Européenne* (SE)** or "European Company", ***Société en commandite par actions* (S.e.c.a)** or **"**partnership limited by shares", ***Société à responsabilité limitée* (S.à.r.l)** or "limited liability company" and ***Société coopérative*** or "co-operative company". These entities are required to maintain information of their owners under both commercial and tax law requirements. In addition, AML/CFT legislation requires professionals involved in the formation of companies in Luxembourg to identify the owners of their clients. Each of these regimes is subject to appropriate oversight by the various authorities.

Commercial Law Requirements and Oversight

44. All companies, except co-operative companies, must be created by a notarised deed. Upon creation of a company in Luxembourg, the notary in charge of preparing the articles of incorporation will, in accordance with applicable AML/CFT requirements, verify all information needed for incorporation, including ownership and identity information.

45. Company law in Luxembourg requires that the ownership and identity information for co-operative companies must be included in its articles of incorporation and the articles of incorporation must be updated every time there is a transfer of shares.

46. The Company law and the law concerning the commerce and company register as well as annual accounting of enterprise, provide that all companies, including branches of foreign companies, must register with the RCS and provide their deed of incorporation and indicate their corporate name, legal form, address of headquarters and amount of capital. Ownership and identity information for both co-operative companies and S.à.r.l. must be provided to the RCS upon registration and updated when there is a transfer of shares. However, the deed of incorporation of SA, SE, S.e.c.s and foreign companies does not necessarily contain identity and ownership information.

47. The company law also requires that all companies, including foreign companies, maintain a register of registered shares at their corporate offices. Registers of shares kept by legal entities are available to the tax authorities as these legal entities must provide the information to the tax authorities on request.

48. The RCS carries out a verification of the information submitted upon registration (a comparison between the information contained in the statutes and the information listed in the registration request). Since the information almost always comes through a notary, the information is of very good

quality and filed on time (see below for more information on supervision to which notaries are subject).

49. Starting in 2009, the RCS has undertaken a process of verification of all entries made in the RCS before 2002. All companies have received a letter asking them to verify the information maintained in the RCS and to correct it without charge, if necessary. The process is now completed. 35 630 companies have been contacted and 50.3% of companies have updated their file. The information updating exercise allowed registered companies to pass review, and eventually, update all the information filed with the Register as foreseen by law and to introduce missing documents that should have been publicised in the Luxembourg official journal. No precise statistics are available concerning the type of information that was updated during the process. Generally speaking, it appears that when there are deficiencies, it is mainly in filing annual accounts in time or not filing annual accounts at all.

50. Currently, to apply sanctions for non-compliance with the registration requirements, the RCS must refer the case to the State Prosecutor.

51. The record keeping requirement is verified by the direct taxation administration (A*dministration des contributions directs* – ACD) during tax audits. In practice, Luxembourg's authorities have confirmed that the information on companies is always provided when requested. During the period under review, there have been 130 audits of tax files (for legal entities or individual carrying on business activities) and 118 on-site visits. Luxembourg authorities have confirmed that audits were done for EOI purposes. In 2013 and 2014, 20 cases have been referred to the State Prosecutor for initiating criminal proceedings. In addition, during the period under review, the ACD has launched a bankruptcy process for 361 taxpayers[5] and has referred 1 285 cases to the State Prosecutor for liquidation of the company (in case of non-compliance with tax or accounting obligations, including maintaining the shares register). The AED has launched a bankruptcy process for 595 taxpayers and has referred 375 cases to the State Prosecutor for liquidation of the company. The verification of the shares register is part of these tax controls but Luxembourg does not have specific statistics for control of share registers or sanctions applicable.

5. This is the last remaining possibility for tax debt recovery in case of persistent state of credit weakness and insolvency of the company.

52. As of 31 December 2014, the total numbers of legal entities registered in the RCS (including branches of foreign companies), were:

Legal entity	Total number
***société anonyme* (SA)**, or "public limited company"	50 769
***Société Européenne* (SE)** or "European Company"	25
***Société en commandite par actions* (S.e.c.a)** or "partnership limited by shares"	1 418
***Société à responsabilité limitée* (S.à.r.l)** or "limited liability company"	60 182
Société coopérative or "cooperative company"	127

Tax Law Requirements and Oversight

53. All companies are required to register with the ACD, by application of the tax law. Upon registration with the tax administration, all companies must provide ownership and identity information, if it was not already provided to the RCS. Companies subject to VAT must also register with the indirect taxation administration (*Administration de l'enregistrement et des domaines* – AED) and provide information on its shareholders.

54. Companies are also required to submit an annual return to the ACD. This return must include the name of shareholders holding at least 10% of the company's capital. Additional information about shareholders must also be disclosed such as information necessary for the application of some fiscal provisions (exemption of withholding tax on dividends, taxation of benefits granted to shareholders), the attendance list and the minutes of the general meetings of shareholders.

55. Fines are applicable for late filing of tax returns. In the period under review (1 January 2012 -30 June 2014), 8 303 legal entities received fines for late filing or missing information for a total of EUR 9 251 059. In addition, during the same period, 362 legal persons have received a surtax for late filing for a total amount of EUR 320 796.

56. In summary, the high level of compliance of Luxembourg taxpayers coupled with strict registration processes ensures that information necessary to assess the tax situation of taxpayers will be available either directly with the tax authorities and the registration authorities or in the documents that have to be maintained by the taxpayers themselves.

Professionals providing registered offices

57. The law on professionals providing registered offices to companies provides that only a credit institution or another professional of the financial sector and the insurance sector, an attorney-at-law ("*avocat à la Cour"*), a

European lawyer, an external auditor, an approved external auditor, and an accountant can provide registered offices to companies. Such agents must know the real identity of the members of the bodies of the company registered with it and must hold the relevant documentation and keep it up to date. That information must be retained for at least five years after the relations between the company and the agent have ceased.

58. As service providers, agents providing registered offices are also subject to the rules contained in Luxembourg's AML/CFT legislation. These service providers are required to perform Customer Due Diligence (CDD) towards their customers in all circumstances and retain information on the identity of their clients and beneficial owners, as well as all information regarding transactions conducted, for five years. These obligations are examined during the AML/CFT verification process to which agents providing registered offices are subject (AML/CFT supervision process for professionals is described below).

Foreign companies

59. Foreign companies that have their principal establishment in Luxembourg ("effective seat of management" or branch) are subject to the same formalities as companies established under company law. These companies are required to register with the RCS in Luxembourg, following the same rules as those that apply to Luxembourg companies; they must register with the ACD, and they must submit annual tax returns to the ACD. They are also required to keep a register of shares in the same conditions as those that apply to Luxembourg companies. Consequently, information on these companies is available under the same conditions as those described above for Luxembourg companies.

60. There were 1 378 foreign companies registered with the RCS as of 31 December 2014. Luxembourg's authorities have confirmed that the information on foreign companies is available to the same extent as information on companies incorporated in Luxembourg, as foreign companies need to be registered with the RCS and the ACD (and for VAT, if applicable). In practice, Luxembourg has received very few requests for information on foreign companies during the period under review (less than five). Luxembourg has never experienced any problem in accessing information on foreign companies, and no issues in relation to such companies were identified by Luxembourg's treaty partners.

Investment companies, financial holding companies (SOPARFIS) and family wealth management companies (SPFs)

Investment companies (SICAV, SICAF, and SICAR)

61. Three types of investment companies can be created in Luxembourg: **SICAVs** (under the form of an SA or an SE), **SICAFs** (under the form of an SA, an SE, a S.e.c.a, a S.à.r.l, an S.e.c.s, a S.e.n.c and a cooperative company), and **SICARs** (investment company in risk capital, under the form of an SA, a S.à.r.l, a S.e.c.a or an S.e.c.s).

62. The company law with regard to the establishment of companies apply to SICAVs, SICAFs and SICARs. Accordingly, investment companies must be registered in the RCS and provide their deeds of incorporation. SICAVs, SICAFs and SICARs must take the form of limited companies or limited partnerships. Therefore, the rules applicable to these legal entities concerning the availability of information are exactly the same as for all other legal entities in Luxembourg and are not affected by their status of SICAVs, SICAFs or SICARs. Information needed for incorporation (such as information on shareholders and beneficial owners) is verified by the notary upon creation of the legal entity and when the statutes are modified.

63. For tax purposes, SICAFs and SICAVs are not subject to corporate income tax but to an annual subscription tax. These companies are therefore required to submit a declaration for payment of this tax to the AED, but are not subject to other tax requirements in terms of registration by tax authorities or declaration of income. SICARs are subject to corporate and communal taxes. As entities liable and subject to taxes, SICARs must be registered by the ACD.

64. The Phase 1 and 2 reports found that there was no obligation for SICARs taking the form of an S.e.c.s, to disclose the identity of the foreign partners. Article 4 of the law of June 2004 provided an exception whereby SICARs taking the form of an S.e.c.s. were exempted from the obligation to disclose the identity of the partners. A Phase 1 recommendation was made on this issue.

65. The Law of 15 June 2004 was amended by the Law of 12 July 2013 in relation to alternative investment fund managers, abolishing this exemption. Consequently, SICARs in the form of S.e.c.s are now (since July 2013) subject to the same general legal requirements as S.e.c.s not taking the form of a SICAR, including foreign partners. This means that information on the general partners must be filed with the RCS and information on the limited partners must be kept by the entity on the shares register. Since the change in the legislation, the *Commission de surveillance du secteur financier* (Financial Sector Supervisory Commission – CSSF) verifies, on a case-by-case basis, whether the RCS and the shares register of such SICAR contains

the required information regarding the identity of its limited partners. As of 31 December 2014, there were 15 SICARs in the form of S.e.c.s. in Luxembourg and no requests about identity and ownership information on SICAR in the form of S.e.c.s. were received during the period under review. As Luxembourg has changed its law and no issues with respect to exchanging this information has been identified, the recommendation is therefore removed.

66. In summary, information for SICARs, SICAFs and SICAVs is available and verified by various means, on the same basis as all other companies. As of 31 December 2014, the total numbers of SICAVs, SICAFs, and SICARs, were:

Legal entity	Total number
SICAVs	2 095
SICAFs	47
SICARs	288

Financial holding companies (SOPARFI)

67. "**SOPARFIs**" do not constitute a specific type of company. These are SAs, S.e.c.as or S.à.r.ls that are regulated by the general law applicable to companies and whose purpose is to manage holdings in a group of companies but that can also have a commercial activity, directly or indirectly attached to holding management.

68. Given the fact that SOPARFIs are not a specific type of legal entity, they are subject to the same legal and tax obligations as all other legal entities with regard to the availability of information. A large number of EOI requests received by Luxembourg were in relation to SOPARFIs, mainly for information on ownership. In practice, all SOPARFIs are registered and handled by the same tax office, which facilitates the treatment of incoming requests pertaining to these companies since the information is centralised. Luxembourg's authorities have stated that when requested, this information was available.

Family wealth management companies (SPF)

69. **Family wealth management companies" (*sociétés de gestion de patrimoine familial,* SPF**) do not constitute a new type of company as such; they take the form of an S.à.r.l, an SA, an S.e.c.a, or a co-operative company and their exclusive purpose is to acquire, hold, manage and realise financial assets. 2 796 SPFs were registered on 31 December 2014.

70. SPFs, like SICAVs, SICAFs, SICARs and SOPARFIs have to be created under one of the legal forms available for legal entities in Luxembourg.

Availability of ownership information is ensured under the conditions applicable to the chosen legal form. They have to be registered with the AED and file a quarterly return for the payment of the subscription tax. The AED verifies that all the conditions required for the creation of an SPF are met; otherwise, the entity loses its SPF qualification and special tax treatment. The AED also performs audits regarding the payment of the annual subscription tax and sanctions can be applied in case of default. In 2012, 215 SPFs were subject to sanctions for default and 166 in 2013.

71. Given that a large number of SPFs use a professional providing a registered office and given that these professionals are subject to AML/CFT obligations, ownership information in relation to SPFs is also maintained by these professionals to comply with the AML/CFT requirements. For the period under review, four requests for information in relation to SPFs[6] were received by Luxembourg. They were answered by the AED and Luxembourg's treaty partners have not made any comments on the availability of information in relation to SPFs.

Anti-money laundering law requirements and oversight

72. AML/CFT requirements are in place in Luxembourg and applicable to all service providers (e.g. notaries, statutory auditors, lawyers, chartered accountants), and their application is monitored by the various bodies in charge of supervising the various service providers. The Phase 2 report noted that with regard to AML/CFT obligations for lawyers and chartered accountants, the supervision process was recent and should be monitored by Luxembourg on an on-going basis. A recommendation to this effect was made.

73. The identification and verification of the customer are to be done on the basis of documents, data or information from reliable and independent sources. In addition, it requires professionals to take complementary measures of verification in accordance with the assessment of the AML/CFT risk profile of the customer. Moreover, the professionals targeted by AML/CFT legislation must identify any beneficial owner of the customer.

74. The entities and professionals covered by AML/CFT obligations must retain all information relating to identification and transactions for five years after the business relationship has ceased or after the transaction has been carried out.

75. The number of notaries is limited to 36 in Luxembourg. They are all supervised by *la Chambre des notaires du Grand Duché du Luxembourg (la Chambre des notaires),* which ensures that AML/CFT obligations are respected. During the period under review, *la Chambre des notaires* has continued its supervision process, and almost all of the notaries have been

6. The requests were dealt by the ACD and are included in the chart in section C.5.

reviewed for respect of their AML/CFT obligations. There has been no important AML/CFT finding with regard to the biggest firms, more exposed to risk of money laundering because of their activities (important real estate or acquisition projects). For smaller firms, the findings were in relation to small errors. During the period under review, two disciplinary actions were initiated. These audits have shown that notaries were well informed of their AML/CFT obligations, that the information was available and that appropriate controls were in place.

76. Lawyers are subject to the same AML/CFT obligations when acting as trust and company service providers, when assisting their clients in preparing or conducting transactions involving the purchase and sale of real properties or businesses, the opening or management of bank accounts, the constitution, domiciliation, management or direction of *fiducies*, companies or similar structures, or where they are involved on behalf of their clients in any financial or real estate transaction.

77. The nearly 2 000 lawyers in Luxembourg are under the supervisory authority of either the Bar of Luxembourg or the Bar of Diekirch (the Bars). Since 2013, the Bars have started a second round of audits for 23 firms of different sizes (which include between 250 and 300 lawyers). These audits were both desk based and followed by an on-site visit. The audits showed that lawyers are well informed about their AML/CFT obligations and only minor breaches were found with regard to the respect of the AML/CFT obligations. No sanctions were applied, but some recommendations were made with regard to certain aspects.

78. There are nearly 1 100 chartered accountants in Luxembourg who are subject to AML/CFT obligations on all their activities and who are supervised by *L'Ordre des Experts-Comptables* (OEC). Since 2012, more than 80 inspections and on-site visits have been completed (covering approximatively 120 chartered accountants). Three warnings have been issued which led to the regularisation of the situations. There is currently one sanction process on-going.

79. Statutory auditors have the same legal obligations in relation to AML/CFT obligations. The nearly 460 members are under the supervision of *l'Institut des Réviseurs d'Entreprise du Luxembourg* (IRE). The obligations of the members, including AML/CFT obligations, are subject to an audit process. Each professional is audited at least once every six years. For the period 2011-2014, approximately 14 independent statutory auditors and 73 firms have been subject to audits related to the respect of their obligations, including AML/CFT obligations. In 16 cases, an additional monitoring was recommended, followed by an audit in the subsequent year. In seven of those cases, an action plan was required and two sanctions were recommended. The major breaches found were in relation to the update of the information.

80. During the period under review, Luxembourg authorities have been in close and regular contact with the professional orders in charge of AML/CFT supervision for their members, to ensure that appropriate measures were implemented and applied. With regard to Lawyers, the Bars have informed the Luxembourg authorities about the issuance of circulars, other documents and guidelines, as well as training programmes and the new round of on-site inspections. The Bars have also set up a specific AML/CFT Committee which discusses AML/CFT issues raised. With regard to Chartered accountants, the OEC has updated its guidelines and trainings on AML/CFT. In addition, the Luxembourg authorities are setting up a National Co-ordination Committee for AML/CFT, which would include consultation with all professional orders.

81. In conclusion, the respect of AML/CFT obligations by professionals in Luxembourg is well supervised by their individual supervisory bodies. In addition, Luxembourg authorities have ensured that AML/CFT supervision is of quality and on-going by the supervisory bodies.

Nominees

82. The AML legislation establishes an obligation regarding identification of customers for a whole series of service providers. Thus, any professional serving as nominee shareholder for another person is considered to be providing services to companies and *fiducies*. This professional is furthermore subject to due diligence obligations with respect to the customer.

83. In practice, given that the professionals acting as nominees (lawyers, accountants, notaries and service providers) are subject to the AML/CFT obligations, ownership and identity information in cases of professionals acting as a nominee is available. Luxembourg's authorities have received a very limited number of requests in relation to nominees during the period under review (less than 20 requests). With regard to non-professional nominees, the Luxembourg authorities do not have knowledge of any non-professional nominees that would have acted in such capacity in Luxembourg and consider any potential gap to be very limited.

Conclusion

84. In light of the obligations imposed by the various regulations in force in Luxembourg:

- Ownership and identity information for companies (including foreign companies) is available pursuant to commercial and tax laws in Luxembourg. Appropriate controls are in place to ensure that these obligations are respected.

- With regard to investment companies, financial holding companies and family wealth management companies, legal changes in relation to SICAR in the form of S.e.c.s. now ensure that ownership and identity information is available under all circumstances. Therefore, the recommendation, for Luxembourg, to ensure that ownership information relating to SICARs which take the form of a S.e.c.s. is removed.
- The respect of AML/CFT obligations for professionals is supervised by the individual supervisory bodies and Luxembourg authorities ensure that quality AML/CFT supervision is carried out on an ongoing basis.

85. Given the various sources of information that exist in Luxembourg and based on the legal and regulatory framework, the practices of the Luxembourg authorities and the experience of its peers, it is concluded that, ownership and identity information with regard to companies is available in Luxembourg.

86. The practical application of the legal requirements is effective. The peer input received indicates that Luxembourg has been able to provide ownership information, whenever requested by its treaty partners. In the two and a half year period under review, ending 30 June 2014, Luxembourg received approximately 850 requests in relation to ownership information of companies. Luxembourg reports that the information was available in all cases.

Bearer shares *(ToR A.1.2)*

87. The Phase 2 report found that under company law, shares of SAs, SEs, and S.e.c.as may be issued in bearer form. The holders of these shares are not identified in the share register that these companies must keep, but Luxembourg law provided mechanisms for ensuring the availability of information on the identity of the holders of bearer shares only under specific circumstances.

88. The conclusion of the Phase 2 report was that although there were parallel mechanisms that ensured the availability of this information in specific situations, there was no overall obligation to identify the holders of bearer shares under all circumstances in Luxembourg and a recommendation was made.

89. Luxembourg addressed this recommendation by amending its legislation on bearer shares with the Law of 28 July 2014 (that entered into force on 18 August 2014) in relation to the immobilisation of bearer shares and the keeping of a share register for bearer shares. Following this new legislation, the board of directors of all companies issuing bearer shares must nominate a custodian where all bearer shares have to be deposited (Article 2 of the law).

90. Pursuant to Article 2 of the law, the custodian must be one of the following professionals established in Luxembourg: credit institution, asset manager, distributors of UCI shares, professionals of the financial sectors (PSF), lawyers, notaries, statutory auditors and chartered accountants. All these professionals are subject to AML/CFT obligations and are under the supervision of the CSSF or their own professional order with regard to the compliance with AML/CFT obligations, including CDD rules for identifying their clients.

91. The designated custodian must keep, in Luxembourg, a register of bearer shares which must contain the identification of all shareholders, the number of shares owned, the date of deposit and the date of any transfers or conversion of the bearer shares into registered shares. The custodian cannot be a shareholder of the company (Article 2(2) and 2(3)).

92. The transfer of bearer shares is effective and enforceable only when shares are deposited with the custodian and the rights attached to the shares can only be exercised if the shares are deposited with the custodian along with all information on the shareholder (Article 2(4) and 2(5)).

93. A fine between EUR 5 000 and 125 000 is applicable for managers and directors that have not designated a custodian or that recognise the rights attached to bearer shares that have not been registered with the custodian (Article 5(2)). A fine between EUR 500 and 25 000 is applicable to custodians that do not keep the register in accordance with the law (Article 5(3)).

94. For bearer shares that were issued before the entry into force of this law, the custodian must be designated within six months of the entry into force of the law (Article 6(1)) and existing bearer shares must be deposited with the custodian within 18 months of the entry into force of the law (Article 6(2)).

95. The voting right and dividends of bearer shares that have not been deposited with the custodian within six months of the entry into force of the law are suspended, until their immobilisation, without interest (Article 6(3)). Bearer shares that are not immobilised within 18 months of the entry into force of the law must be cancelled, and the issued capital will have to be reduced, accordingly. These amounts will have to be deposited to the *Caisse de consignation* (official depositary of the government) until the legitimate holder, who can prove its claim, asks for the repayment (Article 6(5)).

96. Failure, by managers and directors, to respect the transition provisions is sanctioned with a fine between EUR 5 000 to 125 000 (Article 6(6)).

97. As of 15 April 2015, 3 585 companies have designated a custodian who will keep, in Luxembourg, a register of bearer shares. The respect of the obligations under this new legislation will be verified by the tax authorities (ACD) during the regular verification process of tax return.

98. There are various reviews done by the tax authorities, in Luxembourg, from desk-based audits, to revisions of the returns and on-site inspections. An internal memorandum was issued by the tax authorities to inform all tax inspectors that they have to verify the application of the new provisions on bearer shares during their routine verifications and any default will need to be referred to the State Prosecutor. The Luxembourg tax authorities have confirmed that in practice, the respect of the legal provisions of the law of 28 July 2014 is systematically verified by the tax inspector during the on-the-spot controls and the taxation process.

99. In addition, other professionals acting for the company (such as accountants, lawyers, notaries or auditors) also have the obligation to verify the respect of the law and to ensure that legal obligations are respected when identifying the shareholders (pursuant to their AML/FT obligations). In such cases, the sanctions provided in the AML/FT legislation will apply.

Conclusion

100. In conclusion, when the law of 28 July 2014 becomes fully effective (18 February 2016), the identity of holders of bearer shares in Luxembourg companies will be known by the custodian and the information will be available to the tax authorities in all circumstances or the shares will have been cancelled. The Phase 1 recommendation on bearer shares is therefore removed. One peer indicated that during the period under review, before the new law entered into force, one request for ownership information on bearer shares was not answered because the information was not available. Considering that the new provisions on the immobilisation of bearer shares are recent and are not fully effective yet, it is recommended that Luxembourg ensures that the new provisions on immobilisation of bearer shares are effectively implemented and monitored.

Partnerships *(ToR A.1.3)*

101. The Phase 2 report found that the rules regarding the maintenance of ownership information in respect of partnerships in Luxembourg were generally in accordance with the standard and were effective in practice. A summary of the conclusions from the Phase 2 report and an analysis of the experience in practice since the last review are included here. For a more detailed analysis of the legal requirements for partnerships in Luxembourg see Phase 2 report, paragraphs 139-152.

Types of partnerships and Requirements to Maintain Information

102. Under the Luxembourg legislation (law of 10 August 1915 and Civil Code), three types of partnerships can be created in Luxembourg: The ***Société en Nom Collectif*** (S.e.n.c, "general partnership" or "unlimited company"), the ***Société en Commandite Simple*** (S.e.c.s, "limited partnership") and ***Société civile*** ("partnership under civil law"). These entities are required to maintain information of their owners under commercial and tax law requirements. In addition, AML/CFT rules obligated professionals involved in the formation of partnerships in Luxembourg to identify the owners of their clients. Each of these regimes is subject to appropriate oversight by the various authorities.

103. In July 2013, a new type of partnership was created in Luxembourg, the ***Société en commandité spéciale*** (S.c.Sp, "Special limited partnerships"), which is a variation of the S.e.c.s. However, the new special limited partnership is a transparent entity (it does not have legal personality). As the main difference between the special limited partnership and the limited partnership is the absence of legal personality, most provisions on the special limited partnership have been taken over from the limited partnership regime. In order to assure legal certainty for this new type of partnership, it appeared nonetheless necessary to adapt the provisions on the special limited partnership to take account of the particular characteristics resulting from the lack of legal personality (e.g. management and dealings with third parties). Furthermore, commercial law imposes similar requirement regarding the maintenance of information concerning their owners as for S.e.n.c. and the S.e.c.s. (article 6, 7° and article 6 bis, 4° of the law of 19 December 2002 concerning the register of commerce and companies) as well as bookkeeping and annual account of companies.

104. As of 31 December 2014, the total numbers of partnerships of each category were:

Legal entity	Total number
General partnership (S.e.n.c.)	433
Limited partnerships (S.e.c.s.)	983
Special limited partnerships (S.c.sp)	412
Partnerships under civil law (Sociétés civiles)	4 263

Commercial and Tax Law Requirements and Oversight

105. In Luxembourg, information on partnerships provided upon creation and subsequent changes are verified by the notary (if created by a notary). Information about the partners must be provided to the RCS upon registration. If the entity is not created by a notary, the information is verified by the

RCS upon registration. Modifications to the deed also need to be registered with the RCS.

106. Information on partnerships is also available from the tax authorities. Partnerships are required to register with the ACD and provide the name of their partners. However, as the information required for the registration is already publicly available in *Memorial C*, additional information is requested by the ACD only in case of uncertainty. Partnerships subject to the VAT must also register with the Indirect Tax Administration (AED).

107. Although the income of partnerships is taxable in the hands of their members, such entities are required to submit an annual declaration to the ACD in their own name. Declaration No. 300 requires communication of information, including the names of partners. As this information is necessary for the calculation of the personal income tax of all of the partnership's members, its provision is mandatory, and failure to provide it can lead to the application of sanctions by the local taxation office. During the period under review, there has been no sanction for no or late filing by partnerships.

AML/CFT legislation

108. The obligations described under section A.1.1 for companies apply as well to partnerships. Attorneys and tax advisors as well as all professionals deemed to be company service providers fall specifically within the scope of application of the AML/CFT law when they assist their clients in the preparation or conduct of transactions concerning the establishment, management or direction of companies. Although the use of service providers is not mandatory, it is very frequent in Luxembourg. These service providers must identify their clients and retain information on the identity of their clients and the beneficial owners of partnerships, as well as all information regarding transactions conducted, for five years.

Conclusion

109. In practice, identity information on partnerships is verified in various contexts and is available through various sources to the relevant authorities. Incorporation and registration requirements for partnerships in Luxembourg are the same as those applicable to companies, as confirmed by Luxembourg's authorities. Considering these multiple requirements for registration and the practices of the Luxembourg authorities, the availability of information (including identity and ownership information), is verified and available through different means and hence, is in line with the standard set out in the Terms of Reference. For the period under review, approximately 5 % of the requests received related to information on partnerships, the information was available and exchanged in all cases.

Trusts and fiducies *(ToR A.1.4)*

110. Luxembourg is signatory to the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. In addition, Luxembourg legislation allows the creation of *fiducies* under Luxembourg law (cf. law of 27 July 2003 on trusts and fiduciary contracts). With regard to trusts and *fiducies*, the Phase 2 report determined that the professional acting as fiduciary or trustee must identify the settlors and the real owners of the property, pursuant to AML/CFT, and tax requirements. The rules regarding the maintenance of ownership information in respect of trusts and *fiducies* in Luxembourg were found to be in accordance with the standard and were effective in practice.

Fiducies under Luxembourg law

111. The law on trusts and *fiducies* specifies that only certain professionals, covered by AML/CFT obligations can act as fiduciary. Luxembourg law requires the registration[7] with the AED of *fiducie* contracts that concern real estate, aircraft, ships or boats registered in Luxembourg. It should be noted, however, that if no real estate, ship or boat is held through the *fiducie*, there is no requirement for the deed to be registered. The AED has advised that there are currently no *fiducies* in Luxembourg that are holding real estate, aircraft, ships or boats and that should be registered based on such holding.

112. Luxembourg taxation rules provide that income from Luxembourg sources received via a *fiducie* is taxable in the hands of the settlor. The resulting tax obligations depend on the nature of the settlor (natural or legal person). The tax law also provides that any person holding an asset in the capacity of fiduciary must be able, upon demand, to identify the real owner of the property, and this implies the availability of such information. In practice, the use of *fiducies* in Luxembourg is rather limited. In any case, the fiduciary must be able to identify the settlor to the tax authorities.

113. The AML/CFT obligations described under section A.1.1 for companies apply as well to *fiducies*. Attorneys, notaries, tax advisors, credit institutions and financial intermediaries are covered by the AML/CFT law and must perform CDD in all situations. In addition, all other professionals providing services to companies and *fiducies* fall specifically within the scope of application of the AML/CFT law when they assist their clients in the preparation or conduct of transactions concerning the establishment, management, provision of registered offices or direction of *fiducies*. These service providers must identify their clients and retain information on the identity

7. Registration in this case means the formality by which certain deeds must be deposited with the indirect taxes administration; it will, in principle, be subject to payment of a stamp tax.

of their clients and beneficial owners, as well as all information regarding transactions conducted, for five years.

114. It is impossible by law for a non-professional to act as a fiduciary of *fiducies* created in Luxembourg. Considering AML/CFT obligations applicable to professionals and other financial institutions in Luxembourg, it appears that information on *fiducies* is available when requested, as confirmed by peers.

Foreign trusts

115. There is no provision in Luxembourg law that would prohibit a resident from acting as trustee, administrator or manager or from having the responsibility to distribute profits or to administer a trust that is constituted under foreign legislation. Thus, for example, and contrary to the situation of *fiducies*, a trustee administering a foreign trust does not have to belong to a specific category of professionals.

116. Luxembourg law requires the registration with the AED of trust contracts when they concern real estate, aircraft, ships or boats registered in Luxembourg. There is no obligation to register these deeds in other situations. Currently, no trusts are registered in Luxembourg.

117. Luxembourg taxation rules provide that income from Luxembourg sources received via a trust is taxable in the hands of the settlor. The resulting tax obligations depend on the nature of the settlor (natural or legal person). As well, the tax law provides that any person holding an asset in the capacity of fiduciary must be able, upon demand, to identify the real owner of the property.

118. The AML/CFT obligations described above for *fiducies* apply to trusts under the same conditions. Professionals acting as trust service providers are required to identify their clients and the beneficial owners of trusts. It is also conceivable that non-professionals act as trustees of a foreign trust but overall the number of trustees of foreign trusts is limited, and the business is handled mainly by financial institutions.

Conclusion

119. These multiple requirements, taken together, ensure the availability of information on the settlors and beneficiaries of *fiducies* and trusts administered by professional trustees in Luxembourg. In practice, during the period under review, Luxembourg received nine requests in relation to *fiducies* or foreign trusts. The information was available and provided in a timely manner in all cases. None of these requests related to non-professional trustees.

Foundations *(ToR A.1.5)*

120. In Luxembourg, foundations are non-profit entities established for purely philanthropic purposes (social, religious, scientific, artistic, pedagogic, sporting or tourism-related nature). As at 31 December 2014 there were 208 foundations registered in Luxembourg.

121. All bequests to a foundation must be authorised by the authorities responsible for supervising foundations (Ministry of Justice). The deed creating the foundation must be notarised, and is thus subject to AML/CFT obligations, including identification of the founder, by the notary. The beneficiaries are known through the purpose for which the foundation is created. Any deed creating a foundation must be reported to the Minister of Justice for approval and the statutes of the foundation must be approved by grand ducal decree. All changes in the deed of creation must be notarised, meaning that information will again be verified by the notary and by the Ministry of Justice which must approve the changes. Foundations are also subject to annual filing with the Ministry of Justice, which verifies their annual accounts. Foundations must also be registered with the RCS.

122. As a non-commercial entity, a foundation is not subject to corporate tax. Thus, foundations do not have to be registered with the ACD. However, as a relevant entity within the meaning of Luxembourg tax legislation, a foundation is subject to supervision by the Luxembourg administration in order to ensure, in particular, that the conditions under which it is administered make it indeed a non-commercial entity. To this end, the foundation must keep all the records needed to demonstrate that the funds collected have been used in accordance with the stated purpose of the foundation.

Conclusion

123. Given the philanthropic nature of Luxembourg foundations, the obligations concerning their registration and recognition, and the obligations for reporting information to the supervisory authorities, Luxembourg legislation ensures conservation of the necessary information with respect to the founders, directors and beneficiaries of foundations. Luxembourg's authorities have mentioned that they have not received any requests in relation to foundations during the period under review.

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

Penalties for failure to legally document the establishment of bodies, to register them, or to keep information

124. The Phase 2 report found that the enforcement provisions to ensure availability of information on companies, partnerships, *fiducies*, trusts and foundations in Luxembourg were in accordance with the standard and were effective in practice.

Commercial and Tax Enforcement Provisions

125. According to the Phase 2 report, Luxembourg's legislation provides for sanctions in situations where the information required by law is not kept under tax law, commercial law and AML/CTF laws. For a more detailed analysis of the enforcement provisions in Luxembourg, see Phase 2 report, paragraphs 179-186.

126. As discussed above, with regard to the enforcement provisions regarding non-compliance with the new law on immobilisation of bearer shares, a fine between EUR 5 000 and 125 000 is applicable for managers and directors that have not designated a custodian or that recognise the rights attached to bearer shares that have not been registered with the custodian. A fine between EUR 500 and 25 000 is applicable to custodian that do not keep the register in accordance with the law (Article 5(1) and (2)).

127. In addition, the non-respect of the transition provisions by managers and directors is sanctioned with a fine between EUR 5 000 to 125 000 (Article 6(6)).

Enforcement Provisions in Practice

128. Regarding the practical application of enforcement measures during the peer review period, the ACD carried out tax audits during the peer review period, the statistics are as follows:

Tax audits year	2012	2013	2014 [a]
Number of tax audits	83	78	87
Amount of tax collected following a reassessment of the taxable basis (without sanctions) (EUR)	9 132 549	5 901 602	8 873 392
All sanctions applied, whether an audit was performed or not (inluding surtax for late filing) (EUR)	111 477 405	141 305 515	135 732 608

Note: a. The statistics available and provided for 2014 are for the entire year.

AML/CFT legislation

129. The enforcement provisions regarding non-compliance with the AML/CFT obligations for professionals are described in section A.1.1 Ownership and identity information for companies.

Conclusion

130. Luxembourg legislation provides for sanctions in situations in which the information required by law is not kept. There is a variety of possible sanctions provided by Luxembourg law depending of the level of the infraction. Each requirement to maintain ownership information is complemented by sanctions. Luxembourg's authorities have confirmed that the application of sanctions, when necessary, has a deterrent effect and rarely needs to be repeated. The enforcement provisions to ensure the availability of ownership information appear to be dissuasive enough to ensure the legal requirements are respected.

Conclusions on element A.1.

131. The Phase 2 report included two Phase 1 recommendations; one on bearer shares and one on foreign companies. Element A.1 was determined not to be in place, and was rated Non-Compliant.

132. Regarding bearer shares, the Phase 1 and Phase 2 reports recognised that the ownership information on the holders of bearer shares was not always available in Luxembourg. It was recommended that Luxembourg ensure the availability of information relating to SAs, SEs and S.e.c.as bearer securities holders in any circumstances. Since the Phase 2 report, Luxembourg has amended its legislation to immobilise bearer shares. As a consequence, the Phase 1 recommendation is removed, however, as the changes introduced by the new law are recent and have not become fully effective, it is recommended that Luxembourg ensure that the new provisions on immobilisation of bearer shares are effectively implemented and monitored.

133. Regarding information on ownership of foreign partners of SICARs taking the form of S.e.c.s, the Phase 1 and Phase 2 reports determined that such information may under certain circumstances, not be available. A recommendation was made for Luxembourg to ensure that ownership information relating to SICARs which take the form of an S.e.c.s is available in all circumstances. Luxembourg addressed this recommendation in 2013 by amending the law of 15 June 2004 in order to abolish the exemption from the company law's obligation to disclose the identity of the partners. As of 31 December 2014, there were only 15 SICARs which take the form of an S.e.c.s and no request for information on ownership of a SICAR which take

the form of an S.e.c.s was received by Luxembourg during the period under review. Thus, the recommendation is removed.

134. In practice, ownership information on domestic and foreign companies, nominees, partnerships, trusts, *fiducies*, and foundations was available in all cases during the peer review period. Luxembourg has put in place effective enforcement and monitoring mechanisms that ensure availability of identity and ownership information.

135. Considering the above, the two Phase 1 recommendations have been deleted, and one recommendation on the monitoring of the new provisions for the immobilisation of bearer shares (Phase 2) is added. The determination of element A.1 is upgraded to "in place" and element A.1 is rated Largely Compliant.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is ~~not~~ in place	
Factors underlying recommendations	**Recommendations**
~~Luxembourg allows for the issuance of bearer securities by SAs, SEs and S.e.c.as without having mechanisms allowing for the identification of such securities holders in all circumstances. This possibility is also open to investment companies taking the form of an SA or a S.e.c.a.~~	~~Luxemburg should ensure the availability of information relating to SAs, SEs and S.e.c.a bearer securities holders in all circumstances.~~
~~Ownership information relating to foreign partners of SICARs which take the form of an S.e.c.s is not available in Luxembourg in all circumstances.~~	~~Luxembourg should ensure that ownership information relating to SICARs which take the form of an S.e.c.s is available in all circumstances~~

Phase 2 Rating	
~~Non~~ Largely Compliant	
Factors underlying recommendations	**Recommendations**
The new provisions to immobilise bearer shares are recent and have not become fully effective.	Luxembourg should ensure that the new provisions on immobilisation of bearer shares are effectively implemented and monitored.

A.2. Accounting records

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

General requirements (ToR A.2.1)

Obligations flowing from accounting legislation

136. The Phase 2 report determined that all relevant entities and arrangements, companies (including foreign companies having their place of effective management in Luxembourg and branches of foreign companies), partnerships, foundations, *fiducies*, investment companies taking the form of SICARs, SIVAVs, SICAFs and SPFs, must keep accounting records pursuant to the Commercial code. All professional (including professionals acting as trustees) are required to observe general accounting obligations applicable to all professionals established in Luxembourg. This ensures the availability of such information and allows the entities' transactions to be traced for purposes of establishing their financial positions and preparing their financial statements.

137. The tax law also requires accounting records to be kept and filed for all entities, except for exempt investment companies (SICARs, SICAVs, SICAFs and SPFs).

138. Fines for default to comply with the accounting obligations apply, from EUR 500 to 25 000. Managers or administrators that have, with a fraudulent intention, not published the annual accounts are sanctioned by imprisonment from one month to two years and/or a fine from EUR 5 000 to 125 000.

139. All enterprises and fiduciaries are required to file annual accounts with the RCS. In practice the accounts are filed electronically. A follow up by the RCS for late filing will be automatic and implemented in the electronic filing system which is to be modified as soon as the law reforming the legal publication regime is adopted (most probably in October 2015). In 2012/2013, 645 companies were referred for judicial liquidation because they had not respected their legal obligations, including the filing of financial statements. In 2013/2014, there were 511 companies referred to judicial liquidation for the same reason.

Underlying documentation (ToR A.2.2)

140. The Phase 2 report determined that Luxembourg accounting legislation requires that all book entries be backed by supporting documentation, which is to be kept in chronological order. These documents may be kept in the form of copies, which must be true copies of the original documents.

141. During the period under review, Luxembourg received approximately 750 requests for accounting information. Most of these requests were in relation to underlying documents. The Luxembourg authorities confirmed that the information was almost always available when requested. In addition, given Luxembourg's practices in exchange of VAT information, which rely mostly on accounting records and underlying documentation such as invoices and contracts, it appears that Luxembourg is able to provide underlying documentation on request.

Document retention (ToR A.2.3)

142. Luxembourg accounting legislation requires that all accounting records of any kind must be kept for 10 years after the close of the accounting year to which they relate. In case of dissolution, commercial companies are deemed to exist for their liquidation and all documents must be kept for at least five years after liquidation. The documents kept in the RCS may be destroyed when 20 years have elapsed after the entity concerned has been deleted.

143. For tax purposes, the books and accounting records as well as all commercial documents must be kept for 10 years after the end of the calendar year that follows the close of the fiscal year. All documents required by law to be kept for VAT purposes must be retained for five years.

Exchange of accounting information in practice

144. Over the period under review, Luxembourg authorities received approximately 750 requests for accounting information. The peer inputs received indicates that Luxembourg has been able to answer requests in this regard, without difficulty.

145. There have been a small number of cases where the accounting information could not be provided. One peer mentioned that there has been one case where the answer to a request for accounting information was delayed because the financial statements for the two years requested had not been filed. Luxembourg tax authorities have indicated that they have contacted the person concerned and the information was provided for one of the two years requested, the information on other year was still pending. There have also been 23 cases where not all of the accounting information could be provided to the requesting partners because of bankruptcy or because the company no longer existed (liquidation of the company for absence of valid address, activity and non-fulfilment of its obligations). In nine cases the company did not comply with the accounting obligations and the tax authorities referred the cases to the State Prosecutor for legal liquidation of the company. In all cases where the accounting information could not be obtained, the

requesting partner was informed with the reason for the absence of accounting information.

Conclusions on element A.2.

146. Enforcement and monitoring mechanisms in Luxembourg ensure the availability of accounting records underlying documentation on all relevant entities and arrangements, companies (including foreign companies having their place of effective management in Luxembourg and branches of foreign companies), partnerships, foundations, *fiducies*, investment companies taking the form of SICARs, SIVAVs, SICAFs and SPFs, and all professional (including professionals acting as trustees).

147. In practice, accounting information was almost always available when requested. Consequently, the determination of element A.2 remains "in place" and the rating remains Compliant.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place

Phase 2 Rating
Compliant

A.3. Banking information

Banking information should be available for all account-holders.

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

148. A summary of the conclusions from the Phase 2 report and an analysis of the experience in practice are included here since the last review. For a more detailed analysis of the legal and AML/CFT requirements for banking information in Luxembourg see Phase 2 report, paragraphs 213-232.

149. The Phase 2 report determined that Luxembourg has put in place a system whereby the availability of information is ensured from a legal and a practical perspective. Pursuant to AML/CFT legislation and other commercial legislations and regulations, Luxembourg banks and financial institutions are required to perform CDD and to hold records of transactions conducted by their current customers for a period of at least five years.

150. The Phase 2 report also concluded that the supervision of banks and other financial institutions by the CSSF for their compliance with AML/CFT obligations was adequate, by means of on-site and off-site controls on a risk based approach.

Numbered accounts

151. The Phase 2 report determined that with regard to numbered accounts, the rules in place and the supervision was adequate, since CDD obligations apply to all of the numbered accounts held in Luxembourg, and these accounts are also part of the supervision of the CSSF. Numbered accounts are always verified when a bank is audited, the audit team verifies the opening of numbered account files to make sure that the identity of clients and necessary ownership information is available in these files. The internal procedure of the bank with respect to the opening of numbered accounts is also reviewed. Luxembourg authorities have indicated no issues with regard to numbered accounts during the period under review.

Sanctions

152. The administrative sanctions that the CSSF may impose for a breach of the AML/CFT obligations range from a notification to a warning, followed by a fine of EUR 250 to 250 000, and finally a ban on operations. The sanction is based on the seriousness of the breach and can take the form of a letter of observation, an injunction to correct the situation within a certain timeframe or the application of administrative fines. More than one measures/sanction can be applied at once and sanctions can be made public. Any violation of the obligations provided for by the AML/CFT law is punishable with a criminal penalty from EUR 1 250 to 1 250 000.

153. For the period 2012-2014, the CSSF has carried 129 specific AML/CFT on-site inspections (45 in 2012, 43 in 2013 and 41 in 2014). As a result of these inspections, a total of EUR 143 000 of fines were applied in 2012, EUR 147 000 in 2013 and 290 000 in 2014. Very often the amount of the fine is the result of an aggregation of different deficiencies noticed. The most recurrent ones are incomplete or inadequate CDD files, shortcomings with respect to the professionals' co-operation and reporting obligations, deficient internal procedures and controls in place, inadequate staff resources and training for AML/CFT purposes and incomplete financial sanctions screening.

Availability of banking information in practice

154. Luxembourg has received 126 requests in relation to banking information in 2012, 115 in 2013 and 108 for 2014 (these statistics only cover cases where the information was requested directly to the bank or other financial institution and do not take into account cases where the information was collected directly from the person concerned). Luxembourg authorities have confirmed that in no cases during the period under review, the banking information requested was not available.

Conclusions on element A.3.

155. Thus, given the legal provisions and the practices of the Luxembourg authorities, Luxembourg's legal and regulatory framework ensures that banking information in relation to account holders is maintained and available. The determination of element A.3 remains "in place" and the rating remains Compliant.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place

Phase 2 Rating
Compliant

B. Access to information

Overview

156. A variety of information may be needed in respect of the administration and enforcement of 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. This section of the report assesses Luxembourg's legal and regulatory framework and the effectiveness of its practice and whether it gives to the authorities' access powers that cover the right types of persons and information, and whether the rights and safeguards that are in place would be compatible with effective EOI.

157. A number of issues were raised in the Phase 2 report with regard to element B.1. A recommendation was made to ensure access to banking information under all agreements (Phase 1), for explanations to be provided when the gathering powers are not used (Phase 2) and for Luxembourg to exercise its powers to compel production of information and apply sanctions as appropriate (Phase 2).

158. For the conventions signed before March 2009, identity, accounting, banking information as well as information held by insurance companies and SPF cannot be obtained by competent authorities in the field of EOI. A recommendation was made on this issue, for Luxembourg to ensure access to information held by financial institutions, insurance companies and SPFs for all its relevant partners, since during the Phase 2 evaluation, only 45 of the 75 agreements signed by Luxembourg provided for access to banking information and information from insurance companies and SPFs. Since the Phase 2 report, Luxembourg has signed a number of EOI agreements and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention). As a consequence, Luxembourg now has 100 EOI relationships to the standard (out of 108). The Phase 1 recommendation is therefore removed.

159. Luxembourg also made changes to its legal framework and practice to ensure it can provide explanation to its partners when it is unable to obtain the information. The changes also include the application of sanctions against those who do not provide information when requested. During the period under review, sanctions have been applied in ten cases when the requested information was not provided. In nine cases, the information was provided after the application of the penalty. In the last case, the tax authorities have referred the case to the State Prosecutor for liquidation of the legal person because the person was no longer reachable in Luxembourg (no valid address, no activity) and it was considered that this person no longer existed in Luxembourg. This new practice was confirmed by comments received from the peer. Therefore, the two Phases 2 recommendations are removed. However, considering the new legal obligations and elements of practice a recommendation is made for Luxembourg to monitor the practical implementation of the recently introduced legal obligations and changes made to the practice, which were made to ensure that the requested information is obtained and exchanged in accordance with the standard in all cases.

160. With regard to B.2, the Phase 2 report determined that the procedure for collecting information under Luxembourg's domestic tax law does not provide for the notification of the person who is the subject of the request for information. However, it was Luxembourg's practice to request information directly from the taxpayer if that person was in Luxembourg. As a result, in some cases, the information was not collected when the requesting jurisdiction did not want the person to be notified. A recommendation was made for Luxembourg to ensure that in all cases its processes and procedures to collect information are clearly communicated to all its treaty partners and that these processes are followed in all cases.

161. With regard to the notification process, Luxembourg has clarified its practice. The requested information will be first requested from the person concerned by the request. If the requesting partner stipulates that the request be kept confidential from the taxpayer, the information will be requested directly from the information holder. An anti-tipping off provision applicable to the information holder was introduced.

162. In addition, Luxembourg has abolished the right to appeal, from 1 December 2014. These new elements were communicated to Luxembourg's relevant treaty partners, as confirmed by a number of partners. As a consequence, the Phase 2 recommendation is removed. As 5 cases based on the old appeal procedure are still pending, it is recommended that Luxembourg ensures that the requesting partners are informed of the progress of the judicial process.

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).

163. The Phase 2 report found serious issues with regard to element B.1. Although the legal framework regarding access of information in Luxembourg was generally in accordance with the standard, banking information and information protected by secrecy cannot be accessed when the request is based under an agreement signed before March 2009, and a Phase 1 recommendation was made. With regard to the effectiveness of the rules in practice, some issues were raised and appropriate recommendations were made. A recommendation was made for explanations to be provided when the gathering powers are not used (Phase 2) and for Luxembourg to exercise its powers to compel production of information and apply sanctions as appropriate (Phase 2). Luxembourg has amended its legal framework and its practice to address these recommendations.

164. A summary of the conclusions from the Phase 2 report are included here, as well as a report of any changes to the legal framework and an analysis of the experience in practice since the last review. For a more detailed analysis of access powers in Luxembourg see Phase 2 report, paragraphs 241-324.

Luxembourg's competent authority and its powers

165. In Luxembourg, the Ministry of Finance is the competent authority and the Direct Tax Administration (ACD) is the central authority for managing EOI requests based on any agreements with an EOI provision signed by Luxembourg.

166. The responsibility for responding to EOI requests is divided between three tax administrations: the ACD which is responsible for EOI requests in relation to all direct taxes including individual income tax, corporate income tax (*impôt sur les collectivités*) and the municipal business tax; the Indirect Tax Administration (AED), which is responsible for requests in relation to VAT, stamp duties and succession taxes; and the Customs and Excise Administration – *Administration des douanes et des accises* (ADA) which is responsible for excise duties, consumption taxes on alcohol, and the vehicle tax. The ACD, which acts as the Direct Tax Central Liaison Office (CLO), receives the EOI request and either processes the request or passes it on to the appropriate tax administration AED or the ADA.

167. For the period under review, Luxembourg has received a total of 1 380 requests. The AED has received 17 requests, while the ADA has not received

any requests for EOI. All other requests are processed by the ACD. In total, eight persons have been designated to handle incoming requests for EOI.

168. The Phase 2 report noted that two different procedures existed to collect information, based on the date of signature of the agreement under which the request was based: *(i)* the old procedure, which was based on an agreement concluded before March 2009 and not updated, under which requests were dealt with by the local tax offices, or *(ii)* the new procedure provided by the Law of 31 March 2010 for EOI based on an agreement concluded or updated since March 2009, under which requests were dealt with directly by the CLO.

169. Since the Phase 2 report, Luxembourg has enacted a Law organising the procedure for exchange of information on request for tax purposes, on 25 November 2014 (the New Law on EOI). Since that date, all exchange of information requests received are dealt with under the same procedure. Under this new procedure, all requests are handled directly by the CLO – Division for Exchange of Information, notwithstanding the agreement under which the request is based. This new procedure also abolishes the right to appeal (see section B.2 Notification requirements and right and safeguards below for more detail on the abolition of the right to appeal).

Ownership and identity information *(ToR B.1.1)**, Banking information*** *(ToR B.1.1)* ***and accounting records*** *(ToR B.1.2)*

Ownership, identity and accounting information

170. In order to gather the information requested, the CLO first checks whether the information is available internally, either within the tax authority or with another of Luxembourg's administrative authorities. If the information is not available internally, the CLO will need to request the information from the taxpayer or from a third party in possession of the information.

171. A lot of information is directly in the possession of the tax authorities, such as information provided upon registration of the entity including identity and ownership information, accounting records, as well as tax returns. Information can also be available through other administrative authorities, such as information on VAT, real estate information, information on SPFs, information on excise duties, consumption taxes on alcohol, and the vehicle tax.

172. If the information is not directly available to the tax authorities, or to another administration, the tax authorities (CLO – EOI division) will send an injunction letter first to the taxpayer with a one month deadline to provide the information. In principle, the injunction letter is sent first to the taxpayer based on the principle of proportionality, i.e. the taxpayer must always be

the first person from whom the information is requested before it can be requested from a third party. However, Luxembourg has stated that in EOI cases they will directly ask the information holder in Luxembourg where it is established that the person concerned by the request is not present in Luxembourg or when the requesting jurisdiction specifically asked that the taxpayer should not been informed of the request.

173. If the taxpayer does not answer the injunction letter, penalties of up to EUR 250 000 can be applied. Penalties are cumulative (with a maximum of EUR 250 000) and ultimately, the case can be transmitted to the State Prosecutor for criminal sanctions. Luxembourg confirmed that the persons requested to provide information generally respond within the allocated timeframe. During the period under review, the Luxembourg tax authorities have applied sanctions for default to provide the requested information in ten cases, for total penalties of EUR 220 000. In nine cases, the information was provided after the application of the penalty. In the last case, the tax authorities have referred the case to the State Prosecutor for liquidation of the legal person because the person was no longer reachable in Luxembourg (no valid address, no activity) and it was considered that this person no longer existed in Luxembourg.

The previous report

174. The Phase 2 report noted that at that time only 45 of Luxembourg's 75 signed agreements allowed access to information held by financial institutions and other information protected by secrecy rules.

175. The Phase 2 report also noted that one peer reported that it asked Luxembourg to provide information in relation to the activity of certain companies in Luxembourg to justify the deduction of fees paid to Luxembourg-based entities for tax purposes. According to the peer, in its answers, Luxembourg only provided information directly available to the tax authorities and did not request information (such as underlying documents, invoices) from any other persons or from the company concerned to substantiate its answers. Luxembourg's authorities explained that these cases concerned SOPARFIs (i.e. holding companies) and that the requested information related to the substance of their business activities. As these entities generally have no premises in Luxembourg but only a registered office provided by an agent, Luxembourg stated that it was impossible for them to research further.

176. Another case reported concerned information in relation to a potential transfer of a client list without consideration. A request was sent to Luxembourg to establish the date of formation of the company in Luxembourg, along with details of its shareholders, premises, activities, tax

regime, number of employees and accounting data, including the name of its clients. The Luxembourg authorities declined to provide the name of clients (the client list), arguing that this constituted a fishing expedition and a breach of commercial secrecy. Concerning the claim in relation to the information being covered by commercial secrecy, the manner in which Luxembourg responded was not consistent with the standard. Luxembourg did not provide any explanation for this conclusion.

177. In sum, one Phase 1 recommendation and two Phase 2 recommendations were made on element B.1. With regard to the old procedure that does not allow tax authorities to access information held by banks and other financial institutions for treaties signed before March 2009, a Phase 1 recommendation was made for Luxembourg to ensure access to information held by financial institutions, insurance companies and SPFs for all its relevant partners.

178. A second recommendation (Phase 2) was made with regard to the lack of explanations given to the partner jurisdiction when the commercial secrecy was invoked to refuse the exchange of information. In cases where Luxembourg does not use its information gathering powers in response to an EOI request it should fully explain the basis on which it was unable to do so. Finally, the Phase 2 report noted that it appeared that Luxembourg did not use its information gathering powers in all instances to answer incoming requests or adequately communicate with the requesting partner in cases where it has refused to provide the information requested. It was recommended, in the Phase 2 report, that Luxembourg exercises its powers to compel production of information and apply sanctions as appropriate and that the exercise of these powers and application of sanctions should be carefully monitored.

New legislation and practice

179. In order to address the Phase 2 recommendations, an administrative circular modifying the practice of the tax authorities in the collection process of information for international exchange purposes (ECHA – no. 1) was issued on 31 December 2013 (the circular of 31 December 2013). The changes mentioned in that circular were confirmed by the New Law on EOI (25 November 2014).

180. Article 2(2) of the New Law on EOI specifically provides that the holder of information has to provide the totality of the requested information, in a precise manner, without alterations (see section on banking information below for more information on this element).

181. Other elements covered by this New Law on EOI include the confirmation that information with regard to requests that are relevant to a tax period that is after the effective date of the agreement where the

information precedes the effective date of the agreement should be exchanged (Article 2(3) of the New Law on EOI). This element will be further discussed in section C.1.9 below.

182. The circular of 31 December 2013 provides more details about the new practice of the Luxembourg tax authorities and amongst other, with regard to the concept of foreseeable relevance. Precision on the application of the concept of foreseeable relevance is also mentioned in Article 3(2) of the New Law on EOI. The new practice of Luxembourg with regard to the interpretation of whether the request is foreseeably relevant will be discussed in element C.1.1 below.

183. Article 3(4) indicates that the injunction letter should include only the minimal information needed for the notification (to be analysed in element C.3). An anti-tipping off provision is also added (Article 4(1) and (2)).

184. Finally, this New Law on EOI abolishes the right, for the taxpayer, to appeal the decision to exchange the information (Article 6). The notification, the injunction letter, the anti-tipping off provision and the abolition of the appeal process will be further analysed in section B.2 below.

185. Luxembourg also made important changes to its practice. With regard to information on SOPARFIs and the substance of their business activities, Luxembourg's authorities have confirmed that they now collect information by different means, including on-site visits (when possible or to notice the absence of substance). This new procedure was communicated to the partner concerns, and this partner has not expressed any concerned on this issue in the peer input received for the period under review.

186. With regard to the refusal to exchange information based on commercial secrecy and the obligation for Luxembourg to explain the reasons for which the information was not provided, Luxembourg has confirmed that they have not refused any requests based on the concept of commercial secrecy during the period under review, which is consistent with the peer inputs received. Luxembourg has also confirmed that they have exchanged, in a number of cases during the period under review, information containing client lists.

187. In addition, Luxembourg has greatly improved its communication process and provides explanations to its treaty partner when the information cannot be provided (for example in past cases where an appeal was made). A large number of the peer inputs received have confirmed the improvement of Luxembourg authorities' communication with regard to exchange of information.

188. As discussed above, important legal changes were made in Luxembourg with respect to exchange of information, as well as changes made with respect to

Luxembourg's practice in EOI. Considering the improvement in practice, with regard to commercial secrecy and with the communication to its treaty partners, the first Phase 2 recommendation for Luxembourg to fully explain the basis on which it was unable to use its information gathering powers, is removed. However, considering that these new obligations and procedures are recent and have not been tested in practice in all circumstances, it is recommended that Luxembourg monitors the practical implementation of the recently introduced legal obligations and changes made to the practice, which were made to ensure that the requested information is obtained and exchanged in accordance with the standard in all cases.

Banking information

189. Access to banking information is only available for agreements that were signed by Luxembourg since 2009, allowing for waiver of the banking secrecy enshrined in Luxembourg's financial and tax legislation. Luxembourg currently has 100 relationships that have been signed after 2009 and that are in line with the standard.

190. Banking information may be requested from the holder, i.e. the banks as the first resort, but this does not preclude, if necessary, requiring the person concerned by the request to produce information. Luxembourg's authorities have confirmed that in practice, banking information is requested from the bank first when the person concerned by the request is not resident in Luxembourg. Otherwise, the information is requested first from the person concerned unless the requesting jurisdiction asks for the information to be kept confidential (see section B.2 below).

191. For the period under review, Luxembourg has received 349 requests for bank information (126 in 2012, 115 in 2013 and 108 for 2014). These are requests where the information was collected directly from the bank and do not include cases where the information was collected directly from the tax-payer. In practice, banks generally answered within the timeframe allowed and as a result, requests for banking information based on agreements concluded after March 2009 are generally answered by the banks within the 30-day deadline provided by the Law of 31 March 2010. With regard to requests for banking information, 194 requests were answered in less than 90 days (56%), 111 were answered between 90 and 180 days (32%), 32 were answered in less than a year (9%) and 12 in more than a year (3%).

The previous reports

192. The Phase 1 and 2 reports noted that a number of peers pointed to problems in obtaining banking information from Luxembourg. These related to a range of issues, including the number of agreements allowing for the

exchange of banking information and other information protected by secrecy provisions (Phase 1) and to the extent to which Luxembourg used the full range of its laws and practices to obtain and provide bank information for its treaty partners (Phase 2).

193. Concerning the exercise of its powers to obtain information, the Phase 2 report noted that one peer reported that it received, in several instances, bank statements where information was partly unreadable, which prevented its authorities from using the information. Luxembourg stated that the information had been blacked out directly by the banks and the Luxembourg tax authorities had never received the complete documents, implying that the Luxembourg tax authorities accepted the decision of the banks on the relevance of the information without having seen the information. A recommendation was made for Luxembourg to exercise its powers to compel production of information and apply sanction as appropriate and that the exercise of these powers and application of sanctions should be carefully monitored.

New legislation and practice

194. With regard to the number of agreements allowing for the exchange of banking information and other information protected by secrecy provisions, Luxembourg has signed a number of EOI agreements since the Phase 2 report, including the Multilateral Convention. The Multilateral Convention was signed by Luxembourg on 11 July 2013 and entered into force on 1 November 2014. Consequently, Luxembourg has an EOI relationship with 108 jurisdictions, 100 of which are to the standard (allowing access to all information including information held by financial institutions, insurance companies, SPFs and lifting secrecy provisions). The Phase 1 recommendation is therefore removed.

195. With regard to the powers to compel production of information in cases of bank statements that have been blacked out, Luxembourg has issued a circular, on 31 December 2013, which addresses this recommendation. The circular of 31 December 2013 clearly indicates that information requested must be fully provided to the tax authorities, without any alterations. The elements indicated in the circular of 31 December 2013 have been confirmed in the New Law on EOI, of 25 November 2014 (Article 2(2)).

196. A peer has indicated that since the introduction of the new procedure, which was confirmed by the new legislation, the banking information is provided in totality by the Luxembourg tax authorities and bank statements are no longer blacked out, except in certain cases where the Court ordered the information not to be provided (see section B.2 Notification requirements and right and safeguards below for more detail on the appeals and Court decisions).

197. With regard to the application of sanctions, the Luxembourg tax authorities have applied sanctions for failure to provide the requested information in ten cases during the period under review, for total penalties of EUR 220 000. In nine cases, the information was provided after the application of the penalty. In the last case, the tax authorities have referred the case to the State Prosecutor for liquidation of the legal person because the person was no longer reachable in Luxembourg (no valid address, no activity) and it was considered that this person no longer existed in Luxembourg. Luxembourg authorities have indicated that the person to whom the information is requested has one month to provide the information. In case no answer is provided the tax administration sends a reminder allowing for 2 more weeks to provide the information requested. After that additional period, the director of the tax administration applies the sanction.

198. Considering the new legal framework and practices of Luxembourg with regard to the application of their powers to compel information and the application of appropriate sanctions for cases of failure to provide the information, and considering the peer comments in this regard, the second Phase 2 recommendation under element B.1 is removed.

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

199. The concept of "domestic tax interest" describes situations in which a contracting party can only provide information to another contracting party if it has an interest in gathering this information for its own needs.

200. The Phase 2 report determined that there is nothing in Luxembourg legislation to restrict the use of domestic information gathering powers to situations in which the information is required by the ACD for its own use. In practice no requests for EOI have been turned down because of a domestic tax interest requirement.

Enforcement provisions to compel production and access to information (ToR B.1.4)

201. The Phase 2 report determined enforcement provisions to compel production and access to information are present in the legal framework of Luxembourg. However, as discussed above, in practice, there were cases where Luxembourg's authorities should have pursued the matter further and used their enforcement powers to gather the missing information, if necessary. It was thus recommended that Luxembourg use its enforcement powers, as required, in all cases when the holder provides only partial information or refuses to provide the information.

202. In practice, the Luxembourg authorities report that they have been able to respond to 92 % of incoming requests (1 380) during the period under review. The Luxembourg tax authorities have applied sanctions for failure to provide the requested information in ten cases during the period under review, for total penalties of EUR 220 000. In nine cases, the information was provided after the application of the penalty. In the last case, the legal person no longer existed in Luxembourg and the tax authorities have referred the case to the State Prosecutor for liquidation of the legal person.

203. Therefore, as previously indicated, the second Phase 2 recommendation in relation to the application of their powers to compel information and the application of appropriate sanctions to obtain the requested information is removed.

Secrecy provisions *(ToR B.1.5)*

Secrecy obligations of financial institutions and insurers

204. Article 41 of the law of 5 April 1993 on the financial sector provides that information received from persons working in the banking sector in the context of their professional activity must be kept secret. Disclosure of this information is punished, pursuant to article 458 of the Criminal Code, by imprisonment of 80 days to six months and a fine of EUR 500 to 5 000. The secrecy obligation ceases when the disclosure of the information is authorised by virtue of a legislative provision, including those predating the law cited (article 41).

205. Section 111-1 of the law of 6 December 1991 on the insurance sector imposes the same obligations of confidentiality for persons working in the insurance sector.

206. Lastly, article 178 bis of the LGI provides expressly that the ACD may not, for tax purposes, request information from credit institutions, professionals of the sector, finance companies, undertakings for collective investment, or family wealth management companies.

207. To overcome the inaccessibility of banking information in the context of the international EOI, a specific instrument for access to information was included in the legislation in Luxembourg for treaties signed after March 2009 and that have entered into force, as well as for the EU Council Directive on Administrative Co-operation in the Field of Taxation.

208. For the treaties that have not yet been brought up to standard by Luxembourg, restrictions on access to information held by financial institutions and insurance companies continue to apply. These restrictions have an impact that extends beyond banking information, in that professionals working in the banking sector, insurance sector, credit institutions, finance

companies, undertaking for collective investments or family wealth management companies, together with attorneys, are part of the only professions authorised to act as professionals providing registered offices and fiduciaries. However, since the Phase 2 report, Luxembourg has signed a number of EOI agreements, including the Multilateral Convention. Luxembourg now has 108 EOI relationships, of which 100 are to the standard (allowing access to all information including information held by financial institutions, insurance companies, SPFs and lifting secrecy provisions).

209. During the peer review period, Luxembourg received a total of 349 requests for banking information under EOI agreements (these statistics only cover cases where the information was requested directly to the bank or other financial institution and do not take into account cases where the information was collected directly from the person concerned). The information was available and provided in all cases, except when the information was blacked out as required by a decision of the Court (see section B.2 below on this issue – five cases), or when the request was not answered based on the fact that the information requested precedes the effective date of the agreement but the request is relevant for a tax period that is after the effective date of the agreement (three cases). During the period under review, Luxembourg has changed its practice on this issue and has informed the relevant partners that if they still need the information, they could send a new request to which they would apply the new laws and policies (see section C.1.1 below on this issue).

Professional secrecy for attorneys

210. The Phase 2 report indicated that secrecy provisions applicable to attorneys do not prevent the effective exchange of information by the Luxembourg competent authority. In practice, no person has ever invoked legal privilege, or made a secrecy claim, to refuse the production of information for EOI purposes. Also, no issues were raised by peers in this regard. In addition, there are no other professional secrecy rules in Luxembourg that would prevent the access to information in accordance with the standard for EOI purposes.

Conclusions regarding element B.1.

211. A number of issues were raised in the Phase 2 report with regard to the access to information. A recommendation was made to ensure access to banking information under all agreements (Phase 1), for explanations to be provided when the gathering powers are not used (Phase 2) and for Luxembourg to exercise its powers to compel production of information and apply sanctions as appropriate (Phase 2).

212. Since the Phase 2 report, Luxembourg has made important changes to its legal framework and practices to address these recommendations. An

administrative circular was issued on 31 December 2013 modifying the practice of the tax authorities in the collection process of information for international exchange purposes. The changes mentioned in that circular of 31 December 2013 were confirmed by the New Law on EOI, of 25 November 2014.

213. In addition, Luxembourg has increased its EOI network by signing new agreements, such as the Multilateral Convention and other bilateral conventions. Luxembourg has now 100 EOI relationships in line with the standard, which allow for the exchange of banking information and other information protected by secrecy.

214. During the period under review, Luxembourg has not refused to exchange information based on commercial secrecy and has exchanged, in a number of cases, information on client lists. In addition, Luxembourg tax authorities now use powers to compel information and have applied sanctions for default to provide the requested information. No banking statements were blacked out following the new procedure (except for cases required by the Court) and sanctions have been applied in ten cases when the requested information was not provided. This new practice was confirmed by comments received from the peer.

215. The Phase 1 recommendation and the two Phase 2 recommendations are therefore removed. However, considering the new legal obligations and elements of practice, it is recommended that Luxembourg monitor the practical implementation of the recently introduced legal obligations and changes made to the practice, which were made to ensure that the requested information is obtained and exchanged in accordance with the standard in all cases. Therefore, the determination is upgraded to "in place" and the rating is upgraded to Largely Compliant

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place ~~but certain aspects of the legal implementation of the element need improvements~~	
Factors underlying recommendations	**Recommendations**
~~Limitations in access to information provided for by Luxembourg's domestic legislation are currently overridden in respect of only 45 of the 75 bilateral agreements. Only these new rules allow for access to information held by financial institutions, insurance companies, and SPFs.~~	~~Luxembourg should ensure access to information held by financial institutions, insurance companies, and SPFs for all its relevant partners.~~

Phase 2 Rating	
~~Non-Compliant~~ Largely Compliant	
Factors underlying the recommendations	**Recommendations**
~~In one case, Luxembourg refused to provide requested information on grounds of commercial secrecy and it did not adequately explain the basis on which it was unable to exercise its information gathering powers.~~	~~In cases where Luxembourg does not use its information gathering powers in response to an EOI request it should fully explain the basis on which it was unable to do so.~~
~~Luxembourg has the legal framework and compulsory powers in place to access information under its updated and new agreements but has failed to use the powers in practice in a number of cases, including access to banking information. It has also not used its powers to obtain information from certain entities (i.e. SOPARFIs).~~	~~Luxembourg should exercise its powers to compel production of information and apply sanctions as appropriate. The exercise of these powers and application of sanctions should be carefully monitored.~~
Important legal changes were made in Luxembourg with respect to exchange of information, as well as changes made with respect to Luxembourg's practice in EOI. These new obligations and procedures are recent and have not been tested in practice in all circumstances.	Luxembourg should monitor the practical implementation of the recently introduced legal obligations and changes made to the practice, which were made to ensure that the requested information is obtained and exchanged in accordance with the standard in all cases.

B.2. Notification requirements and rights and safeguards

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

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

The previous report

216. The Phase 2 report determined, with regard to notification requirements and rights and safeguards in Luxembourg, that Luxembourg's domestic tax law does not provide for the notification of the person who is the subject of the request for information.

217. In some cases, during the Phase 2 period of review when the requesting jurisdiction asked for the person not to be notified, the information was not exchanged. In these cases, Luxembourg did not exchange the information because the person concerned was a resident of Luxembourg (this issue arose particularly in requests for banking information) and that the information could not be requested directly from the bank because of the practice, in Luxembourg, that the information must be requested directly from the person concerned by the request if this person is resident in Luxembourg. In order to exchange the information, Luxembourg requested from the partner jurisdiction that it withdraw its stipulation that the request be kept confidential from the taxpayer. If the partner jurisdiction refused to withdraw its stipulation, the information was not collected and not exchanged. A recommendation was made for Luxembourg to ensure that in all cases its processes and procedures to collect information are clearly communicated to all its treaty partners and that these processes are followed in all cases.

218. With regard to appeals, the Phase 2 reported noted that Luxembourg legislation provided that any person targeted by the requisition decision as well as all third parties concerned have the right to appeal the decision before the administrative tribunal.

New legislation and practice

219. Since the Phase 2 report, Luxembourg has clarified its process to collect information, in the circular of 31 December 2013 and in the New Law on EOI, of 25 November 2014.

220. Section D of the circular of 31 December 2013 specifies that when a request is received and the information must be collected, the information will be first requested from the person concerned by the request. If the requesting partner stipulates that the request be kept confidential from the taxpayer, the information will be requested directly from the information holder (in which case, a new anti-tipping off provision applies, see below). If the person concerned is a non-resident of Luxembourg, the information is requested from the information holder, without any notification to the person concerned. During the period under review in 14 cases, because the requesting jurisdiction specifically asked that the request be kept confidential from the taxpayer, Luxembourg did not collect the requested information.

221. An anti-tipping off provision was included in the New Law on EOI, of 25 November 2014. Article 4(1) provides that if the competent authority of the requesting state requires that the request be kept confidential, the Luxembourg tax administration will request the information directly from the information holder and will forbid the information holder (including its management and its employees) to disclose to the person concerned or to any

third parties, the existence and the contents of the injunction letter requesting the information. A fine for failure to respect this anti-tipping off provision is punishable by a fine between EUR 1 250 to 250 000.

222. The Luxembourg authorities have mentioned that to make it easier to apply, the anti-tipping off provision is inspired by the one that exists for AML/CFT. This New Law on EOI entered into force on 1 December 2014 and the Luxembourg authorities have confirmed that the anti-tipping off provision has been applied in eight cases (all in relation to requests for banking information when the partner asked that the taxpayer not be notified) and no issues were raised. All these cases occurred after the end of the review period (30 June 2014).

Abolition of the appeal right

223. With regard to the application of the appeal right, a number of peer have indicated that the information was not exchanged because the person concerned by the request has appealed the decision to exchange, and the court cancelled the exchange (partly or in totality). Some peers also indicated that the appeal process was delaying the exchange of information.

224. During the period under review, there have been 62 cases where the decision to exchange the information was appealed (out of 1 380 requests, 4%). In 23 cases, the judge maintained the decision to exchange the information, in 22 cases, the decision to exchange the information was partially cancelled, in which case part of the information was removed or blacked out and finally, in 17 cases, the decision to exchange the information was completely cancelled.

225. With regard to the timeline, there have been eight cases where the decision was rendered within six months, in 38 cases the appeal process took less than a year, the remaining cases took more than a year (mainly when the judgment of the Administrative Tribunal was appealed to the Administrative Court). In some cases, the judge cancelled (either partially or completely) the decision to exchange the information, based on the absence of foreseeable relevance of the requests.

226. A peer has mentioned that in some cases, the requesting jurisdictions had not been informed that the decision was appealed to the Administrative Court, which prevented them from providing additional information. Luxembourg generally informed the requesting jurisdiction about the appeal and the progress of the judicial process. Luxembourg has indicated that this absence of information was due to the very short timeframe for them to react to the appeal (15 days). In addition, at the beginning of the period under review, the Luxembourg tax authorities did not always inform the requesting partners about the appeal.

227. The appeal process was abolished by the New Law on EOI, of 4 November 2014 (Article 6). It is no longer possible to appeal the decision to exchange the information. The only possibility is an appeal against the sanction that was applied for failure to provide the information, which is a general recourse for all administrative sanctions and which does not impact the exchange of information.

228. The Luxembourg authorities have mentioned that they have informed their relevant partners about this change of legislation. As of 15 April 2015, 150 injunction letters had been sent by the Luxembourg tax authorities with the explicit mention that there is no appeal possible. There are still 5 cases pending[8] (based on the old procedure permitting an appeal of the decision to exchange, which was in effect before 1 December 2014). It is therefore recommended that Luxembourg ensure that the requesting partners are informed of the progress of the pending cases.

Conclusions regarding element B.2

229. With regard to the notification process, Luxembourg has clarified its practice with the circular of 31 December 2013 as confirmed by the New Law on EOI, of 25 November 2014. The requested information will be first requested from the person concerned by the request. If the requesting partner stipulates that the request be kept confidential from the taxpayer, the information will be requested directly from the information holder. If the person concerned is a non-resident of Luxembourg, the information is requested from the information holder, without any notification of the person concerned. In addition, the Law of 25 November 2014 has introduced an anti-tipping off provision applicable to the information holder.

230. In addition, Luxembourg has abolished the right to appeal, from 1 December 2014. These new elements were communicated to Luxembourg's relevant treaty partners, as confirmed by a number of partners. As a consequence, the Phase 2 recommendation is removed. As five cases based on the old procedure are still pending and considering that in some cases, the requesting jurisdictions had not been informed that the decision was appealed, which prevented them from providing additional information, it is recommended that Luxembourg ensures that the requesting partners are informed of the progress of the pending cases. Therefore, the determination of the element remains "in place" and the rating is upgraded to Largely Compliant.

8. These requests were received after 30 June 2014 but before the abolition of the right to appeal (1December 2014).

Determination and factors underlying recommendations

Phase 1 Determination
The element is place

Phase 2 Rating	
~~Partially compliant~~ Largely Compliant	
~~The practices and procedures used to collect information in Luxembourg have not always been clear to its treaty partners and may not always have been followed in practice.~~	~~Luxembourg should ensure that in all cases its processes and procedures to collect information are clearly communicated to all of its treaty partners and that these processes are followed in all cases.~~
Luxembourg has abolished the appeal right by the New Law on EOI. However, 5 cases based on the old procedure are still pending and in some cases, the requesting jurisdictions had not been informed that the decision was appealed, which prevented them from providing additional information.	Luxembourg should ensure that the requesting partners are informed of the progress of the pending cases.

C. Exchanging information

Overview

231. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Luxembourg, the legal authority to exchange information is derived from double tax conventions (DTCs), tax information exchange agreements (TIEAs), once they become part of Luxembourg's domestic law as well as the Multilateral Convention. This section of the report examines whether Luxembourg has a network of information exchange agreements that would allow it to achieve effective EOI in practice.

232. The Phase 2 report noted that since its commitment to the standard in 2009, Luxembourg had signed three agreements establishing restrictions which were inconsistent with the standard (with Austria, Panama and Switzerland). Since the Phase 2 report, Luxembourg signed an agreement to the standard with Austria and Switzerland and has started the negotiations with Panama.

233. The Phase 2 evaluation also found that there were only 43 agreements, out of 75 signed agreements, that allowed for exchange of information in accordance with the standard. A Phase 1 recommendation was made for Luxembourg to ensure that all agreements signed could allow for an exchange of information in accordance with the international standard. Luxembourg now has an EOI relationship with 108 jurisdictions, of which 100 are in line with the standard. Of the 100 relationships that are in line with the standard, 95 are currently in force.

234. The interpretation of the foreseeably relevant standard in Luxembourg was considered, in the Phase 2 evaluation, as being unduly restrictive and preventing it from engaging in effective exchange of information in line with the international standard in certain cases. It was recommended that Luxembourg review its practices in this regard to align them with the international standard. Luxembourg has changed its interpretation of the concept of foreseeably relevance, as confirmed by the administrative circular of 31 December 2013 and by the New Law on EOI. Its practice in relation to the application of this concept during the period under review did not raise any concerns by its EOI partners and is in line with the standard.

235. Luxembourg did not exchange banking information with regard to requests that related to a tax period that was after the effective date of the agreement where the information preceded that date, even in instances where the information was otherwise available. Luxembourg was recommended, in the Phase 2 report, to conform to the standard and exchange the information. Luxembourg has changed its practice and since then, exchanged such information. However, considering that at the beginning of the period under review, some requested were not answered based on the old policy a recommendation is made for Luxembourg to monitor the implementation of the new practice. As a consequence of the changes, the rating of element C.1 is upgraded to Largely Compliant.

236. With regard to element C.2, the Phase 2 report noted that Luxembourg could not exchange information in accordance with the international standards under its EOI agreements with several partners, since only 43 of its 75 agreements were in line with the standard. Luxembourg today has a network of bilateral information exchange mechanisms covering 108[9]relationships. Of these 108relationships, 100 are in line with the standard. Of the 100 relationships that are in line with the standard, 95 are currently in force. Accordingly, element C.2 is rated Compliant.

237. In the Phase 2 review, the unnecessary disclosure of information, in injunction letters, which was not otherwise public information, was found not in accordance with the principle that the information contained in an EOI request should be kept confidential and a recommendation to this effect was included. Luxembourg has changed its practice and now discloses the minimum information necessary to collect the information. However, all injunction letters sent during the period under review were made based on the old practice, a recommendation for Luxembourg to monitor the implementation of the new practice is made. The rating of element C.3 is upgraded to Largely Compliant.

238. Regarding element C.4, the Phase 2 report found that the interpretation and application of Luxembourg's laws relating to handling of stolen data as a justification to decline to exchange information under an international agreement was unclear, had never been tested and had not been adequately explained. A recommendation was made for Luxembourg to provide the information or a clear and valid legal basis for its practice of not providing information in these cases. Since the Phase 2 report, Luxembourg has reviewed and changed its position concerning requests based on stolen data

9. See Annex 3 for the existing mechanisms, allowing for the exchange of banking information, to the standard and in force, including the jurisdictions covered by the EU Council Directive on Administrative Cooperation in the Field of Taxation 2011/16/EU and the Multilateral Convention.

and in accordance with this new policy, during the period under review, Luxembourg's authorities answered all 37 requests received that were based on stolen data. As a consequence, element C.4 is upgraded to Compliant.

239. Finally, Luxembourg's response timeframe has greatly improved since the Phase 2 review. Luxembourg ensured timely responses within 90 days in 47% of the cases and within 180 days in 78% of the cases. While progress has been made during the period under review, some peers expressed concerns with delays in receiving responses. The recommendation for Luxembourg to monitor its timeframe for answering requests to ensure that it always replies in a timely manner is maintained, the second Phase 2 recommendation on status updates is removed and element C.5 is upgraded to Largely Compliant.

C.1. Exchange of information mechanisms

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

240. Luxembourg has a total of 108 relationships providing for EOI. Of these 108 relationships, 100 are in line with the standard. Of the 100 relationships that are in line with the standard, 95 are currently in force. Luxembourg is also covered by the EU Council Directive on Administrative Co-operation, which came into effect on 1 January 2013 and the Multilateral Convention, which entered into force in Luxembourg on 1 November 2014.

241. Since the Phase 2 review, Luxembourg started to negotiate new agreements for EOI with 20 jurisdictions,[10] and five of these agreements are already initialled.[11]

242. For the three years under review (1 January 2012 to 30 June 2014), Luxembourg received 1 380 EOI requests from more than 35 different

10. Austria, Bermuda, Botswana, Bulgaria, Cabo Verde, China (People's Republic of), Cyprus*, Egypt, Indonesia, Israel, Kyrgyzstan, Malaysia, Morocco, New Zealand, Oman, Pakistan, Serbia, Slovak Republic, South Africa and Viet Nam.

* Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

11. Botswana, Kyrgyzstan, Oman, Serbia and South Africa.

jurisdictions. Its main EOI partners are France, the Netherlands and Belgium. During this period the other main EOI partners were Germany, Italy, Spain and Sweden.

243. Beyond the EOI on request in direct tax matters, Luxembourg, as a member of the European Union, participates in Community VAT system and consequently to the EOI in VAT matters under EU Council 904/2010.

244. Luxembourg is also involved in spontaneous EOI. Between 1 January 2012 and 30 June 2014, Luxembourg exchanged 72 pieces of data spontaneously, mainly with Belgium, France and Germany. Finally, Luxembourg competent authority is also a signatory to the Multilateral Competent Authority Agreement and has committed to implement automatic exchange of information and to start exchanging in 2017.

Foreseeably relevant standard *(ToR C.1.1)*

Update on EOI mechanisms

245. The international standard for EOI envisages information exchange upon request 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(1) of the OECD Model Taxation Convention set out below:

> "The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out of the provisions this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2".

246. Of the 108 EOI relationships, 100 concluded or updated since 2009 refer to paragraph 1 of Article 26 and the notion of foreseeable relevance as stipulated by the international standard.

247. All the bilateral agreements concluded since March 2009 provide, as well, for an exchange of letters which clarifies the notion of "foreseeably relevant". These exchanges of letters, which have the same force as the agreements, normally include:

- a definition of the notion of "foreseeably relevant" the purpose of which is "to provide for EOI in tax matters to the widest possible extent, without leaving contracting states at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer";
- a list of information that must be provided by the competent authority of the requesting party to the competent authority of the requested party, normally corresponding to paragraph 5 of Article 5 of the model TIEA. The information that must be communicated includes the identity of the person under examination; a statement of the information sought, including its nature and the form in which the requesting state wishes to receive the information from the requested state; the tax purpose for which the information is sought; and, to the extent known, the name and address of any person believed to be in possession of the requested information.

248. Luxembourg's authorities confirmed that these provisions were interpreted in light of the commentaries on paragraph 1 of Article 26 of the OECD Model Tax Convention and on paragraph 5 of Article 5 of the model agreement on exchange of information on tax matters (Model TIEA) published by the OECD.

249. There are eight agreements[12] concluded by Luxembourg before its commitment to the standard, and which have not yet been updated, contain no reference to the notion of "foreseeable relevance", but instead use the terms "necessary" or "relevant". The commentary on Article 26 of the OECD Model Tax Convention considers that the terms "necessary" or "relevant" mean the same thing for the EOI as the expression "foreseeably relevant". Thus, these agreements may be recognised as conforming to the standard with respect to foreseeable relevance.

Previous report

250. The Phase 2 report noted that the provisions of the exchange of letters concluded by Luxembourg deviated from the wording of Article 5 (5) of the OECD Model TIEA in the case of the protocols concluded with Austria, Panama and Switzerland. These three protocols required communication of the name of the person under examination in the requesting state as well as the name and address of the person in possession of the information in the requested state. In requiring the communication of this information, these three protocols were not considered up to the standard. Nevertheless, since

12. Israel, Kuwait, Malaysia, Panama, Thailand, Trinidad and Tobago, Uzbekistan, and Viet Nam.

1 January 2013, Luxembourg can exchange information to the standard with Austria on the basis of the EU Council Directive on Administrative Co-operation 2011/16/EU. Luxembourg was thus recommended to ensure, in line with the commitment to the standard, that each of its EOI mechanisms strictly respects the standard of transparency.

251. The Phase 2 report also noted a number of issues regarding Luxembourg's interpretation of the foreseeably relevant standard. A peer reported that banking information could not be obtained when the account holder was a resident of Luxembourg given that Luxembourg's authorities are not allowed to obtain information from the banking institutions in such case. Luxembourg's unwillingness to exchange banking information in such cases where its own residents were concerned, on the grounds of lack of foreseeable relevance, was not consistent with the standard.

252. In a number of cases, where bank account information was requested in respect of a company that was situated in a third jurisdiction, and where the shareholders of the company were resident in the requesting jurisdiction, Luxembourg requested confirmation that the requesting jurisdiction had pursued all means available to obtain the information including requesting such information from the third jurisdiction. A requirement to request information from a third jurisdiction when the initial request relates directly to a bank account in Luxembourg was considered not to be in accordance with the standard.

253. Other issues in relation to the interpretation of the foreseeable relevance by Luxembourg were also raised, such as the refusal to provide the requested information based on commercial secrecy. In addition, there were some Court decisions[13] in Luxembourg which reflected a very strict interpretation of the standard in Luxembourg. It was recommended, in the Phase 2 report, that Luxembourg reviews its interpretation of the foreseeable relevance concept to conform to the standard.

Changes since the last report

254. Luxembourg has signed new bilateral agreements with Austria and Switzerland that are in line with the standard. In addition, Luxembourg has signed the Multilateral Convention, and completed the procedure for its entry in force in Luxembourg. Both Austria and Switzerland are signatory to this convention. Finally, as mentioned in the Phase 2 report, Austria is also covered

13. Decision number 30644C of 12 July 2012 (on appeal from the decision number 29869 of 6 February 2012), decision number 30251C of 24 May 2012 (on appeal from the decision number 29592 of 9 December 2011), decision number 30658 of 7 June 2012 and decision 30164 of 27 March 2012.

by the EU Council Directive on Administrative Co-operation 2011/16/EU. With regard to Panama, Luxembourg has contacted the Panama authorities to update the agreement. The two jurisdictions are still discussing on whether the agreement should be renegotiated or simply updated by exchange of letters. As a consequence, the first Phase 1 recommendation is removed.

As discussed above, with regard to the interpretation of the concept of foreseeable relevance by the Luxembourg authorities, Luxembourg has confirmed that they have changed their previous interpretation, which is explained in the circular of 31 December 2013, and confirmed in the New Law on EOI. Luxembourg's authorities have explained that they now consider that once the requesting jurisdiction has provided an explanation as to the foreseeable relevance of the request, Luxembourg would not decline the request on the basis that it lacks relevance to the investigation. Luxembourg's authorities now answer all requests provided it is complete and meets the requirements mentioned in the agreement (Article 3(2) of the New Law on EOI). This new interpretation has been applied since 1 January 2014. One peer indicated that at the beginning of the review period, in rare cases, Luxembourg had interpreted the concept of foreseeable relevance in a restrictive way, but since this has not been an issue anymore. No other peer mentioned it as an issue.

255. Luxembourg now exchanges banking information without restriction, including banking information on its own residents. Luxembourg received 349 requests for banking information during the period under review (these are requests where the information was collected directly from the bank and do not include cases where the information was collected directly from the taxpayer) and in no cases did Luxembourg refuse to provide the requested information because the person concerned by the request was resident in Luxembourg.

256. Furthermore, in cases where some of the persons concerned by the request are resident in a third jurisdiction, Luxembourg does not require confirmation that the requesting jurisdiction had pursued all means available to obtain the information (including requesting such information from the third jurisdiction).

257. Finally, as mentioned in section B.1 above, during the period under review, Luxembourg's authorities have not refused any requests based on the concept of commercial secrecy. They have also confirmed that they have exchanged, in a number of cases during the period under review, information containing client lists.

258. The interpretation of the concept of foreseeable relevance and the practices of Luxembourg, as confirmed by the peers, is in line with the standard since Luxembourg addressed the recommendation of the Phase 2 report. Consequently, the first Phase 2 recommendation is removed.

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

259. 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 EOI in respect of all persons.

260. In this area, the 100 relationships concluded by Luxembourg that are in line with the standard are on all points consistent with the OECD Model Tax Convention. Of the eight agreements not already updated to meet the standard, two (Panama and Uzbekistan) specifically mention that the EOI is not restricted by Article 1 of the agreement.

Exchange of all types of information *(ToR C.1.3)*

261. Jurisdictions cannot engage in effective EOI 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 Model TIEA, which are the authoritative sources of the standard, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

262. The Phase 2 report noted that there were only 43 agreements, out of 75 signed agreements that allowed for exchange of information in accordance with the standard (i.e. allowing exchange of information held by banks or other financial institutions). A Phase 1 recommendation was made for Luxembourg to ensure that all agreements signed could allow for an exchange of information in accordance with the international standard.

263. Since the Phase 2 report, Luxembourg has signed a number of EOI mechanisms, all in line with the standard. Luxembourg now has a network of 100 EOI relationships containing provisions equivalent to paragraph 5 of Article 26 of the OECD Model Tax Convention. There are only eight agreements not yet updated, which do not allow for exchange of information held by banks or other financial institutions (it should be noted that the agreement with Panama allows for the exchange of banking information, but contains limitations in relation to identification requirements that are not in line with the standard). In addition, negotiations are underway or have been proposed with most of the partners that do not have an agreement to the standard, as mentioned in section C.2 below. The second Phase 1 recommendation is therefore removed.

Absence of domestic tax interest (ToR C.1.4)

264. 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.

265. All the information exchange mechanisms concluded since March 2009 contain, without exception, an express provision (equivalent to Article 26 (4) of the OECD Model Tax Convention) according to which the requested party will submit the information requested regardless of whether it has a domestic tax interest in obtaining that information.

266. The eight agreements that have not been updated since March 2009 contain no express provision relating to the non-application of the principle of domestic tax interest. However, these treaties are interpreted by Luxembourg as allowing access to all information without reference to that principle.

Absence of dual criminality principles (ToR C.1.5)

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

268. None of the information exchange mechanisms concluded by Luxembourg since March 2009 contains the principle of dual incrimination for limiting the EOI. This is also the case with the agreements not yet updated.

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

269. 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").

270. Every information exchange mechanisms concluded since March 2009 provides for EOI in both civil and criminal matters. This is also the case for the agreements signed before that date.

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

271. According to the Terms of Reference, EOI 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.

272. In some cases, the partner jurisdiction 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. Requested jurisdictions should endeavour as far as possible to accommodate such requests. The requested jurisdiction 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.

273. There are no restrictions in the information exchange mechanisms concluded by Luxembourg that might prevent it from providing information in the form requested, as long as this is consistent with its administrative practices.

274. The Luxembourg authorities have stated that they can exchange information in the form requested to the extent permitted by Luxembourg laws and administrative practices. According to comments received from Luxembourg's EOI partners, there do not seem to have been any instances where Luxembourg was not in a position to provide the information in the specific form requested.

In force *(ToR C.1.8)*

275. EOI cannot take place unless a jurisdiction has EOI arrangements in force. The international standard requires that jurisdictions take all steps necessary to bring information arrangements that have been signed into force expeditiously.

276. In Luxembourg, all tax agreements whether double taxation conventions, protocols amending existing conventions, or information exchange agreements, must be ratified by the Parliament.

277. Luxembourg is covered by the EU Council Directive on Administrative Co-operation 2011/16/EU and the Multilateral Convention, which entered into force on 1 November 2014. Therefore, Luxembourg's network of bilateral and multilateral agreements covers to date a total of 108 jurisdictions. Of these 108relationships, 100 are in line with the standard. Of the 100 relationships that are in line with the standard, 95 are currently in force.

278. 13 agreements[14] signed by Luxembourg which are in conformity with the international standard are not in force yet. It is important that Luxembourg ensures the completion of the procedure for these agreements to enter in force. However, seven[15] of these jurisdictions already have a mechanism to the standard and in force with the Multilateral Convention and for some of them, the European Directive.

279. The agreement concluded with the United States has been ratified in Luxembourg and will enter into force once ratified by the United States. A draft law (no. 6826) providing for the ratification of nine agreements[16] has been deposited before Parliament on 9 June 2015 and the law is expected to be published by the end of October 2015.

In effect *(ToR C.1.9)*

280. For information exchange to be effective, the parties to an EOI arrangement need to enact legislation necessary to comply with the terms of the arrangement.

281. As discussed previously, one peer reported in the Phase 2 evaluation, that Luxembourg did not exchange banking information with regard to requests that related to a tax period that was after the effective date of the agreement but where the information preceded the effective date of the agreement. At that time, Luxembourg reported that it was not possible to exchange banking information that preceded the effective date of application of the agreement's provision based on their interpretation of the EOI agreement. Only information originating after that effective date could be exchanged even in instances where the information was otherwise available and would have been relevant for a taxable period beginning after such effective date. This was not consistent with the international standard and Luxembourg was recommended to access and exchange banking information with regard to requests that are relevant to a tax period that is after the effective date of application of the provisions of the agreement where the information precedes such effective date.

282. In order to address this Phase 2 recommendation, the circular of 31 December 2013, which was confirmed by Article 2(2) of the New Law on EOI, specifically provides that requested information that predates the entry into effect of the provisions of the EOI agreement and that are foreseeably

14. Andorra, Austria, Brunei Darussalam, Croatia, Estonia, Hungary, Ireland, Lithuania, Mauritius, Singapore, Tunisia, United Arab Emirates and Uruguay.
15. Austria, Croatia, Estonia, Hungary, Ireland, Lithuania and Tunisia.
16. Andorra, Croatia, Estonia, Ireland, Lithuania, Mauritius, Singapore, Tunisia and United Arab Emirates.

relevant for a tax period that is after the entry into effect of the provisions of the EOI agreement can be collected and exchanged.

283. Three peers have indicated that during the period under review, requests have been refused on this basis. Luxembourg confirmed that these responses were provided before the application of the circular of 31 December 2013 (applicable from 1 January 2014) and that since the change of its policy, Luxembourg has been in contact with the partners that had requested such information, to inform them of the new policy and to assist them if they wish to send a new request to obtain the information.

284. Considering the change of policy of Luxembourg on information that predates the date on which the provisions of an EOI agreement become effective but that is relevant for a tax year that is after such date, as mentioned in the circular of 31 December 2013 and confirmed by the new legislative provision and by the new practice of Luxembourg, the Phase 2 recommendation on this issue is removed. However, considering that during the period under review, some requests were not answered (based on the old policy), it is recommended that Luxembourg monitors the implementation of the new practice and continues to assist the jurisdictions that had not received the requested information on this basis, in case they would like to send a new request.

Conclusions regarding element C.1

285. In summary, the Phase 2 report noted that since its commitment to the standard in 2009, Luxembourg had signed three agreements establishing restrictions which were inconsistent with the standard (with Austria, Panama and Switzerland). Since the Phase 2 report, Luxembourg signed an agreement to the standard with Austria and Switzerland and has started the negotiations with Panama. Consequently, the first Phase 1 recommendation is removed.

286. The Phase 2 evaluation also found that there were only 43 agreements, out of 75 signed agreements, that allowed for exchange of information in accordance with the standard. A Phase 1 recommendation was made for Luxembourg to ensure that all agreements signed could allow for an exchange of information in accordance with the international standard. Luxembourg now has an EOI relationship with 108 jurisdictions, of which 100 are in line with the standard. Of the 100 relationships that are in line with the standard, 95 are currently in force. The second Phase 1 recommendation is thus removed. With regard to the eight agreements not yet in line with the standard, Luxembourg should continue to update its EOI network.

287. The interpretation of the foreseeably relevant standard in Luxembourg was considered in the Phase 2 evaluation as being unduly restrictive and preventing it from engaging in effective exchange of information in line with the

international standard in certain cases. It was recommended that Luxembourg review its practices in this regard to align them with the international standard. Luxembourg has changed its interpretation of the concept of foreseeable relevance, as confirmed by the circular of 31 December 2013 and by the New Law on EOI. Its practice in relation to the application of this concept during the period under review did not raise any concerns by its EOI partners and is in line with the standard. The first Phase 2 recommendation is therefore removed.

288. Finally, with regard to requests that relate to a tax period that is after the effective date of application of the provision of an agreement where the information precedes that date, even in instances where the information is otherwise available, Luxembourg was recommended, in the Phase 2 report, to conform to the standard and exchange the information. Since the application of the circular of 31 December 2013 (applicable from 1 January 2014), which was confirmed by the New Law on EOI, Luxembourg has changed its practice and exchanged such information. However, at the beginning of the period under review, some requests were not answered because the information requested predates the entry into force of the agreement, even if the requests were in relation to a year after the entry into effect of the provisions of the EOI agreement. The second Phase 2 recommendation is removed but a recommendation is made for Luxembourg to monitor the implementation of the new practice and assist the jurisdictions that had not received the requested information on this basis, in case they would like to send a new request.

289. Consequently, following the important changes made by Luxembourg to its legal framework and to its EOI practice, the two Phase 1 recommendations and two Phase 2 recommendations are removed and a new Phase 2 recommendation is made. The determination of the element is upgraded to "in place" and the rating is upgraded to Largely Compliant.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place~~, but certain aspects of the legal implementation of the element need improvement.~~	
Factors underlying the recommendations	**Recommendations**
~~Of the 45 agreements concluded by Luxembourg, since its commitment to the standard in March 2009, 2 establish restrictions which are inconsistent with the standard.~~	~~Luxembourg should ensure, in line with its commitment to the standard, that each of its EOI mechanisms strictly respects the standard of transparency~~

Phase 1 Determination	
The element is in place~~, but certain aspects of the legal implementation of the element need improvement.~~	
Factors underlying the recommendations	**Recommendations**
~~As a result of domestic law limitations with respect to access to information, only 43 of the 75 signed EOI mechanisms allow for exchange of information in accordance with the international standard. Of these 43 agreements, 23 are in force.~~	~~Luxembourg should ensure that all the treaties signed could allow for an exchange of information in accordance with the international standard.~~

Phase 2 Rating	
~~Non-Compliant~~ [**Largely Compliant**]	
~~Luxembourg has interpreted the foreseeably relevant standard in an unduly restrictive way resulting in information not being exchanged in some cases. Furthermore, in some cases Luxembourg has sought unnecessary confirmations from the requesting jurisdiction.~~	~~Luxembourg should review its interpretation of the foreseeable relevance concept to conform with the standard.~~
~~Luxembourg interprets its obligations under its EOI agreements as not obliging it to exchange banking information with regard to requests that relate to a tax period that is after the effective date of the agreement where the information precedes that date, even in instances where the information is otherwise available.~~	~~Luxembourg should access and exchange banking information with regard to requests that are relevant to a tax period that is after the effective date of the agreement where the information precedes the effective date of the agreement.~~
With regard to the cases of that relate to a tax period that is after the effective date of the agreement where the information precedes that date, even in instances where the information is otherwise available, Luxembourg has changed its practice during the period under review. However, at the beginning of the period under review, some requests were not answered based on the old policy.	Luxembourg should monitor the implementation of the new practice and assist the jurisdictions that had not received the requested information on this basis, if they wish to send a new request.

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

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

290. 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 standard.

291. The Phase 2 report noted that Luxembourg could not exchange information in accordance with the international standard under its EOI agreements with several partners, since only 43 of its 75 agreements were in line with the standard. It was recommended that Luxembourg continue to develop its EOI mechanisms network to the standard, regardless of their form.

292. Since the Phase 2 report, Luxembourg has signed a number of bilateral agreements as well as the Multilateral Convention. Luxembourg has now a network of 108 EOI relationships. Of these 108 relationships, 100 are in line with the standard. Of the 100 relationships that are in line with the standard, 95 are currently in force.

293. Luxembourg has started to negotiate new agreements for EOI with 20 jurisdictions, and five agreements are already initialled.

294. The Luxembourg EOI mechanism network covers to date:

- All OECD members;[17]
- All of Luxembourg's EU partners;[18]
- All of the G20 members, but one;
- 93 of the Global Forum member jurisdictions; and
- its three neighbour countries (Belgium, France and Germany).

17. Austria; Belgium; Canada; Denmark; Finland; France; Germany; Iceland; Italy; Japan; Korea, Malta; Mexico; Netherlands; Norway; Poland; Portugal; Spain; Sweden; Switzerland; Turkey; United Kingdom and United States.
18. Austria; Belgium; Denmark; Finland; France; Germany; Italy; Malta; Netherlands; Poland; Portugal; Romania; Spain; Sweden; United Kingdom.

295. These figures shows that Luxembourg's neighbouring countries (60% of its trade takes place with its three neighbours (Belgium, France and Germany)) as well as all of EU and OECD member now have an exchange of information agreement with Luxembourg allowing for the exchange of banking information.

296. In addition to these signed agreements, Luxembourg has reported that:

- it has initialled standard-consistent agreements with Botswana, Kyrgyzstan, Oman, Serbia and South Africa.
- it is now negotiating agreements with Austria, Bermuda, Bulgaria, Cabo Verde, China, Cyprus, Egypt, Indonesia, Israel, Malaysia, Morocco, New Zealand, Pakistan, Slovak Republic and Viet Nam.
- and it has proposed to Albania, Azerbaijan, Brazil, Burkina Faso, Chile, Georgia, Greece, Kenya, Kuwait, Republic of Moldova, Mongolia, Niger, Panama, Senegal, Thailand, Trinidad and Tobago, Turks and Caicos Islands and Uzbekistan that negotiations be held. Sometimes these proposals have not received a response. Discussions between Panama and Luxembourg on the most appropriate instrument for EOI are still ongoing. Some negotiations should start soon (Senegal and Thailand).

297. The commentaries received from Luxembourg's EOI partners show that Luxembourg has concluded agreements with all those jurisdictions that have expressed an interest in negotiating with Luxembourg an agreement that respects the international transparency standard. Luxembourg has an EOI mechanism network covering all its relevant partners, and therefore, the factor underlying the recommendation is removed and the rating is upgraded to Compliant.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying the recommendations	**Recommendations**
~~Luxembourg cannot exchange information in accordance with the international standards under its EOI agreements with several partners.~~	Luxembourg should continue to develop its EOI mechanisms network to the standard~~, regardless of their form.~~

Phase 2 Rating
~~**Largely Compliant**~~ **Compliant**

C.3. Confidentiality

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

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

298. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, countries generally impose strict confidentiality requirements on information collected for tax purposes.

299. All treaties recently signed by Luxembourg contain a confidentiality provision in line with Article 26 (2) of the OECD Model Convention.

> *"*Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrate bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions*"*.

300. Luxembourg domestic law also contains provisions guaranteeing the confidential nature of information exchanged, namely an obligation of professional secrecy on the part of officials as well as experts involved in a tax enforcement procedure, a tax procedure under criminal law, or a communication from a tax authority in another procedure (cf. LGI section 22). Violations are punishable by a fine or imprisonment of up to six months (cf. LGI section 412).

301. The confidentiality measures are very strict in Luxembourg. Only the employees from the CLO have access to the database where all EOI requests received are registered. Paper files are stored in a secured area with limited access. In addition, all employees of the Luxembourg administrations are bound by professional secrecy rules and regular external audits are performed to monitor the respect of the rules by the employees. No sanctions for breach of confidentiality have been applied in the Luxembourg administration.

Previous report

302. The Phase 2 report noted that, in practice, when a request was received and the information has to be requested from the taxpayer or a third party, an injunction letter was sent, which detailed: *(1)* that the information is sought for the purpose of answering an EOI request; *(2)* a short description of the case (including the legal entities, the years and taxes concerned and the reasons why the partner jurisdiction requests the information); *(3)* the requesting jurisdiction; *(4)* the legal basis under which the request is made; *(5)* whether the taxpayer is the subject of an audit or investigation; and *(6)* information on the right to appeal. However, as a matter of practice, Luxembourg never provided the incoming request received to the person from whom the information is requested.

303. The amount of information that the Luxembourg competent authority disclosed at that time to the information holder might have caused concern with respect to ensuring the confidentiality of EOI requests. The information disclosed in the injunction letter might not have been necessary in all cases in order to produce the information sought. The systematic disclosure of such information, which was not otherwise public information, was considered not in accordance with the principle that the information contained in an EOI request should be kept confidential. A recommendation was made for Luxembourg authorities to ensure that the confidentiality of information contained in EOI requests is adequately protected.

Changes since the last report

304. Since the Phase 2 report, Luxembourg has enacted the New Law on EOI, which provides in its Article 3(4) that only information that is essential to the information holder in order to identified the information that needs to be provided can be disclosed in the injunction letter. The Article specifically mentions that the request cannot be disclosed.

305. As a consequence, since the entry into force of the New Law on EOI (1 December 2014), Luxembourg has changed its injunction letters which now include *(1)* the requesting state (for the information holder to identified the legal basis for the request), *(2)* the elements necessary to identified the requested information including the years for which the information is needed, *(3)* the deadline to provide the information, *(4)* the anti-tipping, if requested, and *(5)* the sanctions applicable for default to provide the information and a notice informing that no appeal rights are applicable. One peer indicated that, when a decision to exchange the information was appealed, Luxembourg informed the requesting jurisdiction about the appeal process but did not specifically mentioned the possibility to withdraw the request to avoid disclosure of confidential information in Court. However, as the appeal right has been abolished in Luxembourg, this situation does not exist anymore.

306. The new law and practice of Luxembourg with regard to injunction letters is in line with the standard as it discloses the minimum information necessary to collect the information. As a consequence, the recommendation that was made in the Phase 2 report is removed. However, although the Luxembourg authorities have systematically used the new injunction letter since the entry into force of the New Law on EOI, all injunctions letters sent during the period under review were made based on the old practice. Considering that the introduction of the new practice with regard to injunction letters is recent, it is recommended that Luxembourg monitor the implementation of this new practice to ensure that only the minimum information necessary to collect the information be disclosed so that confidentiality is preserved in all cases. The determination of the element remains "in place" and the rating is upgraded to Largely Compliant.

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

307. The confidentiality provisions in Luxembourg's agreements and Luxembourg's domestic legislation do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests, background documents to such requests, and any other communications between the requesting and requested jurisdictions.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating	
~~**Partially Compliant**~~ **Largely Compliant**	
Factors underlying recommendations	**Recommendations**
~~The unnecessary disclosure of information, in injunction letters, which is not otherwise public information, is not in accordance with the principle that the information contained in an EOI request should be kept confidential.~~	~~Luxembourg authorities are encouraged to ensure that the confidentiality of information contained in EOI requests is adequately protected.~~
Although the Luxembourg authorities have systematically used the new injunction letter since the entry into force of the New Law on EOI, all injunctions letters sent during the period under review were made based on the old practice.	Luxembourg should monitor the implementation of the new practice to ensure that confidentiality is preserved in all cases.

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

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

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

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

Previous report

309. The Phase 2 report determined that double taxation conventions concluded by Luxembourg contain a provision equivalent to the exemption in Article 26 (3) of the OECD Model Tax Convention allowing the state to refuse to exchange certain types of information, including that which would disclose a trade, business, industrial, commercial or professional secret or trade process.

310. However, as noted in section B.1 above, in the Phase 2 report, the matter of a request for information (a client list) being covered by commercial secrecy was reported by one peer as a basis on which Luxembourg had refused to exchange the information. A recommendation in relation to this matter was included for element B.1.

311. In addition, one peer reported that it had requested banking information from Luxembourg in a number of cases in which Luxembourg had refused to provide, on the basis that data used to support the requests had originally been obtained in violation of Luxembourg's law ("stolen data") and the requested information could therefore not be exchanged. In the cases in question, information which concerned taxpayers in the requesting jurisdiction had been taken from a bank in Luxembourg and provided to a foreign tax authority which spontaneously passed it to the requesting jurisdiction under the terms of the EU Mutual Assistance Directive. Luxembourg's tax authorities considered that the refusal to exchange information in these cases was justified by a combination of the provisions of Article 26 paragraph 3(b) of the DTC between Luxembourg and the requesting jurisdiction and Luxembourg's domestic law.

312. The Phase 2 report found that the interpretation and application of Luxembourg's laws relating to handling of stolen data as a justification to decline to exchange information under an international agreement was

unclear, had never been tested and had not been adequately explained. A recommendation was made for Luxembourg to provide the information or a clear and valid legal basis for its practice of not providing information in these cases.

Changes since the last report

313. With regard to the commercial secrecy, as explained in section B.1 above, Luxembourg has confirmed that they have not refused any requests based on the concept of commercial secrecy during the period under review, which is consistent with the peer inputs received. Luxembourg has also confirmed that they have exchanged, in a number of cases during the period under review, information containing client lists.

314. Since the Phase 2 report, Luxembourg has reviewed and changed its position concerning requests based on stolen data. Luxembourg's new policy is that requests based on stolen data are accepted and answered. In accordance with this new policy, Luxembourg informed its relevant partners and during the period under review, Luxembourg's authorities answered all 37 requests that were based on stolen data. The practical application on this new policy was confirmed by peer input. This new practice is confirmed in Article 2(2) of the New Law on EOI. Luxembourg confirmed that no requests based on stolen data were refused or are still pending. Considering the new policy of Luxembourg and the fact that this new policy was applied in a number of cases during the period under review, the recommendation is removed, the determination of the element remains "in place" and the rating is upgraded to Compliant.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating	
~~**Non-Compliant**~~ **Compliant**	
Factors underlying recommendations	**Recommendations**
~~Luxembourg has refused to provide banking information in response to valid requests in a number of cases on the basis that data used to support the requests had originally been obtained in violation of its laws without providing a clear legal basis for its refusal.~~	~~Luxembourg should respond to all valid requests for banking information or provide a clear and valid legal basis, in line with the standard, for its practice of not providing such information~~

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

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

316. For the period under review (1 January 2012 to 30 June 2014), Luxembourg received 1 380 incoming EOI requests (480 requests in 2012, 588 requests in 2013 and 312 requests for the first half of 2014), from more than 35 partner jurisdictions, the most significant being France, Netherlands and Belgium. During this period the other main EOI partners were Germany, Italy, Spain and Sweden.

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

	2012		2013		2014 (until 30 June)		Total	
	num.	%	num.	%	num.	%	num.	%
Total number of requests received*	480	100	588	100	312	100	1380	100
Full response:** ≤90 days	237	49	269	46	143	46	653	47
≤180 days (cumulative)	348	73	462	79	265	85	1075	78
≤1 year (cumulative)	444	93	564	96	309	99	1317	95
>1 year	36	8	21	4	3	1	63	5
Declined for valid reasons		-	2	0.3	2	0.6	4	0.2
Failure to obtain and provide information requested	17	4	56	10	24	8	97	7
Requests still pending at date of review	-	-	3	0.5	-	-	3	0.2

* Luxembourg 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.

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

318. Luxembourg's response timeframe has greatly improved since the Phase 2 review, where only 28% of the requests were answered in less than 90 days, 48% (cumulative) in less than 180 days and 29% were answered in more than a year. As can be seen from the chart, for the period under review, these numbers are now 47% (less than 90 days), 78% (less than 180 days) and only 5% of the cases took more than a year.

319. At the date of review (24 July 2015), there were three requests pending.

320. Luxembourg considers a full response as any request that has been finally responded to and considered closed. This includes cases where it was not possible to obtain all the information requested. At the date of review (24 July 2015) there were 97 cases where the requested information was not provided in totality (17 in 2012, 56 in 2013 and 24 in 2014). These 97 cases are already included in the total 1 380. In these 97 cases, the information could not be completely provided because the requests were partially or totally cancelled by the Court (39 cases – see section B.2 above), because the company no longer existed in Luxembourg (23 cases – see section B.1 above), because the requests related to a tax period that was after the effective date of the agreement but where the information preceded the effective date of the agreement and these requests were received at the beginning of the review period, before Luxembourg change its practice on this issue (three cases – see section C.1.9 above), because the requesting partner specifically asked that the request be kept confidential from the taxpayer (14 cases – see section B.2 above). In nine cases the company did not comply with the accounting obligations and the tax authorities referred the cases to the State Prosecutor for legal liquidation of the company (liquidation of the company for absence of valid address, activity and non-fulfilment of its obligations – see section A.2 above). The nine other cases have been declined for a variety of other reasons. Concerning the four requests declined for valid reasons, the tax administration declined the requests because of the absence of a legal basis.

321. A number of peers have commented on the timeframe within which Luxembourg answers incoming EOI requests. Luxembourg has explained that in a number of cases, the delay was due to the appeal procedure. Of the 1 380 requests received during the period under review, 62 cases were appealed. 16 of which took more than a year to resolve. A recommendation regarding this issue is made in section B.2. Luxembourg also indicated that some cases were complex and took longer to answer (such as requests for information on patent). Two peers specifically mentioned that the delays were acceptable due to the complexity of the cases and that the information received in these complex cases was of good quality.

322. While substantial progress has been made during the period under review, some peers expressed concerns with delays in receiving responses. The recommendation that Luxembourg should monitor its timeframe for

answering requests to ensure that it always replies in a timely manner is therefore maintained.

323. Peers have also reported, in the Phase 2 report, that they did not always receive an update when the information cannot be provided within 90 days. Luxembourg explained that they have changed their system during the period under review and since June 2013, they systematically send status updates when the request is not answered after 90 days. During the period under review, only one peer commented that it did not always receive status updates. The second Phase 2 recommendation on status updates is therefore removed and the rating is upgraded to Largely Compliant.

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

Organisational process and resources

324. The Phase 2 report concluded that except for the delays in answering and the lack of status updates, the CLO had good organisational process and resources in place. Luxembourg has indicated that since the Phase 2 report, they have focused on improving communication with partner jurisdictions, by bilateral meetings, but also by regular contacts to discuss the requests and potential issues. In addition, they are now informing their main partners about the recent changes to the legal framework and to the practice in EOI. A number of partners have mentioned they have good communication with the Luxembourg EOI team in their peer input.

325. Three persons are devoted to EOI within the CLO. In addition, one person was transferred from the Ministry of Finance recently and an additional person was hired and will start service soon. In addition to the CLO, the AED and ADA also have some responsibilities for EOI. The AED has designated three persons to handle EOI requests while the ADA has designated two persons. It should also be noted that local tax offices have seven employees involved in EOI. Statistics provided by Luxembourg for the period under review show important improvements in the timeframe to answer EOI requests received since the Phase 2 report. This indicates there are sufficient resources devoted to EOI, and this was also confirmed by the CLO.

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

326. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. Other than the issues identified above, there are no further conditions which may restrict the exchange of information.

Determination and factors underlying 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	
~~**Partially Compliant**~~ **Largely Compliant**	
Factors underlying the recommendations	**Recommendations**
While progress has been made during the period under review, some peers expressed concerns with delays in receiving certain responses.	Luxembourg should monitor its timeframe for answering requests to ensure that it always replies in a timely manner.
~~IN instance where it cannot provide an answer within 90 days, Luxembourg does not provide, routinely, a status update to its treaty partners.~~	~~Luxembourg should ensure that its authorities respond to EOI requests in a timely manner, by providing the information within 90 days or receipt of the request, or if it has been unable to do so, by providing a status update.~~

Summary of determinations and factors underlying recommendations

Overall Rating
Largely Compliant

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
The element is in place.		
Phase 2 rating: Largely Compliant.	The new provisions to immobilise bearer shares are recent and have not become fully effective.	Luxembourg should ensure that the new provisions on immobilisation of bearer shares are effectively implemented and monitored.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
The element is in place.		
Phase 2 rating: Compliant.		
Banking information should be available for all account-holders. *(ToR A.3)*		
The element is in place.		
Phase 2 rating: Compliant.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1)*		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Largely Compliant.	Important legal changes were made in Luxembourg with respect to exchange of information, as well as changes made with respect to Luxembourg's practice in EOI. These new obligations and procedures are recent and have not been tested in practice in all circumstances.	Luxembourg should monitor the practical implementation of the recently introduced legal obligations and changes made to the practice, which were made to ensure that the requested information is obtained and exchanged in accordance with the standard in all cases.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
The element is in place.		
Phase 2 rating: Largely Compliant.	Luxembourg has abolished the appeal right by the New Law on EOI. However, 5 cases based on the old procedure are still pending and in some cases, the requesting jurisdictions had not been informed that the decision was appealed, which prevented them from providing additional information.	Luxembourg should ensure that the requesting partners are informed of the progress of the pending cases.
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
The element is in place.		
Phase 2 rating: Largely Compliant.	With regard to the cases of that relate to a tax period that is after the effective date of the agreement where the information precedes that date, even in instances where the information is otherwise available, Luxembourg has changed its practice during the period under review. However, at the beginning of the period under review, some requests were not answered based on the old policy.	Luxembourg should monitor the implementation of the new practice and assist the jurisdictions that had not received the requested information on this basis, if they wish to send a new request.

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
The element is in place.		Luxembourg should continue to develop its EOI mechanisms network to the standard.
Phase 2 rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
The element is in place.		
Phase 2 rating: Largely Compliant.	Although the Luxembourg authorities have systematically used the new injunction letter since the entry into force of the New Law on EOI, all injunctions letters sent during the period under review were made based on the old practice.	Luxembourg should monitor the implementation of the new practice to ensure that confidentiality is preserved in all cases.
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
The element is in place.		
Phase 2 rating: Compliant.		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
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.	While progress has been made during the period under review, some peers expressed concerns with delays in receiving certain responses.	Luxembourg should monitor its timeframe for answering requests to ensure that it always replies in a timely manner.

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

Luxembourg would like to thank the assessment team for the excellent work it has performed, as well as all those who were involved in the peer review – the Secretariat, the members of the Peer Review Group and the Global Forum.

Since the publication of our report in 2013, considerable changes took place in the laws, regulations and practice, which show Luxembourg's commitment in the area of transparency and exchange of information for tax purposes and this has been properly recognised through the peer review process.

Luxembourg has taken note of the positive findings of this report and will focus on the remaining recommendations.

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

Annex 2: Request for a supplementary report received from Luxembourg[20]

Request for a post-Phase 2 supplementary report

Following the methodology of the Global Forum on Transparency and Exchange of information for tax purposes, Luxembourg would like to request for a post-Phase 2 supplementary report to be prepared.

Paragraph 60 of the Methodology states that *"(...) at any time after the adoption of a Phase 2 report, when the assessed jurisdiction makes changes in its legal and regulatory framework or the practical implementation of that framework that are likely to result in an upgrade in a rating to "compliant", the assessed jurisdiction can inform the chair of the PRG and submit a detailed written report for the PRG to consider, clearly indicating why the change justifies a revision of the determination or rating, and ask for a supplementary report to be prepared.*"

1. **Element on which Luxembourg believes the changes that have occurred are likely to result in a rating "compliant"**

In its Peer Review Report Phase 1: Legal and Regulatory Framework and Phase 2: Implementation of the Standard in Practice, the **element C.2** requiring that *"The jurisdictions' network of information exchange mechanisms should cover all relevant partners"* was determined with regard to the legal and regulatory framework as being "in place" with the recommendation that *"Luxembourg should continue to develop its EOI mechanisms network to the standard, regardless of their form".*

At the cut-off date of the phase 2 report, Luxembourg had a network of bilateral information exchange mechanisms covering 75 jurisdictions. Of these 75 agreements, 45 allowed for the exchange of banking information and 43 were in line with the standard. Of the 43 agreements signed and in line with the standard, 23 were in force. Luxembourg is also party to the EU Council Directive on Administrative Cooperation since 1 January 2013. As a

20. Annexes to the Luxembourg request are not reproduced in this document.

result, Luxembourg had an EOI relationship to the standard with 54 jurisdictions and could exchange information with 40 of them.

As only 43 out of 75 agreements were to the standard, the Global Forum concluded that Luxembourg could not exchange information in accordance with the international standard under its EOI agreements with several partners and therefore the element C.2. was rated "largely compliant".

Since then, Luxembourg has signed and ratified the Multilateral Joint Council of Europe/OECD Convention on mutual administrative assistance in tax matters and its Protocol,[21] hence enlarging its EOI network to all 83 parties to this Convention. The Convention entered into force on 1 November 2014.

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.

To date Luxembourg:

- has an EOI relationship with 105 jurisdictions;
- 97 of which are to the standard;
- 80 of which are in force;
- only 8 of which are not to the standard (Israel, Kuwait, Malaysia, Panama, Thailand, Trinidad & Tobago, Uzbekistan, Viet Nam);
- 3 of which are in negotiation (Malaysia, Thailand and Viet Nam).

Although Luxembourg is now party to the Joint Council of Europe/OECD Convention allowing any other party to the Convention to request information form Luxembourg according to the standard, it continues to negotiate agreements for EOI to the standard on a bilateral level with 23 jurisdictions:

- it has initialed standard-consistent agreements with Botswana, Brunei, Hungary, Kyrgyzstan, Oman, Serbia, South Africa and Uruguay ;
- it is now negotiating agreements with Chile, China, Cyprus, Egypt, Latvia, Malaysia, Morocco, New Zealand, Pakistan, Senegal, Syria, Thailand, Ukraine and Vietnam;
- it is starting negotiations with: Slovak Republic.

21. Loi du 26 mai 2014 portant approbation de la Convention concernant l'assistance administrative mutuelle en matière fiscale et de son protocole d'amendement, signés à Paris, le 29 mai 2013 et portant modification de la loi générale des impôts.

In conclusion, with only 43 out of 75 agreements to the standard, Luxembourg received a "largely compliant" rating for element C.2.

To date Luxembourg has an EOI relationship with 105 jurisdictions of which 97 are to the standard.

Therefore element C.2. should be considered as being "compliant".

2. **Other developments since the publication of the Peer Review report**

Since the publication of the ratings end of November 2013, Luxembourg has acted on all of the recommendations made in its report.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
Phase 1 determination: The element is not in place	Luxembourg allows for the issuance of bearer securities by SAs, SEs and S.e.c.as without having mechanisms allowing for the identification of such securities holders in any circumstances. This possibility is also opened to investment companies taking the form of an SA or a S.e.c.a.	Luxembourg should ensure the availability of information relating to SAs, SEs and S.e.c.as bearer securities holders in any circumstances.
	Ownership information relating to foreign partners of SICARs which take the form of an S.e.c.s is not available in Luxembourg in all circumstances.	Luxembourg should ensure that ownership information relating to SICARs which take the form of an S.e.c.s is available in all circumstances.
Phase 2 rating: Non-Compliant		

Determination	Factors underlying recommendations	Recommendations
• Bearer shares In August 2014, a law immobilizing all bearer shares entered into force ensuring that information relating to bearer securities holders will be available in any circumstance.[1] • SICARS Regarding the ownership information relating to SICARs taking the form of a Secs, a law of 12 July 2013 [2] assures that SICARS taking the form of a Secs will be subject to the common registration and publication obligations provided for by commercial law (law of 10 August 1915 on commercial companies and law of 19 December 2002 concerning the register of commerce). • During the Phase 2 review no issue had been identified for element A.1.		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
Phase 1 determination: The element is in place		
Phase 2 rating: Compliant		
Banking information should be available for all account-holders. *(ToR A.3)*		
Phase 1 determination: The element is in place		
Phase 2 rating: Compliant		

1. Loi du 28 juillet 2014 relative à l'immobilisation des actions et parts au porteur et à la tenue du registre des actions nominatives et du registre des actions au porteur et portant modification (1) de la loi modifiée du 10 août 1915 concernant les sociétés commerciales et (2) de la loi modifiée du 5 août 2005 sur les contrats de garantie financière.

2. La loi du 12 juillet 2013 relative aux gestionnaires de fonds d'investissement alternatifs.

Determination	Factors underlying recommendations	Recommendations
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 but some elements of the legal implementation of the element needs improvements	Limitations in access to information provided for by Luxembourg's domestic legislation are currently overridden in respect of only 45 of the 75 signed agreements. Only these new rules allow for access to information held by financial institutions, insurance companies, and SPFs.	Luxembourg should ensure access to information held by financial institutions, insurance companies, and SPFs for all its relevant partners.
Phase 2 rating: Non-Compliant	In one case, Luxembourg refused to provide requested information on grounds of commercial secrecy and it did not adequately explain the basis on which it was unable to exercise its information gathering powers.	In cases where Luxembourg does not use its information gathering powers in response to an EOI request it should fully explain the basis on which it was unable to do so.
	Luxembourg has the legal framework and compulsory powers in place to access information under its updated and new agreements but has failed to use the powers in practice in a number of cases, including access to banking information. It has also failed to use its powers to obtain information from certain entities (i.e. SOPARFIs).	Luxembourg should exercise its powers to compel production of information and apply sanctions as appropriate. The exercise of these powers and application of sanctions should be carefully monitored.

Determination	Factors underlying recommendations	Recommendations
• Access to information for all relevant partners To date Luxembourg has an EOI relationship with 105 jurisdictions of which 97 are to the standard. • Commercial secrecy As of 1 January 2014 a circular[3] of the Director of the direct tax administration concerning the procedure for the exchange of information on request came into force which clarifies the procedure and addresses the issue relating to the interpretation of the foreseeably relevance. In practice, the Luxembourg competent authority follows the procedure according to the circular. Luxembourg thus has replied in accordance with the international standard to all the requests. It has never invoked "commercial secrecy" again nor has it sent altered documents. • Use of compulsory powers The aforementioned circular addresses the issue relating to the exercise of compulsory powers by the competent authority. As recommended, Luxembourg applied sanctions when the requested information was not provided. • Altered documents The law modifying the procedure applicable for exchange of information on request (hereafter "the EOI law") clearly states that the competent authority can compel communication of any documents or information sought by the requesting jurisdiction. It also forbids alteration of the requested information by the information holder.		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
Phase 1 determination: The element is in place		
Phase 2 rating: <u>Partially Compliant</u>	The practices and procedures used to collect information in Luxembourg have not always been clear to its treaty partners and may not always have been followed in practice.	Luxembourg should ensure that in all cases its processes and procedures to collect information are clearly communicated to all of its treaty partners and that these processes are followed in all cases.

3. www.impotsdirects.public.lu/archive/newsletter/2013/nl_31122013/index.html.

Determination	Factors underlying recommendations	Recommendations
• Clarification of the procedure As of 1 January 2014 a circular of the Director of the direct tax administration concerning the procedure for the exchange of information on request came into force which clarifies the procedure and specifies that if the person concerned by the request is a resident of Luxembourg, an injunction letter to request the information is sent directly to this person. When the requesting State asks that the person concerned should not be informed about the request, the injunction will be directly addressed to the holder of the information. When the person concerned by the request is not resident in Luxembourg, the injunction is directly sent to the holder of the information. In practice, the Luxembourg competent authority follows the procedure according to the circular.		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
Phase 1 determination: The element is in place but some elements of the legal implementation of the element needs improvements	Of the 45 agreements concluded by Luxembourg, since its commitment to the standard in March 2009, 3 establish restrictions which are inconsistent with the standard.	Luxembourg should ensure, in line with its commitment to the standard, that each of its EOI mechanisms strictly respects the standard of transparency
	As a result of domestic law limitations with respect to access to information, only 43 of the 75 signed EOI mechanisms allow for exchange of information in accordance with the international standard. Of these 43 agreements 23 are in force.	Luxembourg should ensure that all the treaties signed could allow for an exchange of information in accordance with the international standard.
Phase 2 rating: <u>Non-Compliant</u>	Luxembourg has interpreted the foreseeably relevant standard in an unduly restrictive way resulting in information not being exchanged in some cases. Furthermore, in some cases Luxembourg has sought unnecessary confirmations from the requesting jurisdiction.	Luxembourg should review its interpretation of the foreseeable relevance concept to conform with the standard.

Determination	Factors underlying recommendations	Recommendations
	Luxembourg interprets its obligations under its EOI agreements as not obliging it to exchange banking information with regard to requests that relate to a tax period that is after the effective date of the agreement where the information precedes that date, even in instances where the information is otherwise available.	Luxembourg should access and exchange banking information with regard to requests that are relevant to a tax period that is after the effective date of the agreement where the information precedes the effective date of the agreement.

- Access to information for all relevant partners
  To date Luxembourg has an EOI relationship with 105 jurisdictions of which 97 are to the standard.
- Foreseeably relevance standard
  As of 1 January 2014 a circular of the Director of the direct tax administration concerning the procedure for the exchange of information on request came into force which addresses the issue regarding the interpretation of the foreseeably relevance.
  In practice, Luxembourg thus has replied to all the requests in accordance with the international standard.
  Furthermore the EOI law abolishes the right to appeal of the information holder and the taxpayer against the request. Courts can no longer interpret the foreseeably relevance of requests.
- Retroactivity
  The aforementioned circular addresses the issue regarding the retroactivity of the requests.
  In practice, Luxembourg exchanged the information with the jurisdiction that raised the retroactivity issue.
  In addition to the circular, article 2, paragraph 3 of the EOI law expressly allows the competent authority to access and exchange banking information with regard to requests that are relevant to a tax period that is after the effective date of the agreement where the information precedes the effective date of the agreement.

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
Phase 1 determination: The element is in place		
Phase 2 rating: <u>Partially Compliant</u>	The unnecessary disclosure of information, in injunction letters, which is not otherwise public information, is not in accordance with the principle that the information contained in an EOI request should be kept confidential.	Luxembourg authorities are encouraged to ensure that the confidentiality of information contained in EOI requests is adequately protected.
• Disclosure of information In practice, since the adoption of the report, Luxembourg authorities ensure that the injunction letters contain only indications which are essential to enable the holder of information to identify the requested information. In addition, Article 3, para. 4 of the EOI law indicates that the request cannot be disclosed and that the injunction letter shall only contain indications which are essential to enable the holder of information to identify the requested information.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
Phase 1 determination: The element is in place		
Phase 2 rating: <u>Non-Compliant</u>	Luxembourg has refused to provide banking information in response to valid requests in a number of cases on the basis that data used to support the requests had originally been obtained in violation of its laws without providing a clear legal basis for its refusal.	Luxembourg should respond to all valid requests for banking information or provide a clear and valid legal basis, in line with the standard, for its practice of not providing such information
• Stolen data Luxembourg has provided the requested information to the partner who had raised this issue. In addition, Luxembourg no longer rejects requests involving stolen data.		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		
Phase 2 rating: Partially Compliant	While progress has been made for the last year under review, some peers expressed concerns with delays in receiving certain responses.	Luxembourg should monitor its timeframe for answering requests to ensure that it always replies in a timely manner.
	In instances where it cannot provide an answer within 90 days, Luxembourg does not provide, routinely, a status update to its treaty partners.	Luxembourg should ensure that its authorities respond to EOI requests in a timely manner, by providing the information requested within 90 days of receipt of the request, or if it has been unable to do so, by providing a status update.
• Status updates Since the publication of the report, Luxembourg submits status updates reports to its partners on a regular basis.		

Finally, it is worthwhile mentioning that Luxembourg signed the "early adopters" initiative in October in Berlin in order to automatically exchange information for tax purposes starting in **2017**.

Annex 3: List of all exchange-of-information mechanisms

European Union exchange of information mechanisms

Luxembourg exchanges information with EU Members under:

- the new EU Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation. This Directive came into force on 1 January 2013. It repeals Council Directive 77/799/EEC of 19 December 1977 and provides inter alia for exchange of banking information on request for taxable periods after 31 December 2010 (Article 18). All EU Members were required to transpose it into national legislation by 1 January 2013. The current EU Members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.
- EU Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU Member in favour of individuals or residual entities being resident of another EU Member are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between EU members.
- Council Regulation (EU) No. 904/2010 of 7 October 2010 on administrative co-operation and combating fraud in the field of value added tax (recast of the Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative co-operation in the field of value added tax);
- Council Regulation (EC) No. 2073/2004 of 16 November 2004 on administrative co-operation in the field of excise duties.

Multilateral and bilateral exchange of information agreements

Luxembourg signed the Multilateral Convention as well as its 2010 Protocol on 12 November 2013. Luxembourg deposited its instrument of ratification of this Convention on 11 July 2014, which came into force on 1 November 2014. The status of the Multilateral Convention as at July 2015 is set out in the table below.[22] The table also includes territories to which the Multilateral Convention applies through a Declaration of territorial extension by a state party.

Table of Luxembourg's exchange of information relations

The table below summarises Luxembourg's EOI relations with individual jurisdictions established through international agreements or EU Council Directive 2011/16/EU. These relations allow for exchange of information upon request in the field of direct taxes. In case of the Multilateral Convention which has been ratified by Luxembourg, the date when the agreement entered into force indicates the date when the Convention became in force in Luxembourg and the partner jurisdiction. In case of the EU Directive the date signed indicates the date when the EU Directive was adopted and the date of entry into force of the EU Directive indicates the date when implementing provisions dealing with exchange of information upon request became effective in EU Member countries.

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
1	Albania	DTC	14.01.2009	-
		Multilateral Convention	Signed	01.11.2014
2	Andorra	DTC	02.06.2014	-
		Multilateral Convention	Signed	Not yet in force in Andorra
3	Anguilla[a]	Multilateral Convention	Extended	01.11.2014
4	Argentina	Multilateral Convention	Signed	01.11.2014
5	Aruba[b]	Multilateral Convention	Extended	01.11.2014
6	Armenia	DTC	23.06.2009	09.04.2010
7	Australia	Multilateral Convention	Signed	01.11.2014

22. The chart of signatures and ratification of the Multilateral Convention is available at www.oecd.org/ctp/eoi/mutual.

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
8	Austria	DTC (Protocol) (Protocol)	18.10.1962 21.05.1992 07.07.2009	07.02.1964 01.02.1994 01.09.2010
		Multilateral Convention	Signed	01.12.2014
		EU Council Directive 2011/16/EU (EU Directive)	15.02.2011	01.01.2013
9	Azerbaijan	DTC	16.06.2006	02.07.2009
		Multilateral Convention	Signed	01.09.2015
10	Bahrain	DTC	06.05.2009	10.11.2010
11	Barbados	DTC	01.12.2009	08.08.2011
12	Belgium	DTC (Protocol) (Protocol)	01.01.1972 11.12.2002 16.07.2009	30.12.1972 11.12.2002 25.06.2013
		Multilateral Convention	Signed	01.04.2015
		EU Directive	15.02.2011	01.01.2013
13	Belize	Multilateral Convention	Signed	01.11.2014
14	Bermuda[a]	Multilateral Convention	Extended	01.11.2014
15	Brazil	DTC	08.11.1978	23.07.1980
		Multilateral Convention	Signed	Not yet in force in Brazil
16	British Virgin Islands[a]	Multilateral Convention	Extended	01.11.2014
17	Brunei Darussalam	DTC	14.07.2015	
18	Bulgaria	DTC	27.01.1992	15.03.1994
		EU Directive	15.02.2011	01.01.2013
19	Cameroon[e]	Multilateral Convention	Signed	Not yet in force in Cameroon
20	Canada	DTC (Protocol)	10.09.1999 08.05.2012	10.10.2000 10.12.2013
		Multilateral Convention	Signed	01.11.2014
21	Cayman Islands[a]	Multilateral Convention	Extended	01.11.2014
22	Chile	Multilateral Convention	Signed	Not yet in force in Chile

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
23	China, People's Republic of	DTC	12.03.1994	28.07.1995
		Multilateral Convention	Signed	Not yet in force in China
24	Colombia	Multilateral Convention	Signed	01.11.2014
25	Costa Rica	Multilateral Convention	Signed	01.11.2014
26	Croatia	DTC	20.06.2014	-
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
27	Curaçao[b]	Multilateral Convention	Extended	01.11.2014
28	Cyprus[c]	Multilateral Convention	Signed	01.04.2015
		EU Directive	15.02.2011	01.01.2013
29	Czech Republic	DTC (Protocol)	18.03.1991 05.03.2013	30.12.1992 31.07.2014
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
30	Denmark	DTC (Protocol) (Protocol)	17.11.1980 04.06.2009 09.07.2013	01.01.1979 01.01.2011 28.12.2004
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
31	El Salvador	Multilateral Convention	Signed	Not yet in force in El Salvador
32	Estonia	DTC (Protocol)	23.05.2006 07.07.2014	23.01.2007 -
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
33	Faroe Islands[d]	Multilateral Convention	Extended	01.11.2014
34	Finland	DTC (Protocol) (Protocol)	01.03.1982 24.01.1990 01.07.2009	27.03.1983 18.07.1992 12.04.2010
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
35	Former Yugoslav Republic of Macedonia	DTC	15.05.2012	23.07.2013

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
36	France	DTC (Protocol) (Protocol) (Protocol) (Protocol)	01.04.1958 08.09.1970 21.11.2007 03.06.2009 05.09.2014	14.09.1959 15.11.1971 27.12.2007 29.10.2010 -
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
37	Gabon	Multilateral Convention	Signed	Not yet in force in Gabon
38	Georgia	DTC	15.10.2007	14.12.2009
		Multilateral Convention	Signed	01.11.2014
39	Germany	DTC (Protocol) (Protocol) DTC (new)	23.08.1959 15.06.1973 11.12.2009 23.04.2012	06.06.1960 25.11.1978 23.12.2010 30.09.2013
		Multilateral Convention	Signed	Not yet in force in Germany
		EU Directive	15.02.2011	01.01.2013
40	Ghana	Multilateral Convention	Signed	01.11.2014
41	Gibraltar[a]	Multilateral Convention	Extended	01.11.2014
42	Greece	DTC	22.11.1991	26.08.1995
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
43	Greenland[d]	Multilateral Convention	Extended	01.11.2014
44	Guatemala	Multilateral Convention	Signed	Not yet in force in Guatemala
45	Guernsey[a]	DTC	10.05.2013	08.08.2014
		Multilateral Convention	Extended	01.11.2014
46	Hong Kong, China	DTC (Protocol)	02.11.2007 11.11.2010	20.01.2009 17.08.2011
47	Hungary	DTC (Protocol)	15.01.1990 10.03.2015	21.04.1991 01.01.2013
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
48	Iceland	DTC (Protocol)	04.10.1999 28.08.2009	19.09.2001 28.04.2010
		Multilateral Convention	Signed	01.11.2014
49	India	DTC	02.06.2008	09.07.2009
		Multilateral Convention	Signed	01.11.2014
50	Indonesia	DTC	14.01.1993	09.07.2009
		Multilateral Convention	Signed	01.05.2015
51	Ireland	DTC (Protocol)	14.01.1972 27.05.2014	25.02.1975 -
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
52	Isle of Man[a]	DTC	08.04.2013	05.08.2014
		Multilateral Convention	Extended	01.11.2014
53	Israel	DTC	13.12.2004	22.05.2006
54	Italy	DTC (Protocol)	03.06.1981 21.06.2012	04.02.1983 25.10.2014
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
55	Japan	DTC (Protocol)	05.03.1992 25.01.2010	27.12.1992 30.12.2011
		Multilateral Convention	Signed	01.11.2014
56	Jersey[a]	DTC	17.04.2013	05.08.2014
		Multilateral Convention	Extended	01.11.2014
57	Kazakhstan	DTC (Protocol)	26.06.2008 03.05.2012	11.12.2013 11.12.2013
		Multilateral Convention	Signed	01.08.2015
58	Korea	DTC (Protocol)	07.11.1984 29.05.2012	26.12.1986 04.09.2013
		Multilateral Convention	Signed	01.11.2014
59	Kuwait	DTC	11.12.2007	-
60	Latvia	DTC	14.06.2004	-
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
61	Lao People's Democratic Republic	DTC	04.11.2012	21.03.2014
62	Liechtenstein	DTC	26.08.2009	17.12.2010
		Multilateral Convention	Signed	Not yet in force in Liechtenstein
63	Lithuania	DTC (Protocol)	22.11.2004 20.06.2014	14.04.2006 -
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
64	Malaysia	DTC	21.11.2002	02.07.2004
65	Malta	DTC (Protocol)	29.04.1994 30.11.2011	14.02.1996 11.07.2013
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
66	Mauritius	DTC (Protocol)	15.02.1995 28.01.2014	12.09.1996 -
		Multilateral Convention	Signed	Not yet in force in Mauritius
67	Mexico	DTC (Protocol)	07.02.2001 07.10.2009	27.12.2001 20.11.2011
		Multilateral Convention	Signed	01.11.2014
68	Moldova	DTC	11.07.2007	04.12.2009
		Multilateral Convention	Signed	01.11.2014
69	Monaco	DTC	27.07.2009	03.05.2010
		Multilateral Convention	Signed	Not yet in force in Monaco
70	Montserrat[a]	Multilateral Convention	Extended	01.11.2014
71	Morocco	DTC	19.12.1980	16.02.1984
		Multilateral Convention	Signed	Not yet in force in Morocco
72	Netherlands	DTC (Protocol) (Protocol)	08.05.1968 16.10.1990 29.05.2009	20.10.1969 27.12.1992 01.07.2010
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
73	New Zealand	Multilateral Convention	Signed	01.11.2014
74	Nigeria	Multilateral Convention	Signed	01.09.2015
75	Norway	DTC (Protocol)	06.05.1983 07.07.2009	27.01.1985 12.04.2010
		Multilateral Convention	Signed	01.11.2014
76	Panama	DTC	07.10.2010	01.11.2011
77	Philippines	Multilateral Convention	Signed	Not yet in force in Philippines
78	Poland	DTC (Protocol)	14.06.1995 07.06.2012	31.07.1996 25.07.2013
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
79	Portugal	DTC (Protocol)	25.05.1999 07.09.2010	30.12.2000 18.05.2012
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
80	Qatar	DTC	03.07.2009	09.04.2010
81	Romania	DTC (Protocol)	14.12.1993 04.10.2011	08.12.1995 11.07.2013
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
82	Russia	DTC (Protocol)	28.06.1993 21.11.2011	07.05.1993 30.07.2013
		Multilateral Convention	Signed	01.07.2015
83	San Marino	DTC (Protocol)	27.03.2006 18.09.2009	29.12.2006 05.08.2011
		Multilateral Convention	Signed	Not yet in force in San Marino
84	Saudi Arabia	DTC	07.05.2013	01.09.2014
		Multilateral Convention	Signed	Not yet in force in Saudi Arabia
85	Seychelles[e]	DTC	04.06.2012	19.08.2013
		Multilateral Convention	Signed	Not yet in force in Seychelles

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
86	Singapore	DTC (Protocol)	06.03.1993 09.10.2013	24.05.1996 -
		Multilateral Convention	Signed	Not yet in force in Singapore
87	Sint Maarten[b]	Multilateral Convention	Extended	01.11.2014
88	Slovak Republic	DTC	18.03.1991	30.12.1992
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
89	Slovenia	DTC (Protocol)	02.04.2001 20.06.2013	08.12.2002 22.08.2014
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
90	South Africa	DTC	23.11.1998	08.09.2000
		Multilateral Convention	Signed	01.11.2014
91	Spain	DTC (Protocol)	03.06.1986 10.11.2009	19.05.1987 16.07.2010
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
92	Sri Lanka	DTC	31.01.2013	11.04.2014
93	Sweden	DTC (Protocol)	14.10.1996 07.09.2010	15.03.1998 11.09.2011
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
94	Switzerland	DTC (Protocol) (Protocol)	21.01.1993 25.08.2009 11.07.2012	09.02.1994 19.11.2010 11.07.2013
		Multilateral Convention	Signed	Not yet in force in Switzerland
95	Chinese Taipei	DTC	19.12.2011	25.07.2014
96	Tajikistan	DTC	09.06.2011	27.07.2013
97	Thailand	DTC	06.05.1996	22.07.1998
98	Trinidad and Tobago	DTC	07.05.2001	20.11.2003
99	Tunisia	DTC (Protocol)	27.03.1996 08.07.2014	18.10.1999 -
		Multilateral Convention	Signed	01.11.2014

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
100	Turkey	DTC (Protocol)	09.06.2003 30.09.2009	18.01.2005 14.07.2011
		Multilateral Convention	Signed	Not yet in force in Turkey
101	Turks and Caicos Islands[a]	Multilateral Convention	Extended	01.11.2014
102	Ukraine	DTC	06.07.1997	-
		Multilateral Convention	Signed	01.11.2014
103	United Arab Emirates	DTC (Protocol)	20.11.2005 26.10.2014	19.06.2009 -
104	United Kingdom	DTC (Protocol) (Protocol) DTC (new)	24.05.1967 18.07.1978 28.01.1983 02.07.2009	24.05.1967 21.05.1980 19.03.1984 28.04.2010
		Multilateral Convention	Signed	01.11.2014
		EU Directive	15.02.2011	01.01.2013
105	United States	DTC (Protocol)	03.04.1996 20.05.2009	20.12.2000 -
		Multilateral Convention	Signed	Not yet in force in USA
106	Uruguay	DTC	10.03.2015	
107	Uzbekistan	DTC	02.07.1997	01.09.2000
108	Viet Nam	DTC	04.03.1996	19.05.1998

Notes: a. Extension by the United Kingdom.

b. Extension by the Kingdom of the Netherlands.

c. Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

d. Extension by the Kingdom of Denmark.

e. The Mac will enter into force on 1 October 2015.

Annex 4: List of laws, regulations and other material received

Commercial legislation

Law of 28 July 2014 in relation to the immobilisation of bearer shares and the keeping of a share register for bearer shares

Fiscal legislation

Law of 25 November 2014 organising the procedure for exchange of information on request for tax purposes

Financial legislation

Law of 12 July 2013 in relation to alternative investment fund managers

Other material

Administrative circular modifying the practice of the tax authorities in the collection process of information for international exchange purposes (ECHA – no. 1)

Annex 5: People interviewed during the on-site visit

Representatives from the Ministry of Finance including:

- Representatives of the tax treaty negotiation team

Representatives from the Tax Departments

- Direct Tax Administration
- Indirect Tax Administration
- Customs and Excise Duties Administration
- Exchange of Information Unit

Representatives of the Financial Sector Supervisory Commission – Commission de Surveillance du Secteur Financier (CSSF)

Representatives of the Registration office

Representatives of the Ministry of Justice

For more information
Global Forum on Transparency and Exchange of Information for Tax Purposes
www.oecd.org/tax/transparency
www.eoi-tax.org
Email: gftaxcooperation@oecd.org