GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

GERMANY

2017 (Second Round)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Germany 2017 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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Table of contents

About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 140 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, please visit www.oecd.org/tax/transparency.

Abbrevations and acronyms

General terms

2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2009.
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.
4th AMLD	EU Fourth Anti-Money Laundering Directive
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
CDD	Customer Due Diligence
CLG	Company Limited by Guarantee
DTC	Double Tax Convention
EOIR	Exchange of information on request
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes

Multilateral Convention (MAC)	OECD Convention on Mutual Administrative Assistance in Tax Matters
PRG	Peer Review Group of the Global Forum
TIEA	Tax Information Exchange Agreement
VAT	Value Added Tax

Terms specific to Germany

2011 Report	2010 Combined Phase 1 and Phase 2 Peer Review Report for Germany
2017 Report	2017 Peer Review Report for Germany
AG	Stock Corporation *(Aktiengesellschaft)*
BaFin	Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht)*
GbR	Civil law partnership *(Gesellschaft bürgerlichen Rechts)*
GmbH	Limited liability company (*Gesellschaft mit beschränkter Haftung)*
KG	Limited Partnership *(Kommanditgesellschaft)*
KGaA	Partnership limited by shares (*Kommanditgesellschaft auf Aktien)*
OHG	General Partnership (*Offene Handelsgesellschaft)*
SCE	European Co-operative Society
SE	European Company
UG	Entrepreneurial company *(Unternehmergesellschaft)*
VVaG	Mutual Insurance Society *(Versicherungsverein auf Gegenseitigkeit)*

Executive summary

1. In 2011 the Global Forum evaluated Germany in a combined review against the 2010 Terms of Reference for both the legal implementation of the EOIR standard as well as its operation in practice. That Combined Report (the 2011 Report) concluded that Germany was rated Largely Compliant overall. This report analyses the implementation of the EOIR standard by Germany against the 2016 Terms of Reference. For purposes of assessing Germany's practical implementation of the standard, the report reviews Germany's practices in respect of EOI requests processed during the period of 1 July 2013-30 June 2016 against the 2016 Terms of Reference. This report concludes that Germany continues to be rated Largely Compliant overall.

2. The following table shows the comparison with the results from Germany's most recent peer review report:

Comparison of ratings for Combined Review (2011) and Current EOIR Review (2017)

Element		Combined Report (2011)	EOIR Report (2017)
A.1	Availability of ownership and identity information	LC	LC
A.2	Availability of accounting information	C	C
A.3	Availability of banking information	C	C
B.1	Access to information	C	C
B.2	Rights and Safeguards	LC	C
C.1	EOIR Mechanisms	C	C
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	C	C
C.4	Rights and Safeguards	C	C
C.5	Quality and timeliness of requests and responses	LC	LC
	OVERALL RATING	LC	LC

C = Compliant; **LC** = Largely Compliant; **PC** = Partially Compliant; **NC** = Non-Compliant

Progress made since previous review

3. The 2011 Report made recommendations in respect of four essential elements: (i) one regarding the identification of the owners of bearer shares under element A.1, (ii) one regarding the application of exceptions to the notification procedure under element B.2, (iii) one related to a significant number of EOI mechanisms not in accordance to the standard under element C.1; and (iv) one regarding the timeliness of the replies to exchange of information requests and the provision of status updates under element C.5.

4. While significant progress has been made, Germany is still to fully address the recommendations made under elements A.1, C.1 and C.5. The factors underlying the recommendation and sometimes the recommendations themselves have been amended to reflect the current circumstances. The recommendation under element B.2 concerning the practice of always sending notification even where the legal framework allowed for exceptions has been adequately addressed.

Key recommendation(s)

5. Since the 2011 Report Germany continues to be a very active country in the field of exchanging information, receiving around 4 000 requests and sending approximately 4 500 requests. As such Germany is an important partner to a significant number of jurisdictions.

6. In respect of element A.1, Germany restricted the issuance of bearer shares by all stock corporations and partnerships limited by shares incorporated as of 31 December 2015. However, stock corporations and partnerships limited by shares that were incorporated prior to that date are still permitted to issue bearer shares. While some information on owners of bearer shares may be available pursuant to tax reporting requirements, the recommendation for Germany to ensure that information on the identity of owners of bearer shares remains applicable.

7. In respect of those new aspects of the 2016 ToR that were not evaluated in the 2011 Report, particularly with respect to the availability of beneficial ownership information, the obligations to conduct customer due diligence under the German AML law ensure that beneficial ownership is available in many instances. However, there is currently no legal requirement that all German legal entities and arrangements have a relationship with an AML obligated person at all times. Germany should ensure that beneficial ownership information is available for all relevant entities and arrangements. Germany advised that it is in the process of establishing a beneficial ownership registry, where beneficial ownership information of legal entities can be found, as part of the implementation of the EU fourth Anti-Money

Laundering Directive. The implementation legislation came into force in Germany on 26 July 2017.

8. This review also found that information, including statistical information, on the monitoring and enforcement of many legal obligations concerning the maintenance of legal and beneficial ownership information was not available. As a result, their effectiveness in practice could not be fully ascertained. Germany is recommended to maintain records of its oversight and enforcement efforts in relation to supporting the legal requirements for the maintenance of legal and beneficial ownership information.

9. On element C.5, while significant progress has been made in responding to requests in a timely manner, some of Germany's partners still have pointed to delays and difficulties in terms of communication. Status updates have in many instances not been received by German EOI partners. Germany should examine how it could speed up EOI process, systematically provide status updates and improve the communication with its EOI partners.

Overall rating

10. As shown in the table below Germany has been assigned the following ratings: Compliant for elements A.2, A.3, B.1, B.2, C.1, C.2, C.3 and C.4, Largely Compliant for elements A.1 and C.5. The overall rating is Largely Compliant based on a global consideration of Germany's compliance with the individual elements. A follow up report on the steps undertaken by Germany to address the recommendations made in this report should be provided to the PRG no later than 30 June 2018 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations and factors underlying recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
Legal and regulatory framework determination: The element is in place but certain aspects of the legal implementation of this element need improvement.	Stock companies and partnerships limited by shares created prior to 31 December 2015 can issue bearer shares. While some mechanisms are in place that require the owners of such shares to be identified, these are not in place for all bearer shares.	Germany should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.

Determination	Factors underlying recommendations	Recommendations
Legal and regulatory framework determination: The element is in place but certain aspects of the legal implementation of this element need improvement. (continued)	Beneficial ownership information is required to be collected by AML obligated persons, such as financial institutions, notaries, lawyers and accountants as part of their customer due diligence obligations. Limited liability companies are required to engage a notary for the issuance or transfer of shares. Other legal entities and arrangements are not required to have a relationship with an AML obligated person in Germany, although in practice many of them are likely to do so.	Germany should ensure that beneficial ownership information is available for all relevant entities and arrangements.
EOIR rating: Largely Compliant	Information on the monitoring and enforcement of some legal obligations concerning the maintenance of legal and beneficial ownership information was not available. As a result, their effectiveness in practice could not be fully ascertained.	Germany should enhance its system of oversight to ensure that legal and beneficial ownership information is available for all relevant entities and arrangements.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
Legal and regulatory framework determination: The element is in place.	Banks are required to identify natural persons who ultimately own or control a trust as part of their customer due diligence measures. However, they are not required to identify all of the natural persons who are beneficiaries of a trust as only the beneficiaries of 25% or more of the assets or property of a trust must be identified in all instances.	Germany should ensure that banks are required to identify all of the beneficiaries (or class of beneficiaries) of trusts which have an account with a bank in Germany as required under the standard.
EOIR 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)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
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)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
Legal and regulatory framework determination: The element is in place.	Eighteen EOI agreements entered into by Germany are not in line with the international standard.	Germany should continue to work with all its EOI partners to bring its existing exchange of information agreements in line with the standard.
EOIR rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework determination:	**The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the implementation of EOIR in practice.**	

Determination	Factors underlying recommendations	Recommendations
EOIR rating: Largely Compliant	While progress has been made, some of Germany's partners still have pointed to delays in Germany's processes to obtaining information and responding to requests. Some delays have also been observed in Germany's responses to their EOI partners' requests for clarification on Germany's requests. The relationship with some EOI partners appeared to have suffered from lack of effective communication. Moreover, the various steps required in the EOI process appear to inhibit quicker response times.	Germany should examine how it could (i) speed up and ensure consistency in the processes for obtaining and providing information requested under EOI; and (ii) improve the communication with its EOI partners in relation to inbound and outbound EOI requests, including by providing timely responses to requests for clarification.
	Germany has not consistently provided status to all its treaty partners in relation to requests that cannot be replied within 90 days.	Germany should systematically provide an update or status report to its EOI partners in situations when the competent authority is unable to provide a substantive response within 90 days.

Preface

11. This report is the second review of Germany conducted by the Global Forum. Germany previously underwent an EOIR Combined review in 2011 of both its legal and regulatory framework and the implementation of that framework in practice. The 2011 Report containing the conclusions of the first review was first published in April 2011 (reflecting the legal and regulatory framework in place as of October 2010).

12. The Combined review was conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews. The 2011 Report was initially published without a rating of the individual essential elements or any overall rating, as the Global Forum waited until a representative subset of reviews from across a range of Global Forum members had been completed in 2013 to assign and publish ratings for each of those reviews. Germany's 2011 Report was part of this group of reports. Accordingly, the 2011 Report was republished in 2013 to reflect the ratings for each element and the overall rating for Germany.

13. This evaluation is based on the 2016 ToR, and has been prepared using the 2016 Methodology. The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 29 May 2017, Germany's EOIR practice in respect of EOI requests made and received during the three year period from 1 July 2013 to 30 June 2016, Germany's responses to the EOIR questionnaire, information supplied by partner jurisdictions, information independently collected by the assessment team, as well as information provided by Germany's authorities during the on-site visit that took place from 25-27 January 2017 in Berlin and Bonn, Germany.

14. The evaluation was conducted by an assessment team consisting of two expert assessors and one representative of the Global Forum Secretariat: Ms. Flor Nieto Velázquez, Deputy Administrator for Exchange of Information, Tax Administration Service of Mexico; Mr. Michael Stansfield, United Kingdom Delegated Competent Authority and JITSIC Delegate, Her Majesty's Revenue and Customs, United Kingdom; and Ms. Renata Teixeira, Global Forum Secretariat.

15. The report was approved by the PRG at its meeting on 17-20 July 2017 and was adopted by the Global Forum on 18 August 2017.

16. For the sake of brevity, on those topics where there has not been any material change in the situation in Germany or in the requirements of the Global Forum ToR since the 2011 Report, this evaluation does not repeat the analysis conducted in the previous evaluation, but summarises the conclusions and includes a cross-reference to the detailed analysis in the previous reports.

17. Information on each of Germany's reviews is listed in the table below.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of (date)	Date of adoption by Global Forum
Combined report	Mr Richard Thomas, Attorney Advisor, Office of Associate Chief Counsel, Internal Revenue Service of the United States; Mr Raul Pertierra, Revenue Service Representative, Internal Revenue Service of the United States; Mr Jeong-Real Park Deputy Director, International Investigation Division, National Tax Service of Korea; and Mr Rémi Verneau, Global Forum Secretariat.	1 January 2007 to 31 December 2009	October 2010	April 2011
Combined report (with ratings)	Mr Richard Thomas, Attorney Advisor, Office of Associate Chief Counsel, Internal Revenue Service of the United States; Mr Raul Pertierra, Revenue Service Representative, Internal Revenue Service of the United States; Mr Jeong-Real Park Deputy Director, International Investigation Division, National Tax Service of Korea; and Mr Rémi Verneau, Global Forum Secretariat.	1 January 2007 to 31 December 2009	October 2010	November 2013
2017 report	Ms. Flor Nieto Velázquez, Deputy Administrator for Exchange of Information, Tax Administration Service of Mexico; Mr. Michael Stansfield, United Kingdom Delegated Competent Authority and JITSIC Delegate, Her Majesty's Revenue and Customs, United Kingdom; and Ms. Renata Teixeira, Global Forum Secretariat.	1 July 2013 to 30 June 2016	29 May 2017	[August 2017]

Brief on 2016 ToR and methodology

18. The 2016 ToR were adopted by the Global Forum in October 2015. The 2016 ToR break down the standard of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Germany's legal and regulatory framework and the implementation and effectiveness in practice of this framework against these elements and each of the enumerated aspects.

19. In respect of each essential element (except element C.5 *Exchanging Information*, which uniquely involves only aspects of practice) a determination is made regarding Germany's legal and regulatory framework that either: (i) the element is in place, (ii) the element is in place, but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. In addition, to assess Germany's EOIR implementation and effectiveness in practice a rating is assigned to each element of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant. These determinations and ratings are accompanied by recommendations for improvement where appropriate. Finally, an overall rating is assigned to reflect Germany's overall level of compliance with the EOIR standard.

20. In comparison with the 2010 ToR, the 2016 ToR include new aspects or clarification of existing principles with respect to:

- the availability of and access to beneficial ownership information;
- explicit reference to the existence of enforcement measures and record retention periods for ownership, accounting and banking information;
- clarifying the standard for the availability of ownership and accounting information for foreign companies;
- rights and safeguards;
- incorporating the 2012 update to Article 26 of the OECD Model Tax Convention and its Commentary (particularly with reference to the standard on group requests); and
- completeness and quality of EOI requests and responses.

21. Each of these new requirements are analysed in detail in this report.

Brief on consideration of FATF evaluations and ratings

22. The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating the financing of terrorism (AML/CFT) standards. Its reviews are based on a country's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.[1]

23. The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the determination of beneficial ownership, as that definition applies to the standard set out in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combatting money-laundering and terrorist financing) are different from the purpose of the standard on EOIR (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

24. While on a case-by-case basis, an EOIR assessment may use some of the findings made by the FATF, the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example because other mechanisms may exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

25. These differences in the scope of reviews and in the approach used may result in differing outcomes.

1. www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html.

Overview of Germany

26. This overview provides some basic information about Germany that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of Germany's legal, commercial or regulatory systems.

Legal system

27. Germany is a federal, parliamentary, representative democratic republic consisting of sixteen states (*Länder*).

28. The *Länder* are states endowed with their own powers and own budgets. The distribution of responsibilities between the Federation and the *Länder* is an essential element of the power-sharing arrangement and checks and balances, as provided for in the German constitution, the *Grundgesetz* (Basic Law). The Basic Law presumes that all legislative power remains at the *Länder* level unless otherwise designated by the Basic Law itself. Federal law overrides *Länder* law if the legislative power lies at the federal level.

29. Germany is a member of the European Union (EU).

30. Pursuant to the German Basic Law, all treaties must be implemented by way of a federal act and therefore they must be approved by the German legislative bodies after signature. Once the treaties are enacted into law they are part of the German tax law and prevail over other domestic acts (Fiscal Code, s. 2).

Tax system

31. Germany imposes a wide range of taxes and duties, the main ones being individual income tax, corporate income tax, value added tax (VAT), trade tax and inheritance and gift tax. German tax law relevant for EOI is mainly founded on tax acts, bilateral and multilateral international agreements such as Double Tax Conventions (DTCs), Tax Information Exchange Agreement (TIEAs) and supra-national norms (EU law). The most important domestic tax act is the Fiscal Code (*Abgabenordnung – AO*). The Fiscal

Code regulates central concepts in tax law, namely the procedural rules, tax assessments and tax audits as well as tax offences and criminal prosecution in tax matters. Its provisions apply to all taxes and it is intended to relieve the individual tax acts in case of repetitions and contradictory rules. There are also separate tax acts for each type of tax.

32. Individual income tax, corporate income tax, VAT, trade tax and a number of other taxes are legislated by federal law. As the revenue of these taxes is assigned wholly or partly to the *Länder* or municipalities, any legislation passed by the federal legislator requires approval of the *Bundesrat*, which represents the *Länder*.

33. The Basic Law assigns the administration of taxes (other than customs and excise duties and the tax on motor vehicles) to the *Länder*. There are general uniform guidelines as to the activities of the tax administrations of the *Länder*. Where the administration of tax laws will be substantially facilitated or improved, the Basic Law allows for administration to be carried out by federal authorities under laws to be passed with the consent of the *Bundesrat*. For example, the relief from withholding taxes granted by Double Tax Conventions (DTCs) is administered by the Federal Central Tax Office (*Bundeszentralamt für Steuern – BZSt*). The Federal Central Tax Office is also the Competent Authority for the exchange of information with other jurisdictions.

34. The *Länder* tax authorities comprise the state ministries of finance, regional tax offices as medium-level authorities and the local tax offices.

35. For the administration of taxes, non-statutory provisions are issued, such as administrative guidelines (*Richtlinien*), decrees (*Erlasse*), circulars (*Schreiben*) and orders (*Verfügungen*). These provisions are self-binding to the tax authorities, but do not bind either taxpayers or tax courts. In practice, the Federal government passes guidelines, ministries issue decrees and circulars while regional tax offices issue orders. Guidelines, decrees and circulars of a more general nature are issued by the Federal Ministry of Finance (Bundesministerium der Finanzen) with the consent of the ministries of finance of the states.

36. The *Länder* Tax Courts and the Federal Tax Court (*Bundesfinanzhof*) rule on tax issues.

37. Personal income tax is charged on a progressive system, the lowest rate being 16% and the highest being 45% (plus 5.5% solidarity surcharge). Income from investment is subject to a flat rate of 25% (plus the solidarity surcharge) and – when originating from domestic sources – tax is levied by way of withholding. Corporate tax is charged at a flat rate of 15% plus a 5.5% solidarity surcharge calculated on the corporate tax due, making the total corporate tax burden equal to nearly 16%. All resident companies and

non-resident companies with a permanent establishment in Germany are subject to corporate income tax; resident companies are taxed on their world-wide income while non-resident companies are taxed only on German-source income.

38. An entity is resident for corporate tax purposes if either (i) its legal seat or (ii) its place of management is in Germany.

Financial services sector

39. The German financial system has traditionally been a bank-based system, i.e. banks have been the key source of financing. Germany currently has the highest number of credit institutions and foreign banks in the European Union and the largest banking sector in the eurozone, with total assets of about EUR 7.85 trillion at the end of 2014.[2] According to the information provided by the German authorities, in 2015, around 1 960 independent banks with around 34 045 branches operated in Germany.

40. The banking sector comprises three types of banks offering the full range of banking business and financial services ("three pillar system"), namely private commercial banks (*private Geschäftsbanken*), co-operative banks (*Genossenschaftsbanken*) and savings banks (*Sparkassen*). The savings banks are retail banks commonly owned by administrative districts and municipalities. There are also state banks (*Landesbanken*) which are mainly owned by the savings banks as well as by the states (*Länder*). The co-operative banks comprising in particular "*Volksbanken*" and "*Raiffeisenbanken*" are owned by their members. In addition to these universal banks, the banking sector comprises specialised banks such as covered bond banks (*Pfandbriefbanken*) and building societies (*Bausparkassen*).

41. Germany is one of largest primary insurance markets in the world with premium income of EUR 199 billion in 2015. At the beginning of 2016, Germany had 565 insurance companies under federal supervision and 786 under state supervision that actively conducted business in Germany. Compared to other industrialised nations, the nonlife sector is predominant while the market for pensions is smaller, due to the traditional strength of state pensions and unfunded pension benefits by industrial employers in Germany. The market share of foreign insurers is around 5% in life insurance and 7% in non-life insurance.

42. Financial services providers, insurance companies, investment funds and investment companies are licensed and supervised by the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin*). As a consequence of Germany's participation in

2. Source: https://www.imf.org/external/pubs/ft/scr/2016/cr16190.pdf.

the banking union, credit institutions are, however, licensed and supervised by the European Central Bank (directly or indirectly) in co-operation with BaFin and the German Central Bank (*Deutsche Bundesbank)*. Insurance companies of minor economic importance and public law insurance companies subject to competition, with operations limited to a single federal state (Land) are regulated by the respective state authority. Insurance agents are licensed by the local chambers of commerce and industry. The laws and regulations applicable to the aforementioned entities consist of a set of rules, including European regulations, which are directly applicable in German law; national law transposing European directives, delegated acts and implementing acts of the European Commission.

43. The official securities markets of Berlin, Dusseldorf, Frankfurt am Main, Hamburg, Hanover, Munich and Stuttgart as well as Tradegate Exchange (Berlin), the derivatives exchange Eurex Deutschland (Frankfurt am Main) and the European Energy Exchange (Leipzig) are recognised as regulated markets in the EU. The largest stock exchange by market capitalisation in the Federal Republic of Germany is the Frankfurt Stock Exchange, operated by *Deutsche Börse AG*. The proper conduct of exchange trading as well as the correct pricing process is monitored by the Trading Surveillance Office (*Handelsüberwachungsstelle*). The exchange supervisory authorities (*Börsenaufsichtsbehörden*) are responsible at the state level.

FATF evaluation

44. The FATF last published a Mutual Evaluation Report for Germany in 2010 during its third round of mutual evaluations.[3] Recommendation 5 (Customer Due Diligence) was then rated partially compliant and Recommendations 33 (Legal persons – beneficial owners) and 34 (Legal arrangements – beneficial owners) were rated non-compliant. Following that evaluation, Germany has revised its anti-money laundering framework. This included enacting the Act to Optimise Money Laundering Prevention (*Gesetz zur Optimierun g der Geldwäscheprävention*) of 22 December 2011 as well as adopting secondary measures to improve co-operation and supervision. Germany exited the FATF's follow-up process in June 2014, as its third follow-up report concluded that it made sufficient progress in addressing the deficiencies originally identified by the FATF in the 2010 report.[4] The 2014 follow-up report rates Germany largely compliant in relation to Recommendation 5 and continues to rate Germany non-compliant in relation

3. www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Germany%20full.pdf.
4. www.fatf-gafi.org/countries/d-i/germany/documents/follow-up-report-germany-2014.html.

to Recommendations 33 and 34. The next FATF assessment of Germany is expected to take place in 2021.

45. More recently, parts of Germany's AML/CFT system were assessed by the IMF as part of a financial sector assessment programme review, and the findings were presented in a Technical Note published in June 2016.[5] As stated in the Technical Note, Germany has plans to establish a transparency register including information on beneficial owners as part of its implementation of the EU fourth Anti-Money Laundering Directive. In addition, it is planned that legal persons will be required to gather information on their beneficial owners and to report this information to the transparency register. Legislation to this end is currently being drafted.

Recent developments

46. On 31 December 2015 Germany enacted amendments to the Stock Corporation Act restricting the issuance of bearer shares by companies incorporated as of 31 December 2015, as further detailed in section A.1.2 of this report.

47. On 1 December 2015, the Amended Protocol to the Convention on Mutual Administrative Assistance in Tax Matters ("the Multilateral Convention") entered into force in Germany. Germany has also implemented the Common Reporting Standards ("CRS") for the sharing of financial account information with other CRS participating jurisdictions. As an early adopter, Germany committed to begin exchanges under the CRS by September 2017.

48. As part of its implementation of the EU fourth Anti-Money Laundering Directive, Germany will establish a transparency register with information regarding beneficial owners. Legal entities formed under German law will be required to obtain information regarding their beneficial owners and report it to the transparency register. The relevant draft legislation entered into force on 26 June 2017.

49. The "Act Transposing the Fourth EU Money Laundering Directive, Implementing the EU Fund Transfer Regulation and Reorganising the Financial Intelligence Unit" (*Gesetz zur Umsetzung der Vierten EU-Geldwäscherichtlinie, zur Ausführung der EU-Geldtransferverordnung und zur Neuorganisation der Zentralstelle für Finanztransaktionsuntersuchungen*) entered into force in Germany on 26 June 2017. This legislation enacts the requirements of the Fourth EU Money Laundering Directive into domestic law. Among other things, the Act provides for the establishment of a transparency register that contains and provides access to information

5. https://www.imf.org/external/pubs/ft/scr/2016/cr16190.pdf.

on beneficial owners. The transparency register covers beneficial owners of legal entities under private law, of registered business partnerships and of trusts in relation to which a trustee has his/her residence or registered office in Germany. Legal entities under private law and registered business partnerships must obtain information on beneficial owners (their first and last name, date of birth, place of residence, and the nature and extent of the beneficial interest), retain this information and keep it up to date, and submit this information without delay to the entity operating the transparency register for the purpose of entering it into the register. Under section 21 of the Act, trustees who have their residence or registered office in Germany must obtain information (including nationality) on the beneficial owners of trusts that they administer, retain this information and keep it up to date, and submit this information without delay to the entity operating the transparency register for the purpose of entering it into the register. In addition, the Act contains rules for the competent supervisory authorities, such as the Federal Financial Supervisory Authority, in order to ensure that the legislation is implemented properly.

Part A: Availability of information

50. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

A.1. Legal and beneficial ownership and identity information

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

51. The 2011 Report found that element A.1 was determined to be "in place but certain aspects of the legal implementation of the element need improvement" and rated Largely Compliant. A recommendation was made for Germany to take necessary measures to ensure that information on the owners of bearer shares was available to its competent authorities.

52. In response to this recommendation, Germany amended the Stock Corporation Act to restrict the issuance of bearer shares by stock corporations and partnerships limited by shares incorporated on and after 31 December 2015. However, companies that were incorporated prior to 31 December 2015 are still permitted to issue bearer shares. These companies represent approximately 1.2% of the total number of companies incorporated in Germany. While some information on owners of bearer shares may be available pursuant to tax reporting requirements, as analysed under the 2011 Report, the recommendation for Germany to ensure that information on the identity of owners of bearer remains therefore applicable in relation to stock corporations and partnerships limited by shares incorporated prior to 31 December 2015.

53. No issues were identified in the 2011 Report with respect to the availability of ownership and identity information in practice. Where there were issues regarding such requests, the availability of the information did not appear to have been a factor in itself.

54. The legal requirements for the maintenance of ownership information in Germany are supported by reporting requirements with the tax

administration and/or commercial register. Moreover, for some types of legal entities (including limited liability companies, which are the most common corporate vehicle in Germany), any transfer or issuance of shares require the involvement of a notary, who is subject to customer due diligence obligations under the German anti-money laundering framework. All in all, the several reporting requirements should ensure that legal ownership information is maintained in practice.

55. Statistical information on the oversight and enforcement of some legal obligations relevant for element A.1 was not available. This included, for instance, information on the compliance rate with tax filing requirements or the enforcement measures taken in relation to non-filers. Information on the supervision of notaries for anti-money laundering purposes was also not available for purposes of the present peer review assessment. Oversight and enforcement is often conducted at *Länder* or local level and no statistics were available for the present review. Notwithstanding the above, the authorities interviewed during the on-site visit described clear processes and procedures related to the monitoring and enforcement of filing obligations and the application of sanctions in practice. Statistical data on tax audits performed and the AML supervision of financial institutions were nonetheless provided. Germany is recommended to enhance its system of oversight to support the legal requirements for the maintenance of legal and beneficial ownership information.

56. In respect of those new aspects of the 2016 ToR that were not evaluated in the 2011 Report, particularly with respect to the availability of beneficial ownership information, Germany's anti-money laundering law (AML law) is the central piece of Germany's framework. Taw law also contains some relevant requirements in the Fiscal Code concerning the attribution of economic goods. Beneficial ownership information is required to be available where any relevant entity or arrangement establishes a relationship with a person obliged to conduct customer due diligence (CDD) under the AML law. The scope of AML obligated persons in Germany is very broad, covering financial institutions, notaries, lawyers, tax advisors, auditors, accountants, company service providers. Limited liability companies, which are the most common legal entities in Germany, are required by law to engage a notary for the transfer or issuance of shares. Moreover, many entities will have a relationship with a German financial institution, lawyer, auditor or accountant, who are all subject to AML reporting obligations. While the AML obligations should ensure that beneficial ownership is available in many instances, there is currently no legal requirement that all German legal entities and arrangements have a relationship with an AML obligated person at all times. The definition of beneficial owner of a corporate entity under German law is in line with the international standard.

57. The oversight of compliance with AML obligations by banks appears to be adequate. No information was available on the oversight and enforcement of AML obligations on professionals such as notaries, lawyers and accountants; and therefore, it cannot be concluded that oversight and enforcement in relation to such obligated persons is adequate. Germany is recommended to enhance its system of oversight to ensure beneficial ownership information is being adequately collected in practice.

58. During the present review period, Germany received 125 requests for ownership information. In comparison with requests received for accounting records, banking and other types of information, the number of requests for ownership information is very small. No issues in relation to the availability of this type of information were reported by Germany's EOI partners. Partners were generally very satisfied with the information received.

59. In regard to beneficial ownership information specifically, Germany was requested to provide beneficial ownership information to at least three partners. They were generally satisfied with the information received.

60. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	Stock Corporations and partnerships limited by shares created prior to 31 December 2015 can issue bearer shares. While some mechanisms are in place that require the owners of such shares to be identified, these are not in place for all bearer shares.	Germany should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework *(continued)*	Beneficial ownership information is required to be collected by AML obligated persons, such as financial institutions, notaries, lawyers and accountants as part of their customer due diligence obligations. Limited liability companies are required to engage a notary for the issuance or transfer of shares. Other legal entities and arrangements are not required to have a relationship an AML obligated person in Germany, although in practice many of them are likely to do so.	Germany should ensure that beneficial ownership information is available for all relevant entities and arrangements.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		

Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice	Information on the monitoring and enforcement of some legal obligations concerning the maintenance of legal and beneficial ownership information was not available. As a result, their effectiveness in practice could not be fully ascertained.	Germany should enhance its system of oversight to ensure that legal and beneficial ownership information is available for all relevant entities and arrangements.
Rating: Largely Compliant		

A.1.1. Availability of legal and beneficial ownership information for companies

61. The 2011 Report analysed the types of companies and the registration requirements in Germany (see 2011 Report, paras. 49-77). The main pieces of legislation are the Commercial Code and the acts dealing with specific types of companies (see table below).

62. Since the 2011 Report, amendments have been made to the Stock Corporation Act to restrict the issuance of bearer shares by stock corporations and partnerships limited by shares created as of 31 December 2015. These amendments are further reviewed in section A.1.2 of this report.

63. The table below identify the different types of companies in Germany, their governing law, and the numbers at the end of the last review and at the end of the present review period.

Overview of the different types of companies in Germany

Type of company	Description	Governing law	Numbers as at 30 June 2016	Numbers as reported in the 2011 Report (based on 2008 data)
Stock Corporations (AG)	The AG's capital is at least EUR 50 000 and is divided into shares. Shareholders' liability is limited to the amount of their contribution to the AG's capital. An AG may be listed on a stock exchange.	Stock Corporation Act	15 353 (approx. 530 listed on a stock exchange)	8 900
Partnership limited by shares (KGaA)	A *KGaA* has at least one partner with unlimited liability (general partner). The limited partners' interests are represented by share certificates and their liability is limited to the amount of their shares.	Stock Corporation Act	293	100
Limited liability company (GmbH) and Entrepreneurial company (UG)	A *GmbH* has at least one shareholder and a minimum capital is EUR 25 000. The UG is a subcategory of limited companies but they only require a minimum share capital of EUR 1.	Limited Liability Company Act and the Commercial Code	1 186 598	465 700
Mutual society (VVaG)	A mutual society is owned entirely by its policyholders i.e. the policyholders are as well members of the society as insurance carriers.	Insurance Supervision Act	85	N/A
European Company (SE)	European Companies are regulated by *Council Regulation (EEC) No. 2157/2001* which permits the creation and management of companies with a European dimension. The rules that apply to European companies are the same applicable for public limited companies. In Germany, it means that the all rules that apply to *AGs* apply equally to *SEs*.	SE Regulation, Act implementing European Companies	12	N/A

Type of company	Description	Governing law	Numbers as at 30 June 2016	Numbers as reported in the 2011 Report (based on 2008 data)
Co-operative	A co-operative which is a member-controlled organisation. It must include at least 3 members. The running of a co-operative is comparable to a company.	Co-operatives Act	8 000	5 200
European Co-operative Society (SCE)	SCEs are regulated by Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a SCE. There are some special rules that apply to SCEs (e.g. that it must include at least 5 members), but in general all rules that apply to co-operatives apply equally to SCEs.	SCE Regulation, Act implementing European Co-operative Society	12	N/A

64. The AG and the GmbH are the primary business structures in Germany. Germany reports that other than AGs whose shares are traded on stock exchanges, the AG is far less important as a business structure than the GmbH. This is partly due to the wider flexibility offered by the GmbH as compared to the AG. Germany also advises that AGs are rarely used by foreigners setting up a business in Germany.

Legal ownership and identity information requirements

65. As described in the 2011 Report in section A (see 2011 Report, paras. 53-89), legal ownership and identity requirements for companies are mainly found in Germany's company law and tax law. Moreover, legal ownership information is also available with notaries, as the services of a notary are required to establish or register the transfer or issuance of shares of some legal entities. Notaries are AML obligated persons in Germany, and, as such, AML laws are also relevant to ensure the availability of legal ownership information. As AML laws are also the main requirement for the maintenance of beneficial ownership information, they are described in the beneficial ownership section below. The following table[6] shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

6. The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" in this context means that every entity of this type created is required to maintain ownership information for all its owners (including where bearer shares are issued) and that there are sanctions and appropriate retention periods. "Some" in this context means that an entity will be required to maintain information if certain conditions are met.

Legislation regulating legal ownership information of companies

Type	Company Law	Tax Law	AML Law
Joint stock company (AG)	All (except bearer shares, analysed under A.1.2)	Some	Some
Partnership limited by shares (KGaA)	All (except bearer shares, analysed under A.1.2)	Some	Some
Limited liability company (GmbH) and Entrepreneurial company (UG)	All	Some	Some
Mutual society (VVaG)	All	Some	Some
European Company (SE)	All (except bearer shares, analysed under A.1.2)	Some	Some
Co-operative	All	Some	Some
European Co-operative Society (SCE)	All	Some	
Foreign companies (tax resident)	None	Some	Some

Stock Corporation (AG), Partnership limited by shares (KGaA) and European Company (SE)

66. The articles of incorporation of AGs, KGaAs and SEs must take the form of a notarial deed. These articles must contain, *inter alia*, information on the founders and whether shares are to be issued in bearer or registered form (on bearer shares, see section A.1.2 of this report). For KGaAs, the articles must also include the names and place of residence of each general partner.

67. AGs, KGaAs and SEs must be registered with the *Handelsregister* (Commercial Register). The application for registration is made on an electronic format in an official certified form which contains information on founders, members of the management board and the supervisory board. Without registration, a company does not come into existence and the liability of the founders vis-à-vis third parties remain unlimited. There is no requirement to file with the Commercial Register changes in shareholders.

68. AGs, KGaAs and SEs that issue registered shares must keep a share register containing information on the owners of the shares. If shares are transferred, the register must be modified upon notification and presentation of proof of transfer. Any member of the management board, supervisory board or a liquidator that fails to keep the share register is subject to a fine of an amount up to EUR 25 000. They may be held liable if they fail to maintain the shareholder register up to date.

69. For listed companies, the Securities Trading Act requires that the company and the Financial Supervisory Authority (BaFin) be notified any time a shareholding reaches a threshold of 3, 5, 15, 20, 25, 30, 50 or 75% of the company's voting shares. Non-compliance with the notification requirement may result on a penalty of an amount (i) up to EUR 2 000 000 in the case of a natural person; (ii) up to EUR 10 000 000 or up to 5 % of the total annual turnover according to the last available annual accounts in the case of a legal entity; or (iii) up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined. The company must subsequently disclose the relevant information to Business Register and that will become publicly available. Failure to disclose information to the Business Register is subject to a fine of up to EUR 500 000.

70. If an AG, KGaA or SE is liquidated, it is required to deposit its books and records for ten years at a safe place to be designated by the court even if the liquidation has been completed and the final statement of accounts rendered (Stock Corporation Act, s. 273).

Limited liability company (GmbH) and Entrepreneurial company (UG)

71. In order to come into existence as a GmbH/UG, a company must be registered in the Commercial Register kept by the local court in the district of its domicile. The company will be registered by the local court if the company has been formed and the application has been made in compliance with all legal requirements. The articles of incorporation of a GmbH or an UG take the form of a notarial deed must contain the names of all original shareholders (section 3 of the Limited Liability Companies Act). In addition, the application for registration must be accompanied by a list of shareholders signed by the managing directors. Without providing this list, the company will not be registered and consequently will not come into existence as a limited liability company. After registration, the data concerning the company is published. If false statements are made with respect to the formation of the company, both managing directors and shareholders become jointly and severally liable if the requirements of section 82 of the Limited Liability Companies Act are fulfilled.

72. The transfer of shares of a GmbH or an UG is subject to prior approval of the company. The transfers take the form of a contract concluded before a notary. 73. Any changes in shareholders must be registered without delay with the Commercial Register. Failure to do so is subject to coercive fines applied by the local registers. Managing directors and the notary public, are liable if they fail to provide the Register with an updated list of shareholders. Only the persons whose names are entered into the shareholder list filed with the Commercial Register are deemed to be shareholders in relation to the company (s. 16(1), Limited Liability Companies Act). The Commercial

Register retains information on the shareholders of GmbHs and UGs indefinitely. In this sense, although the Limited Liability Companies Act does not require the company to keep a share register in the sense of a share register kept by the AG, ownership information can be determined based on the documents filed with the Commercial Register. Whoever fails to comply with his duty to apply for registration or to submit documents to the Commercial Register shall be induced to do so by the court of registration by imposition of a coercive fine. An individual coercive fine shall not exceed the amount of EUR 5 000.

73. The dissolution of a GmbH/UG must be registered in the Commercial Register. In most cases, application has to be made by the liquidators. The application must state the date and the reason for the dissolution, and must be accompanied by proof of the dissolution. The registration of the dissolution must be published by the local court. The liquidators must publish the dissolution in some cases in addition to that. Furthermore, in most cases the creditors have to be invited by the liquidators to report to the company. After the dissolution, the company still exists and must start to liquidate its business until at least a one year period has passed. Upon completion of the liquidation, the books and records of the company must continue to be available to shareholders and creditors for inspection for a period of ten years. Further, the completion of the liquidation must be entered in the Commercial Register. The company only ceases to exist once the company is without assets and the completion of the liquidation has been registered. The registration is made on the basis of a formal application signed by the number of liquidators required to represent the company, and their signatures must be authenticated by a notary.

Cooperatives and European Cooperative Societies

74. Co-operatives and European Co-operative Societies acquire legal personality upon registration in the register of co-operative in the local courts. Their by-laws must be provided at registration and contain the names of members of the board of directors and must be signed by their members. The board of directors must keep a list of all co-operative members which must be kept up to date. Documents in relation to the membership status must be kept during the whole period of the respective membership. Furthermore, such must be kept for an additional three years, starting at the end of the year in which the co-operative member left the Co-operative/European Co-operative Society.

Mutual Societies

75. Mutual Societies acquire legal personality by the issuance of a permission by Financial Supervisory Authority (BaFin) to conduct business as such (Insurance Supervision Act, s. 171). Mutual Societies are owned by their members who are policyholders of an insurance contract. Information concerning the members who provide the initial fund (i.e. the founders) is submitted to BaFin before licensing. Due to the fact that a mutual society is owned entirely by its policyholders, the ownership depends totally on the existence of insurance contracts that will have to include the name of the members (policyholders). This means that the expiration of an insurance contract is generally the end of the ownership/membership by the relevant policyholder.

Foreign companies

76. Companies formed under the laws of other jurisdictions which wish to set up a branch in Germany are required to register with the Commercial Register. A publicly certified copy of the articles of incorporation must be provided together with evidence that the company exists and the name of the persons authorised to act on behalf of the company. Updated shareholder information is not required to be provided to the Commercial Register, but shareholder information is provided to the tax authorities on an annual basis as described below.

Tax law requirements

77. A company is resident for tax purposes in Germany if either (i) its legal seat or (ii) its place of management is in Germany. All resident companies must, on their own initiative and without waiting to be asked to do so, furnish their tax office with information that is relevant for tax purposes. This includes information on the establishment of the company, the transfer of its place of management or registered office and the dissolution of the company. Information must be provided within one month of the occurrence of the event. Any person who intentionally or recklessly fail to comply with disclosure obligations commits an administrative offense and may be subject to a fine of an amount up to EUR 5 000.

78. Resident companies must file annual corporate tax returns, including information on the identity of all shareholders owning more than 1% of the capital of the company. Failure to file annual tax returns may be subject to a fine of up to EUR 25 000. Multiple imposition of this fine is possible. Incomplete or false entries made intentionally or as a result of serious negligence leading to tax not being assessed may lead to a fine of up to EUR 50 000. If the situation were characterised as tax evasion, a penalty of imprisonment up to five years and a fine may also apply.

Legal ownership information – Enforcement measures and oversight

Company law obligations

79. As noted in the 2011 Report, the German commercial registration system is organised on a local basis. The local courts of justice manage the local commercial registers (*Handelsregister)* where all companies are required to be registered. The registers maintain information without a time limit (covering a period much longer than five years) and they remain accessible after a company is dissolved or struck off.

80. Moreover, the Business Register (*Unternehmensregister)* maintained by the Federal Minister of Justice assemble part of the information contained in the various local commercial registers ensuring that this information is available at the federal level. That said, not all information maintained in the local registers can be found in the Federal Business Register. In particular, the Federal Business Register does not directly hold ownership information of the companies that are required to provide this type of information to the local registrars (GmbHs and UGs).

81. The registration of companies is done electronically in accordance with an official certified form. Official certifications are performed by notaries (who are subject to AML obligations as further described in later in the subsection covering beneficial ownership).

82. Germany advises that coercive fines are imposed by the local register courts which are part of the administration at the *Land* level. However, it is not known if each *Land* compiles statistics on the fines imposed.

Tax obligations

83. After registration of companies in the Commercial Register, the courts automatically transfer the relevant information to the local tax authorities. This would permit the local tax offices to ensure that all companies incorporated in Germany are registered for tax purposes.

84. Corporate tax returns are filed electronically across Germany. For this purpose, the states (*Länder*) use a common filing standard (ELSTER) as well as a common programme for processing returns. There is a nationwide standard for the electronic processing of corporation tax returns. The system allows for the identification of non-filers and late filers. The e-filing system also requires that tax returns are completed when filed – e.g. a tax return could not be submitted if the company fails to file the form disclosing shareholders holding at least 1% of its capital.

85. The monitoring of compliance with tax reporting obligations as well as the application of sanctions in the event of non-compliance are conducted

at local or state (*Land*) level. While statistics on the audits conducted was maintained (please refer the analysis on element A.2 for detailed statistics), no compiled statistical information on the compliance of filing obligations, application of penalties for late filling was available.

86. During the on-site visit, the tax administration of local tax office in Berlin was interviewed and described the process applied in that location. The tax authorities will send reminders to all taxpayers that failed to file a tax return within the set deadline. Late filing fines may be imposed if the taxpayer failed to file after the first reminder. Multiple fines may be applied if the taxpayer continues to default with filing obligations and income tax liability will be determined on an estimated basis. Every tax office will make a plan of their audit work for the year ahead following a risk-based approach. The targets to be met by each tax office are set in consultation with the *Land* regional authorities and may include a mix of large, medium and small size taxpayers. Compliance with the obligations to maintain up-to-date ownership information and the retention of records for the period required by law are typical issues checked during a tax audit.

Availability of legal ownership information in Practice

87. During the current peer review period, only 125 of the 3 950 requests received by Germany related to ownership and identity information. Peers were generally very satisfied with the information received. Germany reports that it has never been unable to respond to a request for company information due to the fact that information was not available in accordance with the law.

Availability of beneficial ownership information

88. Under the 2016 ToR, a new requirement is that beneficial ownership information on companies should be available. In Germany, the AML legislation requires beneficial ownership information to be maintained in relation to domestic and foreign companies that are customers of an obligated person (e.g. financial institution, notary, lawyer, tax advisor, auditor, accountant, corporate service provider). Although there is no legal requirement that all German legal entities and arrangements have a relationship with an AML obligated person at all times, in practice, most legal entities and arrangements carrying on business will need to do so. Limited liability companies, which are the most common legal entities in Germany, are required by law to engage a notary for the transfer or issuance of shares. Germany estimates that almost 100% of legal entities and arrangements conducting business in Germany need to have a bank account. No detailed data is available whether the bank accounts are maintained in Germany or elsewhere, however. Banks and other obligated financial institutions are required to store beneficial

ownership information in the data retrieval system which permits automated access by the some government authorities to this type of information as well as other information collected as part of customer due diligence. Finally, some ownership information required to be maintained under tax law may also be relevant to identify beneficial owners in some instances. These legal regimes are described below.

89. On 26 June 2017 legislation entered into force in Germany to implement the EU fourth AML Directive into domestic law. Portions of those rules will require the maintenance of a register of beneficial ownership.

AML law requirements

90. Germany's AML provisions are primarily set out in the Money Laundering Act (AML Act) which was already in force at the time of the 2011 Report. Since the 2011 Report, this Act has been amended in a number of instances to further strengthen Germany's AML system and rectify deficiencies identified by the FATF in Germany's 2010 Mutual Evaluation Report.

AML obligated entities

91. Pursuant to section 2 of the AML Act, the following persons, *inter alia*, are considered "obligated entities":

- credit and financial institutions; insurance companies and insurance intermediaries; asset management companies;
- lawyers, legal advisors, patent attorneys and notaries whenever they are involved in planning or carrying out the following transactions for their clients:
    a. buying and selling real estate or commercial enterprises;
    b. managing money, securities or other assets;
    c. opening or managing bank, savings or securities accounts;
    d. organising funds for the purpose of establishing, operating or managing companies or partnerships;
    e. establishing, operating or managing trusts, companies, partnerships or similar arrangements; or if they carry out financial or real estate transactions in the name and for the account of their clients;
- auditors, chartered accountants, tax advisors and tax agents;

- service providers for companies, partnerships and trusts or trustees who are not members of the professions referred above whenever they provide any of the following services for third parties:
  i. establishing a legal person or partnership;
  ii. act as the director or manager of a legal person or partnership, a partner of a partnership, or act in a similar position;
  iii. provide a registered office, business address, address for administration or correspondence and other related services for a legal person, a partnership or a legal arrangement;
  iv. act as a trustee of a legal arrangement;
  v. act as a nominee shareholder for another person other than a corporate entity listed on an organised market that is subject to transparency requirements with regard to voting rights consistent with EU laws, or subject to equivalent international standards;
  vi. arrange for another person to perform the functions described in (ii), (iv) and (v) above.

AML obligations

92. Pursuant to section 3(1) of the AML Act, the AML obligated entities must:

a. identify the customer;

b. obtain information on the purpose and intended nature of the business relationship where this is not already clear from the business relationship in the individual case;

c. clarify whether the customer is acting on behalf of a beneficial owner and, if so, identify the beneficial owner. If the customer is not a natural person, this includes an obligation to take adequate measures to understand the ownership and control structure of the customer;

d. continuously monitor the business relationship, including the transactions carried out in the course of the business relationship, in order to ensure that they are consistent with the information obtained about the customer and, if applicable, the beneficial owner, the business and client profile and, where necessary, with the information obtained about the origin of the assets or property; in the course of their continuous monitoring activities, obligated entities shall ensure that the relevant documents, data or information are updated at appropriate intervals. Based on a common understanding between

the German authorities and the bank associations, banks may choose to implement an event-driven update or an update in fixed time intervals. If fixed time intervals are chosen, information is to be updated in less than two years in case of high risk, up to seven years for normal risk and up to ten years for low risk (Guidelines by the German Association of German Banks, issued in co-operation with the Ministry of Finance and the BaFin).

93. The due diligence requirements described above shall be fulfilled when (s. 3(2)):

a. establishing business relations;

b. carrying out a transaction with a value of EUR 15 000 or more outside an existing business relationship; the foregoing also applies where multiple transactions with a combined value of EUR 15 000 or more are carried out if there is reason to suspect that such transactions are linked.

c. there are factual circumstances to indicate that the assets or property connected with a transaction or business relationship are the product of money laundering or are related to terrorist financing, notwithstanding any exceptions, exemptions or thresholds set forth in the AML Act;

d. there is doubt as to the veracity of the information collected in relation to the identity of the customer or the beneficial owner.

94. When fulfilling the due diligence requirements, the obligated entities shall adopt a risk-sensitive approach in order to determine the specific scope of their measures based on the individual customer, business relationship or transaction (s. 3(4)). If the obligated entities are unable to fulfil the due diligence requirements, they are not permitted to establish or continue the business relationship or carry out any transactions (s. 3(4)). Where a business relationship already exists, the obligated entities shall terminate or otherwise end the business relationship regardless of any other statutory provisions or contractual terms (s. 3(4)).

95. The obligated entities must identify the customer and, if applicable, the customer's beneficial owners, before establishing a business relationship or carrying out a transaction. The identification process may be completed while the business relationship is being established if this is necessary in order to avoid interrupting the normal course of business and there is a low risk of money laundering or terrorist financing involved (s. 4(1)). The obligated entity may dispense with the identification if it has already identified the relevant customer and beneficial owners and made a record of the information obtained, unless external circumstances lead to doubts of the veracity

of the information obtained during the earlier identification process (s. 4 (2)). The obligated entity is furthermore required to file a suspicious transaction report where factual circumstances indicate that the customer failed to comply with its duty to disclose whether it intends to establish, continue or carry out the business relationship or transaction on behalf of a beneficial owner (s. 11(1)).

Beneficial owner definition

96. The AML Act defines beneficial owner as the natural person who ultimately owns or controls the customer, or the natural person on whose behalf a transaction is ultimately carried out or a business relationship is ultimately established (s. 1(6)). The AML Act further provides that the term "beneficial owner" includes, in particular: in the case of corporate entities that are not listed on an organised market and are not subject to transparency requirements with regard to voting rights consistent with EU laws, or are not subject to equivalent international standards, any natural person who directly or indirectly holds more than 25% of the capital stock or controls more than 25% of the voting rights (s. 1(6).1).

Information collected

97. If a customer is a company the obligated entity must collect the company's name, legal form, commercial register number if available, the address of its registered office or head office, and the names of the members of its representative body or of its legal representative (s. 4 (3)). If a member of the customer's representative body or the legal representative is a legal person, information shall be collected on that legal person's company, partnership or trading name, legal form, commercial register number if available, and the address of its registered office or head office (s. 4 (3)).

98. The obligated entity shall establish the identity of beneficial owners by at least establishing their name and, where appropriate given the existing risk of money laundering or terrorist financing in the individual case, by collecting further identifying information (s. 4(5)). Details of the beneficial owner's date and place of birth and address may be collected irrespective of the ascertained risk. For the purposes of verifying the beneficial owner's identity the obligated entity shall always satisfy itself of the veracity of the information collected by taking risk-adequate measures. In a "normal" money-laundering/terrorism financing risk situation, the obligated entity verifies the beneficial ownership information based on information provided by its customer and/or by information from public registers or other official sources. In a high risk situation the obligated entity has to take additional measures, e.g. (1) considering data from additional commercial databases, (2)

in-depth research by the AML officer on the identification information; or (3) asking the customer for further documentation that prove the veracity of the beneficial ownership information supplied.

99. The AML Act further provides that the customer shall provide the obligated entity with the information and documents necessary for fulfilling the due diligence requirements and shall advise it without undue delay of any changes arising during the course of the business relationship (s. 4(6)). The customer shall disclose to the obligated entity whether it intends to establish, continue or carry out the business relationship or transaction on behalf of a beneficial owner. Such disclosure to the obligated entity shall also include information that verifies the identity of the beneficial owner. As noted before, the AML Act also poses the responsibility to maintain the due diligence information up-to-date on the obligated entity (s. 3).

100. In terms of method for the identification of the beneficial owner in the context of customer due diligence, Germany's current legal and regulatory framework does not specify cascading measures to be applied in the case where no individuals who ultimately have a controlling interest in a legal entity can be identified – i.e. there is no residual criteria requiring the identification of (i) natural persons (if any) exercising control of the legal person by other means; and (ii) natural person who holds the position of senior management official. However, the definition of beneficial owner under the AML Act does provide beneficial owner includes, in particular, any natural person who directly or indirectly holds more than 25% of the capital stock or controls more than 25% of the voting rights. That could cover the situation where control is exercised by other means than ownership. In terms of the identification of senior management officials, although that is not specifically covered in the AML Law, company law generally requires information on company's management or the supervisory board to be kept by German companies or provided to the Commercial Register. For foreign companies that are resident for tax purposes in Germany because they have their place of effective management there, information on senior management should be available as this information would be maintained by the foreign company to document the company's tax resident status.

Customer due diligence by third parties

101. Pursuant to section 7 of the AML Act, an obligated entity may engage third parties in order to fulfil its due diligence obligations. The third parties shall, directly and without undue delay, transmit to the obligated entities the data and information obtained upon carrying out CDD measures; and upon request, any copies they have kept of documents for identifying the customer and, if applicable, any beneficial owner (s. 7(1)).

102. Moreover, section 7(2) of the AML Act specifically deals with the possibility of obligated entities that outsource the performance of due diligence obligations to another person on the basis of a contractual arrangement. Before co-operating with another person, the obligated entity shall satisfy itself of the reliability of such person, and during the course of the co-operation satisfy itself of the appropriateness and propriety of the measures adopted by such other person by means of spot checks.

103. The obligated entities must keep all CDD records for at least five years (s. 8) if a longer retention period is not required in accordance with other legal provisions.

104. Failure to conduct customer due diligence and maintain identification information and customer diligence records may be punished with a fine of up to EUR 100 000 (s. 17(1)).

Tax law requirements

105. German tax law contains certain requirements that may be useful for the identification of the beneficial owners of companies.

106. Pursuant to the Fiscal Code, foreign business activities/relationships must also be reported in order to ensure timely tax treatment and the supervision of cross-border tax matters. Taxpayers including legal entities that have worldwide tax liability for income tax (section 1 (1) of the Income Tax Act) and corporation tax (section 1 (1) of the Corporation Tax Act); are required to report the following cross-border activities: (i) the establishment and acquisition of businesses and permanent establishments abroad (section 138 (2) no. 1 of the Fiscal Code); (ii) holdings (including changes in or disposals of holdings) in foreign partnerships (section 138 (2) no. 2 of the Fiscal Code); (iii) the acquisition of substantial holdings in a (foreign) corporation, association or pool of assets (section 138 (2) no. 3 of the Fiscal Code).

107. Moreover, section 39 of the Fiscal Code provides for the following rule for the attribution of economic goods. Economic goods would include shareholdings in a company.

> Section 39 Attribution
>
> (1) Economic goods shall be attributable to the owner.
>
> (2) Notwithstanding the provisions of subsection (1) above, the following provisions shall apply:
>
> 1. Where a person other than the owner exercises effective control over an economic good in such a way that he can, as a rule, economically exclude the owner from affecting the economic

> good during the normal period of its useful life, the economic good shall be attributable to this person. In the case of fiduciary relationships, the economic goods shall be attributable to the beneficiary, in the case of transferred ownerships for security purposes to the security provider, and in the case of proprietary possessions to the proprietary possessor.
>
> 2. Economic goods to which several persons are jointly entitled shall be attributable proportionally to the participants insofar as taxation requires separate attribution.

Beneficial ownership information – Enforcement measures and oversight

108. This aspect of the ToR was not specifically evaluated in the 2011 Report. As described above, the main requirements to maintain beneficial ownership information arises under AML law. Some provisions are also contained in tax law that apply to a limited extent to assist in the identification of beneficial owners.

AML Requirements

109. Different supervisory bodies are attributed supervisory and enforcement powers under the AML Law (s. 16). This includes:

- the Federal Financial Supervisory Authority (BaFin) for, *inter alia*, banks, insurance companies, investment companies;
- the local Bar associations for lawyers and legal advisors who their members;
- the President of each Regional Court for the notaries domiciled in their jurisdiction;
- the Chamber of Public Accountants for auditors and chartered accountants;
- the competent local chamber of tax advisors for tax advisors and authorised tax agents; and
- other *Länder* authorities for other company service providers.

110. Financial institutions and the professionals listed above have an important role in relation to the maintenance of beneficial ownership of companies in Germany as most companies may in the course of their existence maintain a relationship with one or several entities and professionals. In particular, stock corporations are required to engage a notary at the time of incorporation and limited liability companies are required to do so both at the time of incorporation and at the time of transfer or issuance of new shares.

Supervision of AML obligations by the BaFin

111. The BaFin established a two-stage system to monitor the reliability of customer due diligence performed by banks, including the maintenance of beneficial ownership:

- the supervision of AML compliance including CDD obligations is performed by means of audits and special audits;
- A data retrieval system provides for direct access to beneficial ownership and other due diligence information collected by banks (Banking Act, s. 24(c)). The system is directly populated by the banks and data is accessed by the BaFin and can be provided to a number of government authorities in Germany, such as the Financial Intelligence Unit (FIU), the tax and customs authorities and public prosecutors. The reliability of the information on the system is checked by the BaFin.

112. The BaFin is the only banking supervisory authority in Germany and as such supervises the banks' compliance with obligations under *inter alia* the Banking Act and the AML Act. All banks are subject to audit on annual basis and the storage and update of CDD information is regularly examined during these audits. During the annual audits, auditors are required to rate the compliance with provisions on storing and updating CDD information using a rating system with grades ranging from F(0) to F(4), being F(0) no deficiencies; F(1) minor deficiencies; F(2) moderate deficiencies; F(3) severe deficiencies; and F(4) very severe deficiencies. The documents used for identification of the customer, the customer's beneficial owner and the ownership structure are regularly examined by auditors and used to set out a compliance rating for the relevant financial institution.

113. During the period 2013 to 2016 (until 1 July 2016), less than 10 of the 1 960 banks were found to have severe or very severe deficiencies. Those banks were all private banks or co-operative banks. No savings banks were found to have severe deficiencies. Deficiencies identified commonly involved the lack of filing suspicious transactions reports.

114. The BaFin can apply the following enforcement measures (in addition to the fines described in the AML law): (i) written warnings (not made public), (ii) infractions; (ii) reprimand to the board members; (iv) revocation of the license of board members; (v) revocation of the license of the financial institution.

115. In addition to the annual audits, the BaFin also conducts special audits which are specifically focused on AML compliance and follow a risk-based approach. On average, 30 special audits are conducted a year. During the review period, the BaFin actually relied on external auditors to perform special audits and the BaFin staff would only accompany the audits. The main reason

for this was the lack of specialised staff at BaFin. Since 2016, the BaFin staff started to conduct some special audits as well and there are plans to increase the number of special audits led by the BaFin staff from 2017 onwards.

116. BaFin's Department of Prevention of Money Laundering had a total of 110 staff as at in June 2016. There were only 13 staff directly involved in on-going AML supervision in the BaFin. The staff number did not appear to be sufficient considering the size of Germany's financial sector and the large number of financial institutions.[7] Thirty new staff is expected by the end of 2017 and two new departments are being created. Germany is recommended to monitor that its AML supervisory staff is kept at appropriate levels to ensure that the obligations to maintain beneficial ownership are adequately monitored in practice.

117. When deficiencies were identified, written warnings were issued by the BaFin. There are no statistics especially concerning deficiencies on identifying customer and the customer's beneficial owner; however, there are general statistics on the number of written warning issued by the BaFin in the last five years. The warnings may be related to deficiencies related to customer due diligence, reporting of suspicious transactions or other issues covered by AML framework. The statistics are transcribed below:

	2011	2012	2013	2014	2015	2016
Number of written warnings	9	20	60	70	94	120

118. In terms of administrative fines imposed by the BaFin in its role of AML supervisor, the following statistics are available. There was no information on how many cases fines were imposed as a result of deficiencies identified in relation to customer due diligence and the identification of beneficial owners.

	2011	2012	2013	2014	2015	2016
Number of administrative fines applied	12	20	60	70	94	120

119. With regard to the bank retrieval data system, as at June 2016, the BaFin had 40 staff engaged in the monitoring of the system, and at January 2017, this number had increased to 60. Germany's data retrieval system is a useful tool that greatly facilitates access to the BaFin and a number of other government authorities to beneficial ownership information held by banks. It is an online information system housed in an interface within the BaFin and the central tax authorities. It is populated by credit institutions on the basis of the client's information they gather, including beneficial owner

7. See IMF assessment (para. 43) https://www.imf.org/external/pubs/ft/scr/2016/cr16190.pdf.

information. The information available in the data retrieval system includes: the account number, opening and closing dates, account holders and authorised person's names and birthdates and the beneficial owner's name and (if known) address. The information can be accessed by government authorities without alerting the relevant banks or their customers.[8] In practice, government authorities make frequent use of the data retrieval system (for statistics please see element A.3 of this report).

120. In terms of the monitoring of the reliability of the information contained in the system, the BaFin reports that monitoring staff sometimes find information that seems incorrect or outdated. In such cases, the banks are required to make the necessary corrections and report about the source of the mistake and strategies to avoid such errors in the future. If these mistakes occur more frequently, the BaFin performs an on-site inspection in the bank to check whether it follows the AML law requirements concerning the maintenance of proper CDD records. In the peer review period, BaFin completed 20 such on-site inspections. An average of 27% of the samples checked contained at least minor mistakes. The BaFIn stresses that it mainly checks those institutions which already seemed to have a problem and concentrates on samples in which there are indications for potential mistakes. Therefore, in the BaFin's assessment, the high percentage of incorrect records is, therefore, not a suitable basis for drawing conclusions on the general level of compliance by banks with their CDD obligations in Germany. During on-site inspections, the BaFin usually conducts a plausibility check of CDD data stored by financial institutions. If the CDD data seems implausible or contradictory, or other facts indicate that the information is incorrect, the BaFin carries out further searches during inspections in order to verify the relevant information. The on-site inspections also include a checking of information stored regarding the ownership structure since necessary CDD measures also include an obligation to take adequate measures to understand the ownership and control structure of the customer. For the latter the BaFin resorts to commercial databases, public available data or other sources. Deficiencies detected during on-site inspections are corrected at the same moment or – if that is not possible – the financial institution has to follow-up with the BaFin regarding the correction of the information after the on-site inspection.

Supervision of other AML obligated persons

121. The supervision of the compliance of professionals such as notaries, lawyers, tax advisors and accountants with their obligations to identify the beneficial owner of their corporate clients is performed at *Länder* or local level. Germany advises that the compliance of those professionals with their obligations under the AML framework, including the obligation to identify the

8. See more details on https://www.imf.org/external/pubs/ft/scr/2016/cr16190.pdf.

beneficial owner, is monitored during on-site and off-site inspections by their regulatory bodies. No information was available on the level of compliance of these professionals with their obligations, inspections carried out or enforcement measure taken by authorities. As such, the effectiveness of Germany's system for the maintenance of beneficial ownership information could not be fully ascertained. Germany is recommended to keep records of its oversight and enforcement efforts in relation to supporting the legal requirements for the maintenance of beneficial ownership information by all AML obligated entities.

122. Germany is of the view that the mandatory involvement of the notary in both the incorporation of limited liability companies (GmbH) and stock corporations (AG) and the change of legal owners of limited liability companies (GmbH) should ensure that high quality beneficial ownership information is maintained in Germany. If a notary does not clarify the involvement of a beneficial owner or does not record the name of such a beneficial owner, he or she would be in contravention of the AML Act and could be subject to significant sanctions. Germany considers that such sanctions would have a deterrent effect against non-compliance. Moreover, a notary is a holder of a public office (section 1 of the Federal Notaries Code). Pursuant to sections 92-94 of the Federal Notaries Code, notaries are subject to public supervision by the judicial authorities. The supervisory authorities are responsible for regularly monitoring notaries' performance of their official duties (section 93 of the Federal Notaries Code). If it is determined that a notary is not fulfilling his/her official obligations, or that a notary is not executing his/her official obligations in accordance with the statutory rules, then the notary will be subject to an administrative procedure pursuant to sections 95-110 of the Federal Notaries Code. The following measures may be imposed during a disciplinary procedure: reprimands, fines and removal from office (section 97 of the Federal Notaries Code). The fine can total up to EUR 50 000 (EUR 100 000 in particularly serious cases).

Tax Law Requirements

123. Oversight and enforcement with tax obligations is conducted at *Länder* and local level. No detailed information on federal level was available on the compliance rate with tax filing requirements or the enforcement measures taken in relation to non-filers. Notwithstanding the above, the authorities interviewed during the on-site visit described clear processes and procedures related to the monitoring and enforcement of filing obligations and their application of sanctions in practice. Ownership information and the attribution of economic goods including shareholdings, where relevant, are checked during a tax audit. Statistical information was available in relation to the percentage of taxpayers audited in years 2013-15 (those are included in the analysis of element A.2).

Availability of beneficial ownership information in practice (Peer experience)

124. In regard to beneficial ownership information specifically, Germany was requested to provide beneficial ownership information to at least three partners. Peers were generally satisfied with the information received.

ToR A.1.2: Bearer shares

125. The 2011 Report found German law allowed stock corporations (AGs) and partnership limited by shares (KGaAs) to issue bearer shares and holders of bearer shares could not be identified in all circumstances.

126. Amendments to the Stock Corporation Act that entered into force on 31 December 2015 restricts the issuance of bearer shares by any AG or KGaA that has been incorporated on and after this date. Pursuant to article 10 of the Stock Corporation Act, shares may be issued in bearer form if:

- the company is listed on a stock exchange; or
- the shares are immobilised (i.e. by requiring companies to issue bearer shares as a "global certificate" instead of an "individual certificate" and requiring the certificate to be held with a custodian).

127. The following persons may act as custodians:

- a securities depositary bank (*Wertpapiersammelbank*) as defined in section 1 subsection (3), first sentence, of the Securities Deposit Act (*Depotgesetz*);
- an authorised central securities depositary or a recognised third-country central securities depositary pursuant to Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012 (OJ L 257, 28.8.2014, p. 1), or
- any other foreign depositary (i.e. a depositary located abroad) that satisfies the requirements of section 5 subsection (4), first sentence, of the Securities Deposit Act. Foreign depositaries are required to be subject to the control of a public supervisory body and must have a legal status comparable to that of a central securities depositary in Germany. The German central depositary remains liable for any negligence on the part of a foreign central depository.

128. The registration court must reject the filing of the articles of association of an AG or a KGaA in the event they allow for the issuance of bearer shares but do not provide for a custodian arrangement. Compulsory

liquidation pursuant to section 399 Domestic Relations and Voluntary Jurisdiction Procedure Act is applicable in the event registration is nonetheless made. In the event a global certificate is not placed with a custodian, the shares should be treated as normative. If those shares are not included in the share registry kept by the company, the holder of the share will not be recognised as shareholders under section 67 (2) of the Stock Corporation Act.

129. The immobilisation requirements do not apply to AGs and KGaAs incorporated before 31 December 2015. It is estimated that there are more than 14 000 non-publicly listed AGs and KGaAs in existence and it is not known how many of those have issued bearer shares.

130. As noted in the 2011 Report, those companies are required to file with their corporate tax return a list of all shareholders owning more than 1% of the company's capital, regardless of the form of the shares held. This reporting mechanism does not appear to be sufficient to ensure that information on the owners of bearer shares is available in all cases. Although an obligation is imposed on the company to report all shareholder that hold at least 1% of its shares, it is not clear how a company that has issued bearer shares would be able obtain such information in all cases. Moreover, since this tax reporting requirement applies an annual basis, transfer of bearer shares in the course of the year could go undetected.

Bearer Shares in practice

131. Germany does not have statistics on the compliance of companies with these reporting obligations. Also it is not known whether audits have identified problems with the identification of holders of bearer shares. Germany is recommended to take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.

132. Germany was requested to provide ownership information on 125 instances during the review period and reports that information has been adequately provided. Peer input did not indicate particular concerns.

ToR A.1.3: Partnerships

133. The 2011 Report (para. 93) notes that there are three forms of partnership in Germany. Germany also reports that there would be an entity called a partnership company (*Partnerschaft*) that should be dealt with in this section. The table below summarises the main characteristics of the four types of partnership under German law:

Overview of the different types of partnerships in Germany

Type of partnership	Description	Governing law	Numbers as at 30 June 2016	Numbers as at 1 January 2008
General Partnership (OHG)	An association of two or more natural or persons to operate together under a joint name on a trade. A general partnership is set up by contract. Partners in a general partnership are fully liable for the partnership's debts.	Commercial Code	24 215	25 481
Limited Partnership (KG)	An association of two or more natural or legal persons where at least one partner is a general partner and at least one is a limited partner. The liability of the limited partner is limited to his contribution while the general partner is fully liable for the debts of the partnership.	Commercial Code	257 681	199 805
Civil law partnership (GbR)	An association of two or more natural or legal persons committed to each other through a social contract, to achieve a common purpose which cannot be used for the purpose of running a commercial business. If a GbR runs a commercial business, it is automatically considered to be an OHG or a KG, depending of its articles of association. GbRs are often used for the pooling of joint interest in ventures or for passive investments.	Civil Code	Not known (no systematic collection of statistics or registration)	N/A
Partnership Company (*Partnerschaft*)	A *Partnerschaft* does not carry out commercial trade and is a partnership of natural persons established for the joint exercise of a profession.	Partnership Company Act	Not known (no systematic collection of statistics)	465 700

134. The 2011 Report (para. 94) also noted that the German Commercial Code provides for a Silent Partnership (s. 230 and following). Under a Silent Partnership, a person makes an equity contribution into another person's business. This arrangement can be characterised as a contract, and like a contract, its existence is typically not disclosed to the public. Silent Partnerships do not have any legal status and cannot hold real estate or own assets. They have no income or credits for tax purposes, do not carry on business and cannot be compared to a limited partnership. Therefore, the Silent Partnerships were considered to be out of the scope of the Terms of Reference.

Partnership law requirements

135. The legal requirements for the maintenance of information identifying the partners in a partnership are described in the 2011 Report (see paras. 95-99). Under the Commercial Code, general partnerships (OHG) and limited partnerships (KG) are required to disclose the identity of their partners, including the identity of limited partners in a KG, to the Commercial Register. Any subsequent changes in partners must also be registered. The information is maintained by register for a minimum period of 5 years. Failure to do so may trigger the application of fine of a maximum amount of EUR 5 000. According to the German authorities, multiple application of this fine is possible.

136. If a civil law partnership (GbR) carries out commercial trade, it must register with the Commercial Register and it will be considered to be an OHG. As OHGs, they are required to disclose the identity of their partners and any subsequent changes in partners to the Commercial Register. If other types of trade activities are conducted, the partners of the GbR must also register with local trade authorities. Those authorities will notify the tax authorities of the commencement of trade. As noted below, on the Tax Law Requirements subsection, information on identity of the partners is disclosed in the annual partnership tax return.

137. A partnership company (Partnerschaft) must be registered in the partnership register and provide information on the identity of all partners. Any subsequent changes in partners must also be registered.

Tax law requirements

138. As described in the 2011 Report, a partnership is not a person liable to tax since it is treated for income tax purposes as transparent. However, the taxable profit is determined at the partnership level by way of a uniform and separate determination of profits pursuant to section 180(1) no. 2 lit. A) of the Fiscal Code. All partnerships are required to fill out an annual tax return and to mention in an annex to this return the attribution of the partnership's profit to each partner. Due to this requirement, partnerships must disclose partners' identity in their annual partnership tax returns.

139. Failure to file tax returns may trigger the imposition of a fine of up to EUR 25 000. Multiple imposition of this fine is possible. Incomplete or false entries made intentionally or as a result of serious negligence leading to tax not being assessed may lead to a fine of up to EUR 50 000. If the situation were characterised as tax evasion, a penalty of imprisonment up to ten years and a fine may also apply.

Oversight and enforcement

140. The information maintained by the Commercial Register on the identity of partners of general partnerships and limited partnerships is public and can be accessed electronically. Similar to companies, registration is done locally. There is no information available on the sanctions imposed by registration authorities concerning the failure to comply with registration requirements by partners and partnerships.

141. Similarly no data is available concerning the filling of tax returns by partnerships. The German authorities advised that compliance with filing obligations is closely monitored. The Commercial Register sends information on the registration of general partnerships and limited partnership to the tax authorities, allowing them to monitor the compliance with tax obligations more efficiently. The *Länder* use a common filing standard as well as a common programme for processing returns, which would also be used to process tax returns of partnerships. The system allows for the identification of non-filers and late filers. The e-filing system also requires that tax returns are completed when filed. Moreover, information such as the identity of partners and the attribution of the partnership's profit to each partner would commonly be checked in the course of an audit.

Beneficial ownership – Legal requirements and oversight and enforcement

142. The German AML legislation is the centrepiece of German's system for the maintenance of beneficial ownership information. Information on the beneficial owners of partnerships would require to be available under German law (subject to the specificities described earlier in section A.1.1 of this report), if a partnership engages an AML obligated person. As reviewed in detail in relation to companies (A.1.1), the scope of application of the German AML legislation is broad and covers, for instance, financial institutions, notaries, lawyers, auditors, accountants, persons providing services such as registered office or as a director or manager of a partnership. However, there is no legal requirement for partnerships to engage an AML obligated person although many are expected to do so in the course of carrying on business in Germany.

143. The availability of legal and beneficial identity information in respect of partnerships is generally assured by the oversight and enforcement activities of the AML supervisory authorities and the tax compliance activities described above in respect of companies. As noted under A.1.1, while adequate information was kept on the monitoring and enforcement of record keeping obligations of banks was available, no details on the monitoring of other AML obligated entities could be provided. As a result, their

effectiveness of German's system for the maintenance of beneficial ownership information in practice could not be fully ascertained.

Availability of partnership information in practice

144. During the current review period, two partners have asked Germany for information on the partnerships and no issues regarding the availability of this information were raised in the peer input.

ToR A.1.4: Trusts

145. As noted under the 2011 Report, German law does not recognise the concept of trusts. Germany has not signed the Hague Convention on the Law Applicable to Trusts and on their Recognition. There are, however, no obstacles that prevent a German resident individual or service provider to act as a trustee of a foreign trust.

Legal requirements for the availability of legal and beneficial ownership

AML Law

146. Under the German AML framework, a number of professionals are listed as obligated persons with CDD and other reporting obligations (AML law, s. 2 (1)). Those include lawyers, accountants, tax advisors and service providers acting as a trustee of a legal arrangement. As described under section A.1.1 of this report, AML obligated persons have customer due diligence obligations, including the obligation to identify their customer and the beneficial owner(s) of their customers. In relation to legal arrangements, the AML law says the beneficial owner would include in particular (AML Law, s. 1(6).2):

i. any natural person acting as settlor or who otherwise exercises control over 25% or more of the assets or property;

ii. any natural person who has been designated as the beneficiary of 25% or more of the managed assets or property;

iii. where the natural person intended to be the beneficiary of the managed assets or property is yet to be designated, the group of natural persons for whose benefit the assets or property are primarily intended to be managed or distributed; or

iv. any natural person who otherwise directly or indirectly exercises a controlling influence on the management of assets or property or the distribution of income.

147. Information must be kept for a minimum period of five years. Failure to conduct customer due diligence and maintain identification information may be punished with a fine of up to EUR 100 000 (s. 17(1)).

Tax Law

148. As noted in the 2011 Report, if a person states that assets are held in a fiduciary relationship, then this person would have to provide evidence of the existence of such a relationship in order to avoid tax liabilities attaching to the assets or income from the trust, or other fiduciary relationship (section 159 of the *Fiscal Code*). In addition, a trustee in Germany is a taxpayer subject to the provisions of the German tax law, and in particular section 93 of the Fiscal Code states that any persons "shall provide the tax authority with the information needed to ascertain facts and circumstances which are significant for taxation". Pursuant to section 117 of the Fiscal Code, the powers to access information granted to the revenue authorities by section 93 can be used whether the information required relates to German taxes or not. This means that, a trustee resident in Germany must be in position to provide on request of the German authorities all information on settlors and beneficiaries of trusts administered from Germany.

149. Information must be kept for a minimum period of six years. Failure to file annual tax returns may be subject to a fine of up to EUR 25 000. Multiple imposition of this fine is possible. Incomplete or false entries made intentionally or as a result of serious negligence leading to tax not being assessed may lead to a fine of up to EUR 50 000. If the situation were characterised as tax evasion, a penalty of imprisonment up to ten years and a fine may also apply.

Oversight and enforcement

150. Obligated persons under the AML Act providing trustee services are subject to supervision by the respective professional chamber or regulatory authority, which are organised at *Land* or local level. The compliance of these persons with their obligations under the AML framework, including the obligation to identify the beneficial owner, is monitored during on-site and off-site inspections by their supervisory bodies. However, no information was available on the supervisory activities or enforcement measures applied during the period under review.

151. With regarding to the tax obligations, as described earlier under A.1.1, oversight and enforcement with tax obligations is conducted at *Land* and local level, the authorities interviewed during the onsite visit described clear processes and procedures related to the monitoring and enforcement of filing obligations and their application of sanctions in practice. Statistical

information was available regarding the percentage of taxpayers audited on an annual basis. However, no detailed information was available on the compliance rate with tax filing requirements or the enforcement measures taken in relation to non-filers.

152. Germany is recommended to keep records of its oversight and enforcement efforts in relation to supporting the legal requirements for the maintenance of legal and beneficial ownership information.

Availability of trust information in practice

153. The 2011 Report indicated that peer input had not raised any concerns regarding the availability of trust information in practice. During the current review period Germany received no requests for information concerning foreign trusts. Again, peers did not raise any concerns with regard to the availability of this type of information.

ToR A.1.5: Foundations

154. As noted in the 2011 Report, German law recognises the concept of foundations. A foundation (*Stiftung*) is an organisation intended to promote on a long-term (indefinite) basis a particular purpose (designated by the founder) through assets dedicated to that purpose. While the basic rules on foundations are to be found in the *Civil Code* (sections 80 to 88), *Länder* law (and not federal law) regulates recognition and supervision of foundations. This means that there are as many pieces of legislation on foundations as there are *Länder* in Germany.

155. Foundations can be categorised into public and private foundations:

Types of foundation

Type of Foundation	Description	Governing law
Public Foundation *(Stiftung des öffentlichen Rechts)*	Public foundation is a legally-independent administrative organisation which was established or recognised by a sovereign act of a *Land* by statute or may also be established by a federal act. As part of the public administration, it uses its foundation assets to carry out administrative tasks, and is subject to state supervision. The sovereign act regulates the purpose, assets, and at least the basics of the foundation's constitution and supervision.	Fiscal Code, Civil Code, Lander Law

Type of Foundation	Description	Governing law
Private Foundation *(Stiftung des Privatrechts)*	A private foundation with legal capacity comes into being as a legal entity by virtue of a written act of foundation by the founder and of recognition by the foundation supervision authority. The act of foundation is a unilateral legal transaction by means of which the founding member undertakes to assign assets to fulfil the purpose defined by the founding member, and in which the founding member defines the constitution of the future foundation. Recognition is an administrative act under private law. The foundation is to be recognised if the act of foundation complies with the statutory requirements, the long-term sustained fulfilment of the objectives of the foundation appears to be safeguarded, and the objectives of the foundation do not endanger the public good. Private foundations are subject to the supervision of the foundation authorities of the respective *Land* in which they are headquartered.	Fiscal Code, Civil Code, Lander Law

156. On 31 December 2015, there were 21 301 private foundations with legal capacity under civil law (*rechtsfähige Stiftungen des bürgerlichen Rechts*). The figure is derived from statistics provided by the Association of German Foundations (*Bundesverband Deutscher Stiftungen*), which compiled the statistics on the basis of information provided by the *Länder* supervisory authorities. On 31 December 2008, the number of foundations was approximately 15 000.

157. The 2011 Report concluded that Germany's legal framework ensured the availability of information of the founders, members of the foundation council and beneficiaries of a foundation. The identity of the founder, the composition of the foundation board (council) and the identity of beneficiaries or the class of beneficiaries must be disclosed to the *Länder* authorities at the time of registration of the foundation.

Civil law requirements

158. Section 80 of the Civil Code states that:

> the creation of a foundation with legal personality requires an endowment transaction and the recognition of this by the competent public authority of the *Land* the foundation has its seat in.

159. Pursuant to section 81 of the same Code, the endowment must be in writing and must give the foundation a charter with provisions on (i) the name of the foundation, (ii) its seat, (iii) its objectives, (iv) its assets and (iv) the composition of its board. The endowment must contain a binding declaration by the founder. As a result, the supervisory authorities will always know the founders' identity. Germany also advises that the foundation supervisory authorities must be advised about changes in the composition of the foundation board.

160. In addition, as part of their supervision duty, the *Länder* authorities must ensure that the purpose of the foundation is met and in particular that all assets held by a foundation were used in compliance with this purpose and to the benefit of the persons or class of persons mentioned in the statutes. To this extent, foundations are required to provide an annual report and accounting records (see section A.2) to the supervisory authorities, making the information on foundation beneficiaries know from these authorities.

161. If there is an arrangement in the format of a foundation but that does not register with the relevant authorities, it will not have the legal capacity or recognition as a foundation and will not be subject to supervision by the *Länder* authorities. Such arrangement would consist as a contractual arrangement between the founder and the fiduciary and may be treated as a *Treuhand* (see the subsection further below).

Tax requirements

162. The income from private foundations – when the foundation does not follow a charitable purpose – is subject to corporate income tax (section 1 *Corporate Income Tax Ac*t). In that case, a foundation must fill out an annual tax return. Private foundations with charitable purposes are subject to corporate income tax only to the extent that an economic activity which does not serve the immediate achievement of the charitable purposes is carried out. Germany advises that tax authorities periodically review if foundations pursue their charitable purposes.

163. Public foundations are generally not subject to corporate income tax. However, if they carry on commercial operations, they must file an annual tax return concerning such operations (section 1(1) *Corporate Income Tax Ac*t).

164. Assets transferred by the founder to a private foundation, whether the founder is resident in Germany or not, are subject to inheritance tax. In addition, the assets of foundations serving substantially the interest of one or more families are subject to inheritance and gift tax every thirty years (section 1(1)4 of the *Inheritance and Gift Tax Act – Erbschaft- und Schenkungsteuergesetz*). Due to this requirement, the information on the founders is known to the tax authorities.

AML requirements

165. As noted earlier under A.1.1, the scope of application of Germany's AML framework is broad and covers, *inter alia*, financial institutions and a number of professionals such as notaries, lawyers, accountants and tax advisors (AML law, s. 2 (1). Although there is no legal requirement for these

persons to be involved with regard to the establishment or management of foundations, their involvement is likely to occur in many instances in practice. AML obligated persons have customer due diligence obligations, including the obligation to identify their customer and the beneficial owner(s) of their customer. In relation to foundations with legal capacity the beneficial owner would include in particular (AML Law, s. 1(6)2):

a. any natural person acting as settlor or who otherwise exercises control over 25% or more of the assets or property;

b. any natural person who has been designated as the beneficiary of 25% or more of the managed assets or property;

c. where the natural person intended to be the beneficiary of the managed assets or property is yet to be designated, the group of natural persons for whose benefit the assets or property are primarily intended to be managed or distributed; or

d. any natural person who otherwise directly or indirectly exercises a controlling influence on the management of assets or property or the distribution of income.

166. Information must be kept for a minimum period of five years. Failure to conduct customer due diligence and maintain identification information may be punished with a fine of up to EUR 100 000 (s. 17(1) and (2)).

Oversight and supervision

167. Supervisory authorities at the *Länder* are responsible for monitoring the foundation's compliance with its objectives and ensure the preservation of its assets.

168. These authorities also maintain a public directory of the supervised foundations. The directories – which are kept by the *Länder* – are open to public inspection and contain at least: (i) the name of foundation; (ii) its legal status; (iii) its object; and (iv) its address.

169. After recognition of the foundation, the purpose of the foundation cannot generally be changed. If the foundation statute allows for modifications, such modifications require approval by the supervisory authority. Germany advises that, in case of a significant change in the situation of the foundation, the foundation laws of the *Länder* also allow a change of the purpose to be proposed by the board or by the supervisory authority. The decisions of the board always require approval by the supervisory authority.

170. There is no detailed information available on the level of supervision conducted by the *Länder* authorities and so its effectiveness in practice could not be fully ascertained.

Availability of foundation information in practice

171. The 2011 Report did not indicate any concerns regarding the availability of information on foundations in practice. During the current review period Germany received no requests for information concerning foundations. Peers did not raise any concerns with regard to the availability of this type of information.

Other relevant entities and arrangements

Treuhand (fiduciary relationship)

172. As noted in the 2001 Report, in a broad sense, the *Treuhand,* or *Treuhandverhältnis,* is a contractual relationship by which one party, the *Treugeber*, requires another, the *Treuhänder*, to manage his or her assets in a certain way. It is a contract, which is not regulated *per se* in the German Civil Code, but is based on the general principle of the autonomy of the contracting parties and delimited by jurisprudence and doctrine.

173. A *Treuhand* can exist without any written underpinning document. It can be concluded between any two persons capable of being party to a contract. It is created when the *Treuhänder* (trustee) is authorised to exercise rights over property in his or her own name, on the basis of and in accordance with a binding agreement with the *Treugeber* (settlor). It may involve third party beneficiaries but is most often a two-party relationship. It may also take different forms: it may be hidden (*verdeckte Treuhand)* or disclosed to third parties (*offene Treuhand)*; the *Treuhänder* may be authorised to manage the assets under the *Treuhand* in the interest of a third party (*fremdnützige Treuhand)* or in his or her own interest (*eigennützige Treuhand*).

174. In a narrower sense, a *Treuhand* relationship is deemed to be given only for relationships entailing the performance of obligations in which the *Treugeber* enters into an agreement to transfer the objects or rights to the *Treuhänder*, and the latter agrees to hold and administer them in the interest of the *Treugeber.*

175. If the *Treuhänder* acts on a not-for-profit basis, this constitutes a mandate in accordance with section 662 of the Civil Code; if the *Treuhänder* receives a fee, this constitutes a business management contract in accordance with Sec. 675 of the Civil Code.

176. The German *Treuhand* is sometimes compared to the Anglo-Saxon express trust; however some differences exist. All dispositions by the Treuhänder regarding the property transferred to him are effective, even if he were to act in bad faith and contrary to the contractual arrangements made.

177. A *Treuhand* is not required to be registered.

AML Requirements

178. Under the German AML framework, a number of professionals are listed as obligated persons with CDD and other reporting obligations (AML law, s. 2 (1). Those include lawyers, accountants, tax advisors and service providers acting as a *Treuhänder* (trustee).

179. AML obligated persons have customer due diligence obligations, including the obligation to identify their customer and the beneficial owner(s) of their customers. In relation to legal arrangements used to manage or distribute assets or property on "*Treuhand*", or through which third parties are instructed with the management or distribution of assets or property, or similar legal constructs, the AML law says the beneficial owner would include in particular (AML Law, s. 1(6).2):

a. any natural person acting as settlor or who otherwise exercises control over 25% or more of the assets or property;

b. any natural person who has been designated as the beneficiary of 25% or more of the managed assets or property;

c. where the natural person intended to be the beneficiary of the managed assets or property is yet to be designated, the group of natural persons for whose benefit the assets or property are primarily intended to be managed or distributed; or

d. any natural person who otherwise directly or indirectly exercises a controlling influence on the management of assets or property or the distribution of income.

180. The AML Law further provides that, in the case of a party acting on behalf of another person, that other person must be identified. Where contracting parties act as *Treuhänder*, they are deemed to be acting on behalf of another person and therefore, that other person must be identified (AML Law, s. 1(6).3).

181. Information must be kept for a minimum period of five years. Failure to conduct customer due diligence and maintain identification information may be punished with a fine of up to EUR 100 000 (s. 17(1) and (2)).

Tax law

182. As noted in the 2011 Report, if a person states that assets are held in a fiduciary relationship, then this person would have to provide evidence of the existence of such a relationship in order to avoid tax liabilities attaching to the assets or income from the trust, or other fiduciary relationship (section 159 of the *Fiscal Code*). In addition, a trustee in Germany is a taxpayer subject to the provisions of the German tax law, and in particular section 93 of the Fiscal Code stating that any persons "shall provide the tax authority

with the information needed to ascertain facts and circumstances which are significant for taxation". Pursuant to section 117 of the Fiscal Code, the powers to access information granted to the revenue authorities by section 93 can be used whether the information required relates to German taxes or not. This means that a trustee resident in Germany must be in position to provide on request of the German authorities all information on settlors and beneficiaries of trusts administered from Germany.

183. As noted in the 2011 Report, the Fiscal Code provides that under a *Treuhand* relationship assets are to be attributed to the *Treugeber* (settlor) (s. 39(2)). Consequently, if the *Treuhänder* (trustee) states that assets are held in a fiduciary relationship, then he or she has to provide evidence of the existence of such a relationship in order to avoid the assets or any income derived therefrom to be attributed to him or her for tax purposes (section 159 of the F*iscal Code*). In addition, all persons in Germany administering assets held in a fiduciary relationship are taxpayer subject to the provisions of the German tax law. In particular, section 93(1) of the *Fiscal Code* states that any persons "shall provide the revenue authority with the information needed to ascertain facts which are of significance for taxation".

Oversight and enforcement

184. Although no precise figures exist on the subject, the *Treuhand* is a very common feature in Germany. Lawyers, notaries, and other service providers often act as *Treuhänder,* but any member of the general public who can be party to a contract can also act as *Treuhänder.*

185. Professionals providing *Treuhänder* services are subject to supervision by the respective professional chamber or regulatory authority, which are organised at *Land* or local level. The compliance of those professionals with their obligations under the AML framework, including the obligation to identify the beneficial owner, is monitored during on-site and off-site inspections by their regulatory bodies. However, no information was available on the supervisory activities or enforcement measures applied during the period under review.

186. With regarding to the tax obligations, as described earlier under A.1.1, oversight and enforcement with tax obligations is conducted at *Land* and local level. The authorities interviewed during the onsite visit described clear processes and procedures related to the monitoring and enforcement of filing obligations and their application of sanctions in practice. While statistics were maintained concerning the percentage of taxpayers audited on an annual basis, no statistical information on the compliance rate with tax filing requirements or the enforcement measures taken in relation to non-filers was available. Germany is recommended to keep records of its oversight and enforcement efforts in relation to supporting the legal requirements for the maintenance of legal and beneficial ownership information.

Availability of *Treuhand* information in practice

187. The 2011 Report did not indicate any concerns regarding the availability of information on *Treuhand* in practice. During the current review period peers did not raise any concerns with regard to the availability of this type of information either.

A.2. Accounting records

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

188. The 2011 Report concluded that all entities and arrangements were required to maintain adequate accounting records, including underlying documentation for at least 5 years (see 2011 Report, paras. 150-172). Element A.2 was determined to be in place and Compliant and no recommendation was made. The requirements to maintain accounting records were found in both the commercial law, and tax law. There have been no changes in the legal framework since the 2011 Report.

189. There were no issues with respect to the availability of accounting information in practice during the period under review in the 2011 Report.

190. The oversight of relevant entities and arrangements was satisfied through a combination of tax compliance and the supervision by the Federal Office of Justice (*Bundesamt für Justiz*) with respect to the mandatory publication of annual financial statements.

191. With respect to the compliance with tax obligations, Germany described clear processes and procedures related to the monitoring and enforcement of filing obligations, the auditing process and the application of sanctions in practice. That has been confirmed by the authorities interviewed during the on-site visit. Statistical information on Germany's audit programme was also available.

192. During the current review period Germany received 2 072 requests for accounting information. Accounting information is by far the most significant type of information requested by German partners. Germany advised that information was in the great majority of cases found to be available when requested. Peer input did not indicate issues regarding the availability of this type of information. In isolated cases, information was not found to be available or there were suspicion of tax fraud or tax evasion. In such instances, Germany proceeded with involving the relevant department responsible for the investigation of tax offences or has conducted extensive tax audits to expose possible fraud. In other cases, where there have been delays or pending requests, the issue appeared to be more related to the procedures for access and exchange of information (and are analysed under element C.5 of the report).

193. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		
Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

ToR A.2.1: General requirements and ToR A.2.2: Underlying documentation

194. Accounting requirements are found mainly in commercial law and tax law. They are described in detail in the 2011 Report (see paras. 150-172). There have been no changes in Germany's legal framework since the last review.

Commercial Law and entity specific law

Record keeping requirements based on the Commercial Code

195. The 2011 Report noted that the accounting requirements set out by Germany's Commercial Code cover all merchants, including companies such as *AG*, *GmbH*, *KGaA* and *SEs* as well as the partnerships dealt in the Commercial Code (*oHG* and *KG*) and foundations with commercial purposes.

196. Pursuant to section 238(1) of the *Commercial Code*, entities must keep books and records to clearly show their commercial transactions and their financial position pursuant to generally accepted accounting principles. The business operations must be comprehensible from their beginning to end. The entity must retain copies of all mailed business correspondence that conforms to the original transaction.

197. Section 239 of the *Commercial Code* further provides that entries in the books and other required records must be complete, correct – timely and orderly – and that entries or recordings may not be altered in such a way that the original meaning is no longer ascertainable.

198. Pursuant to section 240 of the *Commercial Code* in addition to the books and records, all accounting information must:

- record precisely the real property, the receivables and liabilities, the amount of cash on hand as well as other assets and, in doing so; specify the value of the individual assets and liabilities; and
- include an inventory for the close of every fiscal year.

199. Section 247 further details the content of balance sheets.

200. Pursuant to Section 257, commercial books, inventories, opening balance sheet, annual financial statements, management reports, consolidated financial statements, group management reports and all working instructions necessary for their understanding as well as further organisational documents and accounting documents, must be kept for ten years; any other documentation must be kept for six years. The period of storage commences with the end of the calendar year in which the last entry into the commercial books was made, the inventory was compiled, the opening balance sheet or the annual financial statements were adopted, the consolidated financial statements were prepared, the business correspondence was received or sent, or the accounting documents originated.

201. Any person who as a member of a statutory body or the supervisory board of a company that incorrectly reproduces or conceals the company's condition in the opening balance sheet, the annual financial statements, the management report or the interim financial statements is punishable with a sentence of up to three years' imprisonment or a fine (section 331 of the Commercial Code). Moreover, destroying, damaging or disposing of accounting records or other documents before the end of the retention period is a punishable offence, if (i) the perpetrator has ceased to make payments (ii) insolvency proceedings have been opened for the perpetrator's assets or (iii) the opening of insolvency proceedings has been refused because of insufficiency of assets (section 283b subsection 1 no. 2 and subsection 3 of the German Criminal Code). The offence is punishable with up to two years' imprisonment or a fine (see item 163 of the review report).

Publication of accounts

202. The following entities are required to publish annual financial statements in the Federal Gazette:

- Corporations (*AG*, *GmbH*, *KGaA* and *SEs)* – section 325 of the Commercial Code*;*
- Co-operatives – section 339 of the Commercial Code;

- General Partnerships and Limited Partnerships without a natural person as a personally liable partner – section 264a in conjunction with 325 of the Commercial Code;
- Branches of certain foreign corporations – section 325a of the Commercial Code;
- Credit institutions, institutions which provide financial services, payment institutions, insurance companies and pension funds, irrespective of their legal form – section 340 and 341 of the Commercial Code.

203. The documents to be published include: (i) a profit and loss statement and a balance sheet (annual financial statements); (ii) a management report; (iii) a certification of the financial statements or the notation concerning his refusal; (iv) additional documents specific to the legal form (e.g. details of the appropriation of profits, report of the supervisory board etc.). These documents are directly publicly available via the website of the Federal Gazette. Companies that are considered micro-companies are only required to deposit their balance sheet with the Business Register (section 326(2) of the Commercial Code) which can be accessed by third parties after paying a small fee; these are companies which on their balance sheet dates do not exceed the limits of two of the three following criteria:

a. balance sheet total: EUR 350 000;

b. net turnover: EUR 700 000;

c. average of ten employees during the financial year

Investment companies and financial holding companies cannot by definition be micro-companies.

204. Any company which is required to prepare and publish annual financial statements has to do so irrespective of the object of the business, irrespective of whether it has yet commenced business operations or has ceased operations and irrespective of whether the business aims to make a profit (section 325(1) of the Commercial Code).

205. If the members of the body that legally represents a company fail to disclose the annual financial statements or related documents, they shall be prompted to do so by the Federal Office of Justice. The disclosure can be enforced by administrative fines up to EUR 25 000. Higher administrative fines apply to listed companies and other companies exposed to the capital market.

Requirements for audited accounts

206. Large and medium sized companies must have their annual financial statements and management report audited by an external auditor

(sections 316 et seqq. of the Commercial Code). Companies which are capital-market oriented (e.g. listed) as well as all banks and insurance companies (irrespective of their size) have to do a statutory audit as well. The audit of the annual financial statements shall also cover whether the legal regulations and the supplementing provisions of the articles of association have been observed. The audit shall be prepared in such a way that errors and violations of the relevant provisions which materially affect the presentation of the net assets, financing and results of operations will be recognised if professional diligence is exercised. The examination of the management report includes its accordance with the annual financial statements and whether it conveys a correct picture of the state of the business. The statutory auditor must also verify that the bookkeeping is orderly. The auditor has to provide a written report with the necessary clarity on the kind and scope as well as on the results of his examination (section 321 of the Commercial Code). The auditor has to summarise the result of the examination in a certification (section 322 of the Commercial Code).

Other record keeping requirements

207. Supplementary record-keeping obligations are about provided in entity specific laws such as the Stock Corporation Act (s. 91 et seqq.), the Limited Liability Companies Act (s. 41 et seqq.) and the Co-operatives Act (s. 33). In relation to the Mutual Insurance Societies (*VVaG)*, the accounting obligations of insurance companies (s. 341 et seqq. of the Commercial Code) are applicable due to section 172 of the Insurance Supervision Act (VAG).

Tax law

208. The German Fiscal Code (s. 140 through s. 148) provides for account and record-keeping requirements. Section 140 provides that "whoever is obliged under laws other than tax laws to keep accounts and records of relevance for taxation shall be obliged to fulfil the obligations imposed by such other laws in the interests of taxation as well".

209. Under section 147 (1) of the Fiscal Code, the records to be maintained include: (i) accounts and records, inventories, annual financial statements, management reports, the opening balance sheet as well as operating procedures and other organisational documents; (ii) trade or business letters received; (iii) reproductions of trade or business letters sent; and (iv) other documents to the extent that they are of relevance for taxation. VAT legislation also requires taxpayers to maintain documents tracing the intra-community delivery of goods or provision of services, including invoices issued and received and relevant contracts.

210. The requirements provided in the Fiscal Code ensure that accounting records will correctly explain all transactions, enable the financial position of entities covered by the provision of the commercial code to be determined with accuracy and allow financial statements to be prepared.

211. Accounting records and underlying documentation must be kept for six years (Fiscal Code, s. 147). This record-keeping obligation forms part of obligations under tax law to keep accounts and records. Non-compliance can result in the use of coercive measures (s. 328), payment of tax based on an estimated tax basis (s. 162) and fines (s. 379(1) s 146(2b)).

212. Books and records must be kept within Germany (section 146 of the Fiscal Code). However, under certain circumstances the tax authorities may allow the taxpayer to keep electronic books and records within a different EU member State or – under certain requirements – within a different European Economic Area member State. The statutory requirements for this procedure ensure that the German authorities have access to the data in all circumstances.

213. Certain sole proprietorships are not required to keep books and records under the Commercial Code. Pursuant to section 241(a) of the Commercial Code, sole proprietorships that do not exceed sales revenue of EUR 600 000 and annual net income of EUR 60 000 for two consecutive business years are exempt from the accounting requirements of sections 238 through 241. Under these limited circumstances, small businesses are also not required to keep books and records according to general accounting principles pursuant to sec. 141 of the Fiscal Code. They are entitled to determine taxable income on a cash basis (sec. 4 (3) of the Income Tax Act), and income must be calculated by using an official form (sec. 60 (4) of the Income Tax Regulations).

214. Calculation on a cash basis generally requires documentation to be kept. Otherwise taxpayers may be unable to comply with their obligation to co-operate (section 90 (1) of the Fiscal Code), for example, to substantiate – upon request by tax authorities – the numbers reported in the tax return. Certain documentation, in particular all invoices, must be kept for VAT purposes (Sec. 14b, 22 of Turnover Tax Act. Foundations – if they do not run a business (which is usually the case) – and civil law partnerships (GbR) are also entitled to calculate taxable income on a cash basis.

215. Under section 666 of the German Civil Code, the *Treugeber* may request the *Treuhänder* to provide information as to the use of the assets and to render transaction records related thereto. This is coupled with a requirement to keep records to explain how the income received by the settlor or *Treugeber* has been calculated. In addition, in the case of fiduciary relationships (*Treuhand* but also foreign trusts), and pursuant to section 39 (2) of the Fiscal Code, all assets are to be attributed to the *Treugeber* or the settlor. Consequently, if a person states that assets are held in a fiduciary

relationship, then this person has to provide evidence of the existence of such a relationship in order to avoid the assets or any income derived therefrom to be attributed to him or her for tax purposes (section 159 of the Fiscal Code).

Liquidated entities

216. The annual financial statements and related documents that have been published in the Federal Gazette or deposited with the Business Register remain accessible to the public after the liquidation of the entity. The book-keeping documents must be retained by a former shareholder, partner or third person (e.g. credit institution), who has to be designated by a court (AG, KGaA, SE – section 273(2) of the Stock Corporation Act) or can be designated by a court if there is no internal understanding (GmbH – section 74(2) of the Limited Liability Companies Act; OHG, KG, Partnerschaft – section 157(2) of the Commercial Code). The retention period is (i) ten years in cases of *AG, KGaA, SE* (section 273(2) of the Stock Corporation Act); (ii) ten years in cases of *GmbH* (section 74(2) of the Limited Liability Companies Act); and (iii) six years for commercial correspondence and ten years for other documents in cases of *OHG, KG, Partnerschaft* (in appropriate application of section 257(4) of the Commercial Code). The obligation to retain records also apply for struck off and dissolved entities. The courts do not have the power to vary the record retention period. Foundations have to provide an annual report and accounting records to the supervisory authorities and these documents are kept in the files of the supervisory authorities.

Oversight and enforcement of requirements to maintain accounting records

Oversight by the Federal Office of Justice

217. The Federal Office of Justice is responsible for ensuring all German companies and relevant businesses comply with the obligation to publish their annual financial statements. The relevant divisions (administrative fines and their enforcement) are staffed with approximately 190 persons.

218. Since 2007, companies and relevant businesses must e-file their annual financial statements and related documents for publication in the Federal Gazette. The filed information is available for public consultation in the Federal Gazette's website and is kept indefinitely, permitting the easy access to information of companies even if they have been liquidated. The deposited balance sheets of micro-companies are kept indefinitely and accessible in the Business Register. The publication and deposition of annual financial statements and related documents is part of Germany's initiative for a transparent business environment. Most German companies are privately held and it was felt that

the easy access to accounting information would contribute to maintaining confidence of creditors, business partners and investors.

219. The disclosure of annual financial statements and related documents is closely monitored by the Federal Office of Justice and the Federal Gazette, based on an automated system. Approximately 90% of the obligated companies and businesses publish their documents within the statutory deadlines. Obligated entities that fail to publish their documents on time receive reminders and are subject to administrative fines if they fail to publish the documents within the timeframe given in the reminder. The statistics for initiated proceedings, appeals and the imposition of fines in the last two legal years are shown below:

Enforcement measures applied by the Federal Office of Justice

	2015	2016
Proceedings initiated	Approx. 175 000	Approx. 160 400
Appeals against proceedings	Approx. 16 550	Approx. 12 900
Administrative fines imposed	Approx. 55 000	Approx. 63 700
Appeals against imposition	Approx. 9 600	Approx. 10 400

220. For non-compliant companies, proceedings can also be brought against the members of the body legally representing the company instead of the company itself.

221. If the published documents are incorrect in form or content, the Federal Office of Justice can impose a regulatory fine up to EUR 50 000 (section 334 of the Commercial Code). In relation to the prosecution of criminal offences concerning the violation of book-keeping obligations under section 283b of the German Criminal Code, 349 proceedings in which it was the main offence were initiated in 2014 and 297 convictions occurred in the same year.

222. In relation to publicly listed companies, the Financial Reporting Enforcement Panel (FREP) is responsible for monitoring the financial reporting in addition to the Federal Office of Justice. Examinations are conducted following a risk-based approach. Ninety-six examinations were conducted in 2016 and 81 in 2015. 16% of the examinations showed deficiencies in 2016 and 15% in the previous year. Main deficiencies identified referred to insufficient reporting in the notes and/or management report as well as application challenges in cases of using IFRS.

223. The BaFin, as the financial markets supervisory authority, can demand an examination by FREP and also has own powers to verify compliance with accounting and bookkeeping obligations.

Supervision of external auditors

224. The Auditor Oversight Body (AOB) – formally incorporated in the Federal Office for Economic Affairs and Export Control (BAFA) – is responsible for the supervisory control of the Chamber of Public Accountants and ascertained mistakes of auditors and audit firms, which conduct audits for enterprises of public interest. The AOB has a wide range of supervisory powers and can apply sanctions. Statistics on the supervisory activities during the review period were not available. The AOB conducts inspections of public interest enterprise's audit firms on a regular basis. The frequency of the inspections depends on the volume and structure of the firm's public interest enterprise client portfolio. An inspection comprises the inspection of the quality control system of the audit firm and certain public interest enterprise audit engagements that are selected on a risk based approach. When inspecting the quality control system the AOB evaluates the respective policies and procedures of the audit firm and requests further documentation that demonstrates that these policies and procedures are executed properly. Audit engagements are inspected by reviewing working papers prepared by the audit team to conclude whether an audit engagement was conducted in accordance with the applicable legal framework and auditing standards. Inspections may be performed as on-site or off-site inspection or as a combination of both. An inspection always comprises discussions and meetings in presence with representatives from the public interest enterprise's audit firm. The results of an inspection are summarised in a (private) written report which is addressed to the audit firm only. Further measures might be taken against the audit firm or an individual audit partner if deemed necessary to enforce the enhancement of audit quality.

Tax

225. The *Länder* revenue authorities have the task of uniformly assessing and levying taxes in accordance with the law. In this context, they have the very important role of monitoring that proper record keeping is kept by German taxpayers to the extent that these records are relevant to determine taxation. Germany levies corporate income tax on a worldwide basis for resident taxpayers.

226. The annual tax assessment process includes an examination of the annual financial statements that must be e-filed with the tax returns. The failure to furnish tax returns triggers reminders and late penalty fees after a first reminder. The lack of submitting documentation can provide an indication of lack of compliance with accounting and record-keeping requirements and will be subject of further investigation.

227. The tax offices plan the audit work. During an audit, accounting records and underlying documentation are examined in greater detail. Large

companies are sometimes audited every year, while others are selected and audited on a targeted basis with regard to risk criteria. The audit period is generally three successive taxation periods.

228. In Germany it is allowed to conduct field audits on taxpayers who maintain a commercial or agricultural and forestry business, who are self-employed, or whose income exceeds a certain threshold. Moreover, with respect to other taxpayers, field audits are permissible particularly in cases where there is a need to clarify matters relevant for taxation and, due to the nature and scope of the facts to be reviewed, it is impractical for the tax office to conduct a desk audit. Every year, the Federal Ministry of Finance compiles statistics on the results of tax audits using data supplied by the *Länder*. These statistics cover only the taxes on income, property and transactions administered by the *Länder*, as well as trade tax. They do not cover import VAT, customs, special excise duties or local authority taxes (except for trade tax, which is included in the statistics). Taxpayers are categorised according to size (based profits and revenues and per sector of activity) for the purpose of conducting field audits. These categories are as follows: (i) large companies; (ii) medium-size companies; (iii) small companies; (iv) micro-enterprises. In years 2013-15, approximately 2.4% of taxpayers were audited which presented more the 190 000 audits per year carried out by more than 13 000 auditors. The following statistics were provided in relation to the audits conducted in the years 2013-15:

Years	Size category	Total number of entities	Number audited	
			Total	%
2013	Large companies	196 402	41 746	21.3
	Medium-sized companies	820 778	53 332	6.5
	Small companies	1 214 853	38 355	3.2
	Micro-enterprises	5 688 385	60 140	1.1
	Total	**7 920 418**	**193 573**	**2.4**
2014	Large companies	196 402	42 229	21.5
	Medium-sized companies	820 778	53 006	6.5
	Small companies	1 214 853	38 791	3.2
	Micro-enterprises	5 688 385	58 715	1.0
	Total	**7 920 418**	**192 741**	**2.4**
2015	Large companies	196 402	41 886	21.3
	Medium-sized companies	820 778	52 159	6.4
	Small companies	1 214 853	39 126	3.2
	Micro-enterprises	5 688 385	58 616	1.0
	Total	7 920 418	191 787	2.4

229. The following statistics were provided in relation to additional tax liability determined by tax audits:

	Additional tax liability determined by tax audits (in EUR)
2013	approx. 17.2 billion
2014	approx. 17.9 billion
2015	approx. 16.8 billion

Availability of accounting information in practice

230. During the current review period Germany received 2 072 requests for accounting information. This accounts for more than half of the requests received by Germany. Germany advised that information was in the great majority of cases found to be available when requested. Peer input did not indicate issues regarding the availability of this type of information.

231. In isolated cases, information was not found to be available or there were suspicion of tax fraud or tax evasion. In such instances, Germany has proceeded with involving the relevant department responsible for the investigation of tax offences or has conducted extensive tax audits to expose tax evasion or tax fraud. Germany is not required to start a tax audit to collect information (see B.1), but in some cases the lack of compliance of taxpayers with a request or the facts of the request, may trigger further investigation in Germany, in particular in cases where tax fraud or tax evasion is suspected. In other cases, where there have been delays or pending requests, the issue appeared to be more related to the procedures for access and exchange of information (and are analysed under element C.5 of the report).

A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

232. The 2011 Report concluded that element A.3 was in place and Compliant. Obligations to maintain banking information are derived from a combination of requirements from the AML law, the Banking Law, the Commercial Code and the Fiscal Code.

233. The EOIR standard now requires that beneficial information in respect of accountholders be available. In this regard, the AML law in Germany requires that banks conduct customer due diligence and collect information on the beneficial owner of their customers. The legal requirements are adequately monitored in practice by the Federal Financial Supervisory Authority (BaFin).

234. One issue has been identified in relation to the identification requirements related to beneficiaries of a trust where a trust has a customer relationship with a bank in Germany. Banks are required to identify natural persons who ultimately own or control a trust as part of their customer due diligence measures. Banks are required to identify, in particular, the natural persons who are beneficiaries of 25% or more of the assets or property of a trust. Moreover, beneficiaries of a percentage inferior to 25% of the assets or property must also be identified if they have a controlling influence on the legal arrangement by other means (section1 (6) sentence 1 of the AML Law). The standard requires that all of the beneficiaries of the trust be identified irrespective of a specific threshold or controlling influence. Therefore, Germany is recommended to ensure that banks are required to identify all of the beneficiaries of the trust.

235. During the previous review period, peers had indicated some delays in obtaining bank information but no issues related to the availability of such information. During the current review period Germany received 354 requests for banking information. This information was found to be available by Germany when answering the EOI requests. Peers did not raise any issues concerning availability of banking information either.

236. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	Banks are required to identify natural persons who ultimately own or control a trust as part of their customer due diligence measures. However, they are not required to identify all of the beneficiaries of a trust as only the natural persons who are beneficiaries of 25% or more of the assets or property of a trust must be identified in all instances.	Germany should ensure that banks are required to identify all of the beneficiaries (or class of beneficiaries) of trusts which have an account with a bank in Germany as required under the standard.
Determination: The element is in place		
Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant.		

ToR A.3.1: Record-keeping requirements

237. The 2011 Report noted that there are additional specific duties for credit institutions and financial services institutions under the tax and banking laws. Pursuant to the Fiscal Code, credit institutions must record the data recorded on the opening of an account, securities account or the allocation of a safe deposit box and to retain it for a period of five years (section 154(2) of the *Fiscal Code*, read in conjunction with the *Fiscal Code Application Ordinance* on section 154). Moreover, the Banking Act requires credit institutions and financial services institutions to have in place a proper business organisation which must, among other things, cover complete documentation of the business activity in order to enable overall supervision by the Federal Financial Supervisory Authority (BaFin) (s. 25a(1)). The relevant records have to be kept for at least five years.

238. Moreover, the AML Act requires banks to identify and verify the identity of the customer as well as of any person's acting on behalf of the customer when opening an account (s. 3 (1)). Section 3 (1) also requires banks in the course of the customer due diligence process to:

- obtain information on the purpose and intended nature of the business relationship where this is not already clear from the business relationship in the individual case; and
- continuously monitor the business relationship, including the transactions carried out in the course of the business relationship, in order to ensure that they are consistent with the information obtained by the obligated entities about the customer and, if applicable, the beneficial owner, their business and customer profile and, where necessary, with the information obtained about the origin of their assets or property.

239. Section 8 (1) of the AML Act requires banks to record the aforementioned information they collect for a minimum period of five year starting from the end of the relationship with the customer (s. 8(3)). Moreover, pursuant to the Commercial Code, banks are required to record all transactions related to the account (section 257(1)4 in conjunction with section 238(1)).

240. Finally some customer data is also available under the account retrieval system maintained by the BaFin (Banking Act, section 24c(1)). Basic customer data maintained consists of account number, name of owner, date of birth (if a natural person), day of opening and day of closing of the account, name and, if collected, address of beneficial owner.

241. The Banking Act empowers the BaFin to apply every possible measure which is useful to eliminate shortcomings in the compliance of the Act (s. 6 (3)). Sustainable violations may lead to the removal of the bank's chief executive officer and/or members of the board or to the revocation of

the bank's license (s. 35(2)6), Violations of the recording keeping provisions under the AML Act may lead to fines of up to EUR 100 000 per infraction (s. 17(1)5 and 6 and s. 17(2)).

Beneficial ownership information on account holders

242. The 2016 ToR specifically require that beneficial ownership information be available in respect of all account holders. In this regard, Germany's AML Act establishes specific obligations regarding the identification of the beneficial owner of a customer. Those requirements have been extensively described under element A.1.1 above and are summarised below.

243. Banks must conduct customer due diligence when (s. 3(2)):

i. establishing business relations;

ii. carrying out a transaction with a value of EUR 15 000 or more outside an existing business relationship (the foregoing also applies where multiple transactions with a combined value of EUR 15 000 or more are carried out if there is reason to suspect that such transactions are linked);

iii. there are factual circumstances to indicate that the assets or property connected with a transaction or business relationship are the product of money laundering or are related to terrorist financing, notwithstanding any exceptions, exemptions or thresholds set forth in the AML Act; or

iv. there is doubt as to the veracity of the information collected in relation to the identity of the customer or the beneficial owner.

244. Banks must continuously monitor the business relationship. Based on a common understanding between the German authorities and the bank associations, banks may choose to implement an event-driven update or an update in fixed time intervals. If fixed time intervals are chosen, information is to be updated in less than two years in case of high risk, up to seven years for normal risk and up to ten years for low risk (Guidelines by the German Association of German Banks, issued in co-operation with the Ministry of Finance and the BaFin).

245. When fulfilling the due diligence requirements, banks must adopt a risk-sensitive approach in order to determine the specific scope of their measures based on the individual customer, business relationship or transaction (s. 3(4)). If they are unable to fulfil the due diligence requirements, they are not permitted to establish or continue the business relationship or carry out any transactions (s. 3(4)). Where a business relationship already exists, banks must terminate or otherwise end the business relationship regardless of any other statutory provisions or contractual terms (s. 3(4)).

246. The AML Act defines beneficial owner as the natural person who ultimately owns or controls the customer, or the natural person on whose behalf a transaction is ultimately carried out or a business relationship is ultimately established (s. 1(6)). The term "beneficial owner" includes, in particular:

- in the case of corporate entities that are not listed on an organised market and are not subject to transparency requirements with regard to voting rights consistent with EU laws, or are not subject to equivalent international standards, any natural person who directly or indirectly holds more than 25% of the capital stock or controls more than 25% of the voting rights (s. 1(6).1).
- in the case of foundations with legal capacity and legal arrangements used to manage or distribute assets or property on "*Treuhand*", or through which third parties are instructed with the management or distribution of assets or property, or similar legal constructs:
  - any natural person acting as settlor or who otherwise exercises control over 25% or more of the assets or property;
  - any natural person who has been designated as the beneficiary of 25% or more of the managed assets or property;
  - where the natural person intended to be the beneficiary of the managed assets or property is yet to be designated, the group of natural persons for whose benefit the assets or property are primarily intended to be managed or distributed; or
  - any natural person who otherwise directly or indirectly exercises a controlling influence on the management of assets or property or the distribution of income.

247. The obligated entity shall establish the identity of beneficial owners by at least establishing their name and, where appropriate given the existing risk of money laundering or terrorist financing in the individual case, by collecting further identifying information (s. 4(5)). Details of the beneficial owner's date and place of birth and address may be collected irrespective of the ascertained risk. For the purposes of verifying the beneficial owner's identity, the obligated entity must always satisfy itself of the veracity of the information collected by taking risk-adequate measures. In a "normal" money-laundering/terrorism financing risk situation, the obligated entity verifies the beneficial ownership information based on information provided by its customer and/or by information from public registers or other official sources. In a high risk situation the obligated entity has to take additional measures, e.g. (1) considering data from additional commercial databases, (2) in-depth research by the AML officer on the identification information; or (3) asking the customer for further documentation that prove the veracity of the beneficial ownership information supplied.

248. As noted above with respect of trusts and other legal arrangements, banks are required to identify, in particular, the natural persons who are beneficiaries of 25% or more of the assets or property of a trust. Therefore, under the AML Law there is an irrefutable presumption, that a natural person who has been designated beneficiary of 25% or more of the assets or property, is a beneficial owner and must be identified in the CDD process. In addition to that, beneficiaries of a percentage inferior to 25% of the assets or property must also be identified if they have a controlling influence on the legal arrangement by other means (section1 (6) sentence 1 of the AML Law). The standard requires that all of the beneficiaries of the trust be identified irrespective of a specific threshold or controlling influence. Therefore, Germany is recommended to ensure that banks are required to identify all of the beneficiaries of the trust.

249. In relation to the measures to be taken by banks to identify the beneficial owner of a legal person as part of customer due diligence, the German legal and regulatory framework does not provide for cascading measures to be applied by banks in the case where no individuals who ultimately have a controlling interest in a legal entity can be identified – i.e. there is no residual criteria requiring the identification of (i) natural persons (if any) exercising control of the legal person by other means; and (ii) a natural person who holds the position of senior management official. However, the definition of beneficial owner under the AML Act expressly provides that the term "beneficial owner" includes, in particular, any natural person who directly or indirectly holds more than 25% of the capital stock *or controls more than 25% of the voting rights*. That could cover the situation where control is exercised by other means than ownership. In terms of the identification of senior management officials, although that is not specifically covered in the AML Law, company law generally requires information on company's management or the supervisory board to be kept by German companies or provided to the Commercial Register. Information on senior management may not be available in relation to foreign legal entities. Germany should ensure that the method for identifying the beneficial owner of a legal person as part of customer due diligence is adequately set out in its legal framework.

250. Pursuant to section 7 of the AML Act, an obligated entity may engage third parties in order to fulfil its due diligence obligations. This would cover situations of third-party introducers or outsourcing. In such circumstances, the obligated entity remain ultimately responsible for fulfilling such due diligence obligations. The third parties shall, directly and without undue delay, transmit to the obligated entities the data and information obtained upon carrying out CDD measures and, upon request, any copies they have kept, and documents for identifying the customer and, if applicable, any beneficial owner (s. 7(1)).

251. Moreover, section 7(2) of the AML Act specifically deals with the possibility of obligated entities outsourcing the performance of due diligence obligations to another person on the basis of a contractual arrangement. Before co-operating with another person, the obligated entity shall satisfy itself of the reliability of such person, and during the course of the co-operation satisfy itself of the appropriateness and propriety of the measures adopted by such other person by means of spot checks. It is possible that the outsourced entity is abroad. Although the German person remains responsible for the results, there is not requirement that a copy of all the files be transmitted to Germany. This may restrict the German authorities' access to information in a timely manner. Germany should ensure that it has adequate access to all due diligence files.

Enforcement provisions to ensure availability of banking information

252. As described under A.1.1, the BaFin established a two-fold system to monitor the reliability of customer due diligence performed by banks, including the maintenance of beneficial ownership:

- the supervision of AML compliance including CDD obligations is performed by means of audits and special audits; and
- A data retrieval system provides for direct access to beneficial ownership and other due diligence information collected by banks (Banking Act, s. 24c). The system is directly populated by the banks and data is accessed by the BaFin and can be provided to a number of government authorities in Germany, such as the FIU, the tax and customs authorities and public prosecutors. The reliability of the information on the system is checked by the BaFin.

253. The BaFin is the only banking supervisory authority in Germany and as such supervises the banks' compliance with obligations under for instance the Banking Act and the AML Act. All banks are subject to audit on an annual basis and the storage and update of CDD information is regularly examined during these audits. During the annual audits, auditors are required to rate the compliance with provisions on storing and updating CDD information using a rating system with grades ranging from F(0) to F(4), being F(0) no deficiencies; F(1) minor deficiencies; F(2) moderate deficiencies; F(3) severe deficiencies; and F(4) very severe deficiencies.

254. During the period 2013 to 2016 (until 1 July 2016), less than 10 of the 1 960 banks were found to have severe or very severe deficiencies. Those banks were all private banks or co-operative banks and no savings banks were found to have severe deficiencies. Deficiencies identified commonly involved lack of filing suspicious transactions reports.

255. In addition to the annual audits, the BaFin also conducts special audits which are specially focused on AML compliance and follow a risk-based approach. On average, 30 special audits are conducted a year.

256. As noted under A.1.1, as at June 2016, BaFin's Department of Prevention of Money Laundering had a total of 110 staff. There were only 13 staff directly involved in on-going AML supervision in the BaFin. The staff number did not appear to be sufficient considering the size of Germany's financial sector and the large number of financial institutions.[9] Thirty new staff is expected by the end of 2017 and two new departments are being created. Germany is recommended to monitor that its AML supervisory staff is kept at appropriate levels to ensure that the obligations to maintain beneficial ownership are adequately monitored in practice.

257. With regard to the bank retrieval data system, as at June 2016, BaFin had 40 staff engaged in the monitoring and compliance; in January 2017, this number had increased to 60. Germany's data retrieval system is a useful tool that greatly facilitates access to the BaFin and a number of other government authorities to beneficial ownership information held by banks. It is populated by credit institutions on the basis of the client's information they gather, including beneficial owner information. The information available in the data retrieval system includes: the account number, opening and closing dates, account holders and authorised person's names and birthdates and the beneficial owner's name and (if known) address. The information can be accessed by government authorities without alerting the relevant banks or their customers.[10] In practice, government authorities make frequent use of the data retrieval system, as further detailed in the table below:

Data retrieval system –
Access to information by the German authorities

Authority	2013	2014	2015
FIU	887	1 196	1 356
Federal Police	1 224	1 357	1 348
Other police agencies	73 185	86 989	73 185
BaFin	1 218	353	1 183
Tax authorities	13 397	13 401	13 003
Customs authorities	7 052	6 672	6 915
Public prosecutors	25 434	25 304	25 851

9. See IMF assessment (para. 43) https://www.imf.org/external/pubs/ft/scr/2016/cr16190.pdf.
10. See more details on https://www.imf.org/external/pubs/ft/scr/2016/cr16190.pdf.

258. In terms of the monitoring of the reliability of the information contained in the system, the BaFin reports that monitoring staff sometimes find information that seems incorrect or outdated. In such cases, the banks are required to make necessary corrections and report about the source of the mistake and strategies to avoid such errors in the future. If these mistakes occur more frequently, BaFin performs an on-site inspection in the bank to check whether the bank follows the AML law requirements concerning the maintenance of proper CDD records. In the peer review period, BaFin completed 20 such on-site inspections. An average of 27% of the samples checked contained at least minor mistakes. The BaFIn stresses that it mainly checks those institutions which already seemed to have a problem and concentrates on samples in which there are indications for potential mistakes. Therefore, in the BaFin's assessment, the high percentage of incorrect records is therefore not a suitable basis for drawing conclusions on the general level of compliance by banks with their CDD obligations in Germany. During on-site inspections, the BaFin usually conducts a plausibility check of CDD data stored by financial institutions. If the CDD data seems implausible or contradictory, or other facts indicate that the information is incorrect, the BaFin carries out further searches during inspections in order to verify the relevant information. The on-site inspections also include a checking of information stored regarding the ownership structure since necessary CDD measures also include an obligation to take adequate measures to understand the ownership and control structure of the customer. For the latter the BaFin resorts to commercial databases, public available data or other sources. Deficiencies detected during on-site inspections are corrected at the same moment or – if that is not possible – the financial institution has to follow-up with the BaFin regarding the correction of the information after the on-site inspection.

Availability of bank information in practice

259. During the previous review period, peers had indicated some delays in obtaining bank information but no issues related to the availability of such information. During the current review period Germany received 354 requests for banking information. This information was found to be available by Germany when answering the EOI requests. Peers did not raise any issue with respect to the availability or quality of bank information.

Part B: Access to information

260. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information; and whether rights and safeguards are compatible with effective EOI.

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).

261. The 2011 Report found that Germany had broad powers to access ownership, accounting, banking and other types of information. These powers were accompanied by effective enforcement provisions.

262. As noted in the 2011 Report, all incoming exchange of information requests are received by German's competent authority, the Federal Central Tax Office, located in the city of Bonn. Under Germany's federal system, the competent authority has no information gathering powers and no direct access to taxpayer information. All information gathering measures are performed by local tax authorities. The competent authority relies on contact points (liaison officers) at the different *Länder*. After receiving a request for co-operation from the competent authority, the *Länder* authorities then contact the relevant local tax office which will proceed with collecting information.

263. The same information gathering powers are used both for exchange and domestic taxation purposes. The same procedures apply regardless of the type of information being requested (e.g. legal or beneficial ownership, accounting and banking information). Where the subject of the request is a

domestic participant,[11] this person will be asked first to provide information. If this person fails to provide the information within the applicable timeframe and has not filed an objection, then the German revenue authorities would request third party information holders to provide the requested information. Where the subject of the EOI request is a domestic participant, the German authorities can only approach a third party information holder directly to collect information when the authorities consider that any attempt to ascertain the facts with the assistance of the domestic participant will be unsuccessful. If the person who is the subject of the request is not a domestic participant, then the German authorities can directly request a third party information holder for assistance.

264. In the current review period, Germany received 3950 requests for information. In most cases, the German authorities successfully gathered the requested information. The answer to 235 requests was pending at the time of the on-site visit (23 January 2017). Peers were generally satisfied with the information provided; however, some peers have indicated that response times were long and some requests were pending. One peer indicated that Germany was reluctant to provide information when the peer indicated that the taxpayer should not be contacted. German authorities explained that in most cases in order to reply to EOI requests Germany needs to contact the taxpayer or a third party information holder.

265. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: In Place		
Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating:Compliant		

11. A domestic participant is a person who, at the time when information is exchanged, has, for example, his or her domicile, habitual abode, place of management or headquarters, a permanent establishment or a permanent representative in the German territory.

ToR B.1.1: Ownership, identity and bank information and ToR B.1.2: Accounting records

266. The 2011 Report analysed the procedures applied for accessing information for replying to exchange of information requests. The same rules continue to apply.

267. The powers to gather information in order to reply to an exchange of information request are specifically provided in section 117(4) of the German Fiscal Code. Those powers are the same for domestic taxation purposes:

> When implementing legal and administrative assistance, the powers of the revenue authorities and the rights and obligations of the participants and other persons shall be based on the provisions applying to taxes as defined in section 1(1) of the Fiscal Code.

268. Accessing tax information in Germany requires that the domestic participant concerned should be first asked to provide the information (Fiscal Code, s. 93(1)). This applies both in a domestic context and also in the context of EOI. It also applies to information held in other government agencies. Only if recourse to the domestic participant does not or is not likely to produce any results, can a third party be asked to provide the information not provided in first instance by the domestic participant himself (Fiscal Code, s. 93(1)). This is also confirmed in a decision by the Federal Fiscal Court of 29 July 2015 (BStBI 2016, 135).[12]

269. In the context of EOI, this means that, whenever a domestic participant is of interest to a foreign authority (e.g. if the German participant is also a foreign taxpayer under investigation), this person should first be to provide information. If this person fails to provide the information within the applicable timeframe and has not filed an objection, then the German revenue authorities would request third party information holders to provide the requested information. The German authorities clarified, however, that information available in tax files, such as ownership information and tax returns can be – and generally are – provided to EOI partners without the need to contact the domestic participant first. Moreover, a waiver of the notification procedure need not be requested in such a case (see element B.2). For other types of records, the German authorities can also approach a third party information holder directly to collect information when the authorities consider that any attempt to ascertain the facts with the assistance of the

12. The decision provides that a revenue authority may only turn directly to persons other than the domestic taxpayer if in the course of an anticipatory assessment of the evidence and based on specifically verifiable facts the revenue authority considers it inevitable that any attempt to ascertain the facts with the aid of the domestic taxpayer will be unsuccessful.

domestic participant will be unsuccessful. The German authorities advised that a decision in this regard will be taken based on the information in the domestic participant's files and the background information provided in the EOI request. Therefore, in cases the requesting competent authority requests that the taxpayer (who is also a domestic participant from Germany's standpoint) should not be approached, then the requesting competent authority needs to provide reasons to justify why any attempt to ascertain the facts with the assistance of the domestic participant would be unsuccessful. If this test is not met, Germany needs to collect information from the domestic participant first before approaching a third party.

270. In cases where a domestic participant is not of interest to the foreign authority, Germany can directly contact a third party information holder. In practice, third-party information holders, such as banks, have been requested to provide information and no difficulties were experienced.

271. All incoming exchange of information requests are received by German's competent authority, the Federal Central Tax Office, located in Bonn, with exception to requests from certain bordering regions.[13] After reviewing the validity of the request (more details under element C.5), the competent authority will transmit a translation of the main parts of the request – including the information requested and the background of the request – to a liaison office at the *Länder* level by e-mail (in a secure network). This office will in turn perform a separate admissibility check of the request and contact by e-mail (in a secure network) the local tax office in the jurisdiction of the domestic participant/information holder. The local tax office will verify the request and then gather the information.

272. The German authorities explained that the multiple checks of the validity of the request are performed, because in the German federal state organisation, the *Länder* authorities are not bound by the conclusions reached by the competent authority at federal level concerning the validity of requests. Moreover, under section 30 of the Fiscal Code, any public official is obliged to observe tax secrecy and failure to do so can be punished with imprisonment up to two years or by fine of up to EUR 10 million. The German authorities consider that the obligation to observe tax secrecy under the Fiscal Code requires their review of each case as to whether taxpayer information can be disclosed pursuant to each single request. This will include the analysis of the foreseeable relevance of the requests and whether the information requested can be provided under the terms of the relevant EOI instrument. In practice, the authorities advise that there is a lot of convergence in the assessment for the validity of requests. When there are questions by the *Länder* or

13. Specific agreements exist for direct exchange between *Länder* tax authorities in the border with France, the Czech Republic and Austria. See element C.5.

local authorities, the competent authority at federal level would try to provide the relevant clarification in many times by contacting the requesting jurisdiction. No systemic access to information problem has been identified during the period under review.

273. The German local tax officer will decide on the most appropriate means to collect information from the domestic participant/third-party information holder. Germany advises that most requests received by Germany cannot simply be replied with information available in the tax databases due to the "data parsimony" principle where little information as possible is kept on file. Therefore, a domestic participant/information holder in Germany is often contacted to provide information. In general, a letter is sent to the domestic participant/information holder requesting the relevant information. The tax authority will give a timeframe for the domestic participant/information to reply and this timeframe will vary depending on the circumstances of the case. Normally the same letter also notifies the domestic participant about the foreign request, unless such notification has been waived (see element B.2). In some cases, the tax officer collects the information in the course of a domestic tax audit. The on-site visit confirmed that, when an audit of the domestic participant is planned, the officer may wait until the commencement of such audit to collect the relevant information. Although this could increase time to answer EOI requests, Germany advises that it often receives complex requests, such as requests for transfer pricing documentation or very detailed underlying documentation, and therefore it would be more efficient to obtain the information during the course of an audit.

274. In relation to the pending requests, Germany advised that some of the reasons for delays are:

i. an external audit of the taxpayer is planned and the information requested for EOI will be collected during the audit;

ii. the taxpayer about whom information is being requested is subject to criminal proceedings in Germany. German law provides that in this case the domestic participant has the right of refusal to provide any information and documents that would force him/her to incriminate him/herself in a tax crime or tax-related administrative office which he or she committed. (sections 101-106 and 393(1) of the Fiscal Code). Similarly the tax authorities are prohibited to apply coercive measures against the taxpayer. Germany advised that in such cases, third party information holders could be contacted for the collection of information, where the information is also held by third parties;

iii. the requests are complex, such as requests related to transfer pricing.

275. Peer input indicated that some requests were not answered in a timely manner or have been pending for more than a year. Whilst Germany always

attempts to provide the most complete and accurate answers to the requests, Germany should also ensure that information can be accessed in a timely manner. For instance, in some cases sending a letter for the production of information to the information holder may provide a more expeditious answer than waiting to collect information in the course of a planned audit. Germany is recommended to ensure that information for EOI purposes is accessed in a timely manner.

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

276. As mentioned above, section 117(4) of the German Fiscal Code expressly provide that the revenue authorities may use their domestic information gathering measures to answer incoming information exchange of information requests. Consequently, the issue of a domestic tax interest does not arise in law. There were no issues in this regard in the review period covered by the 2011 Report and no such issues have arisen in the current review period.

ToR B.1.4: Effective enforcement provisions to compel the production of information

277. The German revenue authorities can make use of all means of investigation to respond to EOI requests. They have the power to compel production through the imposition of fines in an amount of up to EUR 25 000 (Fiscal Code, s. 329). Multiple fines can be applied for recurrent infractions. The application of fines must follow the principle of proportionality and the actual amount of the fine will be defined observing the facts and circumstances of each case (Fiscal Code, s. 328).

278. Search and seizure measures are not available in the context of EOI.

279. In practice, the competent authority advises that information holders usually comply with the request for information or file an objection (see element B.2). It would be rare that revenue authorities would need to resort to imposing fines to secure the access to information. Statistics on the number of fines applied during the review period were not available.

ToR B.1.5: Secrecy provisions

Bank secrecy

280. The 2011 Report noted that, pursuant to section 30a(5) of the Fiscal Code, banks must furnish to the revenue authorities information and documents when the authorities advise that (i) the co-operation of the domestic

participant was insufficient; or (ii) requesting information directly from the domestic participant will not produce the expected result. If a request is sent to a bank is such circumstances, the bank must co-operate with the revenue authorities despite any duty of confidentiality. During the review period, there have been no problems to gather information from banks.

Professional secrecy

281. Professional secrecy must be observed by a number of professionals in Germany: attorneys at law, patent attorneys, notaries, defence counsels in statutorily regulated proceedings, certified public accountants, sworn auditors, tax consultants, tax agents, or the members of law, patent law, accounting, auditing or tax consulting firms. Unlawful disclosure of such secrets is punishable under section 203 of the Criminal Code.

282. Section 102 of the Fiscal Code sets out the right to withhold information to protect certain professional secrets, which members of the professions referred to in that section must maintain confidentiality in accordance with the rules governing their profession. In particular, members of specific professions, such as attorneys at law, patent attorneys, notaries, defence counsels in statutorily regulated proceedings, certified public accountants, sworn auditors, tax consultants and tax agents (section 102 (1) no. 3 of the Fiscal Code) can refuse to furnish information that is entrusted to them or becomes known to them in their professional capacity. This provision protects client-related secrets that become known to members of such professions or their assistants in a professional capacity. This provision could not protect the client from disclosing the evidence of the fact of a transaction, such as contracts, deeds or other instruments.

283. It is noted that these professionals are AML obligated persons pursuant to the AML Act. Therefore, any records concerning customer due diligence are not covered by secrecy. Moreover, if a lawyer, accountant, tax advisor or other professional covered by secrecy obligations acts as a trustee or a nominee or holds documents such as accounting records, shareholder registers, contracts on behalf of their client, the professional secrecy provisions do not impede the provision of information or documents by these professionals to the revenue authorities.

284. The German authorities are not aware of any case in the review period where professional secrecy was an impediment to collect information to reply to an EOI request. No issues were raised by peers.

B.2. Notification requirements, 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.

285. The 2011 Report found that German laws provide for prior notification of the domestic participant that is the subject of an exchange of information request. Although there were some exceptions to the notification requirement under the law, during the previous review period, these exceptions had never been applied in practice. Germany was recommended to, when necessary, make use of the exceptions to the notification procedure. Element B.2 was considered to be in place and was rated as Largely Compliant.

286. Germany's legal framework on notification has not changed since the 2011 review, with exception to an additional exception to prior notification that has been introduced with respect to requests on the basis of the EU Mutual Assistance Act (i.e. the German Act that implemented the EU Directive 2011/16/EC on Administrative Co-operation in the field of direct taxation).

287. During the current review period, Germany advises that prior notification has been waived in approximately 10% of the requests received about German domestic participants. Germany noted that there have been very few cases where the EOI partner requested such waiver. It is possible that not all treaty partners are aware of this possibility. Peer input has not indicated particular concerns, however.

288. It is noted that the prior notification requirement in Germany also entails the right to be heard or object before the information is exchanged. Notification is generally sent together with the notice to the domestic participant to supply the requested information. The timeframe to file an objection is generally four weeks from the receipt of the notification. Therefore, in the cases where a domestic participant is involved, the information is only exchanged after the deadline for objection has elapsed.

289. During the review period, Germany received 129 objections against exchanging information following the notification to the domestic participant. In most of the cases, the objections were considered groundless and information was exchanged after the deadline for the domestic participant to appeal to court had elapsed (and no appeal had been filed). The German authorities interviewed during the on-site visit noted that unfounded objections can at times unduly delay EOI. Germany is recommended to monitor this issue and ensure that its rights and safeguards are compatible with effective exchange of information.

290. The 2016 ToR have introduced a new requirement that exceptions must exist from time-specific post-notification. Germany's law does not contain post-exchange notification rules. Where prior exchange notification has been waived, there is no post notification of the domestic participant.

291. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		
Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

ToR B.2.1: Rights and safeguards should not unduly prevent or delay effective exchange of information

Prior notification, the right to be heard, holding period and appeal rights

292. As noted in the 2011 Report, German law provides a requirement that domestic participants be notified and consulted in relation to requests for information which concern them prior to the exchange of the information. The law allows for some exceptions to notification.

293. Pursuant to section 117(4) of the Fiscal Code, "when implementing legal and administrative assistance, (…) notwithstanding section 91(1), domestic participants shall invariably be heard where legal and administrative assistance concerns taxes administered by the revenue authorities of the *Länder*, *unless* VAT is concerned, an information exchange is taking place on the basis of the EU Mutual Assistance Act or exceptional circumstances within the meaning of section 91(2) or (3) exist."

294. Section 91 reads as follows:

> (1) Before an administrative act affecting the rights of a participant may be issued, he should be given the opportunity to

comment on the facts relevant to the decision. This shall apply particular where there is to be a significant departure from the facts declared in the tax return to the detriment of the taxpayer.

(2) The consultation may be dispensed with when not required by the circumstances of an individual case, in particular when:

1. an immediate decision appears necessary because of imminent danger or in the public interest,

2. such consultation would jeopardise the observance of a time limit material to the decision,

(…)

4. the revenue authority intends to issue a general order or similar administrative acts in large numbers or administrative act using automated system,

(…).

(3) The consultation shall not take place if it conflicts with an overriding public interest."

295. The list provided in section 91 subsection (2) of the Fiscal Code is not exhaustive and for exchanges under the EU Directive additional circumstances would warrant a waiver to the notification requirements. In all cases where the consultation can be dispensed with pursuant to section 117 or section 91, a decision to dispense with such notification needs to be made by the competent revenue authority (the local tax authorities), who in turn communicate the decision to the competent authority. According to a guidance note issued by the Federal Ministry of Finance and approved by the *Länder* authorities,[14] the decision on whether the consultation may be dispensed with must be taken by the competent revenue authority on a case-by-case basis at its duty-bound discretion, with due regard for the general principles set out in section 91 of the Fiscal Code. This exercise of discretion must be recorded. In the decision on whether to dispense with a consultation, the revenue authority must take into consideration the taxpayer's legitimate interests. If doubts exist as to whether the taxpayer's legitimate interests have been considered, the consultation must take place. A consultation must generally take place if there is a risk that the transmission of information and documents as part of an exchange of information could result in the participant incurring damage incompatible with the purpose of the exchange of information (i.e. in cases where information which may not be obtained under German law or the obtaining of which contradicts German administrative practice). The guidance note provides that, with regard to section 91 (2) of the Fiscal Code,

14. Guidance note No IV B 6 – S 1320/07/10004:007 dated 23 November 2015.

dispensing with a consultation is an appropriate use of discretion if, for example, "a consultation would appear to put at risk the success of the exchange of information, especially the assessment of the information exchanged". The German authorities also confirmed that the reference to "imminent danger", as provided in Section 91(2) of the Fiscal Code, could be used to justify a waiver of the consultation of the domestic participant in cases in which the information requested is of a very urgent nature.

296. Moreover, according to the guidance note the consultation could also be dispensed with the following instances:

- publicly accessible material;
- information already provided by a taxpayer in an application or declaration form provided that the relevant form already contained language proving for the possibility of the information being passed on to foreign tax authorities, e.g. application for reduced withholding tax rate;
- if there is no domestic participant/party involved, e.g. the request pertains to the foreign taxpayer's immovable property situated in Germany;
- sale of real estate and transfer of shares provided the information is based on details already reported by the taxpayer; or
- automatic exchange of information.

297. German legislation does not require a particular format for the notification. As a matter of practice, the notification indicates the information being requested and the requesting jurisdiction, but not the reason for the request. A copy of the EOI request is not given to the notified person. As a rule, the notification is generally given in the same letter requesting the German party to provide the information. If the information is already in the possession of the German revenue authorities, the domestic party involved is notified in writing of the intended exchange before the response is sent to the requesting country.

298. The persons concerned (domestic participant or information holder) are usually granted two weeks to object to the exchange of information. During this period, any information already collected by the tax authority is not yet sent to the foreign authority.

299. During the review period, Germany received 129 objections by domestic participants against exchanging information following the notification to the domestic participant. Following the receipt of an objection, the German competent authority has to review whether the objection has merit and issue a written decision. If the decision considers that the objection has

no merit, then the domestic participant is given the opportunity to file an appeal at the Cologne Fiscal Court and seek provisional relief within four weeks. The competent authority holds the information for the four-week period in which the domestic participant can file an appeal before exchanging with the requesting jurisdiction. If provisional relief is granted to the taxpayer as a result of the appeal, the German authorities will not be able to exchange information until the case is finally decided (and if decided in favour of the tax administration).If the Fiscal Court refuses to grant provisional relief Germany will send the information to the requesting country immediately after that decision. Based on the discussions with authorities during the on-site visit this is the most likely reason some peers reported delays. The authorities reported that in most cases the domestic participants' objections are considered unfounded and may have been made with the purposes of delaying EOI. Germany is recommended to monitor this issue to ensure that this does not become a systemic problem and ensure that its rights and safeguards are compatible with effective exchange of information.

300. There have been very few cases where persons appealed to the Cologne Fiscal Court – i.e. approximately 15 decisions in the last 15 years. During the review period, there has been one case where Cologne Fiscal Court ruled that the case failed to meet the foreseeable relevance standard. This case is analysed under element C.1. Since the on-site visit, there have been three appeals – one of these appeals has already been withdrawn by the taxpayer; another was rejected by the Fiscal Court; and the third one is pending a decision (the appeal is dated 1 July 2017).

Post notification

301. The requirement to have an exception to time-specific, post-exchange notification was newly introduced to the 2016 ToR. German laws do not contain post-exchange notification rules. Where prior exchange notification has been waived, there is no notification at all.

Part C: Exchanging information

302. Sections C.1 to C.5 evaluate the effectiveness of Germany's EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether it respects the rights and safeguards of taxpayers and third parties and whether Germany could provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

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

303. The 2011 Report concluded that Germany's network of EOI mechanisms was in place and rated Compliant. The report noted that approximately half of the EOI agreements entered by Germany[15] were not in line with the standard, in particular with regard to foreseeable relevance. Germany was recommended to renegotiate the EOI agreements that did not meet the standard.

304. Since the 2011 Report, Germany has taken important steps to bring its network of agreements in line with the international standard. It signed the Amended Protocol to the Multilateral Convention on 3 November 2011 and ratified it on 28 August 2015. The Convention entered into force in Germany on 1 December 2015. In addition, Germany signed 19 EOI instruments in line with the international standard (including DTCs, Tax Information Exchange Agreement (TIEAs) and protocols to existing DTCs). Germany also ratified

15. These were the EOI agreements entered with the following jurisdictions: Argentina, Armenia, Austria, Bangladesh, Belarus, Belgium, Bolivia, Bosnia and Herzegovina, China (People's Republic of), Côte d'Ivoire, Czech Republic, Ecuador, Egypt, Hungary, India, Indonesia, Iran, Israel, Jamaica, Japan, Kazakhstan, Kenya, Kyrgyzstan, Kuwait, Liberia, Moldova, Mongolia, Morocco, Namibia, Pakistan, Philippines, Serbia, Singapore, Slovak Republic, South Africa, Sri Lanka, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkmenistan, Ukraine, Venezuela, Viet Nam, Zambia and Zimbabwe.

and brought into force some EOI instruments in line with the standard that had been signed and referenced to in the 2011 Report. Finally, Germany transposed the EU Directive 2011/16/EC on Administrative Co-operation in the field of direct taxation in 2013.

305. Today, based on all Germany's bilateral and multilateral EOI mechanisms, Germany has EOI relationships with 139 jurisdictions and 118 of those are in line with the international standard. It remains that 18 EOI agreements entered into by Germany before 2013 are not in line with the international standard.[16] Moreover, it is unknown if 3 EOI instruments entered by Germany before 2006 meet the standard.[17] Germany advises that it has already commenced negotiations or have approached most of these partners.

306. During the review period, Germany could not reply to 11 requests for exchange of information from four EOI partners because these requests were not covered by the EOI agreement in force (e.g. because the agreements do not specifically allow for exchange of information for the enforcement of the domestic laws of the requesting jurisdiction). Germany is recommended to continue to update its EOI instruments that do not meet the international standard. Considering the overall progress made by Germany, the determination for Element C.1 continues to be "element is in place" and the rating remains Compliant.

307. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	Eighteen EOI agreements entered into by Germany are not in line with the international standard.	Germany should continue to work with all its EOI partners to bring its existing exchange of information agreements in line with the standard.
Determination: The element is in place.		

16. There are 18 EOI mechanisms that still need to be brought in line with the standard. Those are the ones entered with Bangladesh, Bolivia, Bosnia and Herzegovina, Côte d'Ivoire, Ecuador, Egypt, Iran, Liberia, Mongolia, Namibia, Serbia, Sri Lanka, Thailand, Trinidad and Tobago, Venezuela, Viet Nam, Zambia and Zimbabwe.

17. The agreements entered with Belarus, Kyrgyzstan and Tajikistan do not contain provisions akin to Article 26 (4) and (5) of the OECD Model Tax Convention. These jurisdictions have not yet been reviewed by the Global Forum and it is not known if they would be able to exchange information in line with the standard in the absence of such provisions.

Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

ToR C.1.1: Foreseeably relevant standard

308. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. The 2010 Report found that the DTCs signed by Germany on or after 2005 made an express reference to the exchange of foreseeably relevant information. Older DTCs generally use the term "as is necessary" or "as is relevant" in lieu of "as is foreseeably relevant". The terms "as is necessary" and "as is relevant" are recognised in the Commentary to Article 26 of the OECD *Model Tax Convention* to allow for the same scope of exchange as does the term "foreseeably relevant". Germany follows the Commentary when interpreting its treaties and therefore considers older DTCs to use the term "foreseeably relevant". Similarly, Germany's TIEAs follow the *2002 Model Agreement on Exchange of Information on Tax Matters*.

309. Germany continues to interpret and apply its DTCs and TIEAs consistent with these principles. All EOI arrangements which Germany has signed since the 2011 Report included the term "foreseeably relevant" in their EOI Article.[18]

310. Foreseeable relevance is defined in the protocol to some of Germany's EOI instruments in the following terms:

> Data are foreseeably relevant if in the concrete case at hand there is the serious possibility that the other Contracting State has a right to tax and there is nothing to indicate that the data are already known to the competent authority of the other Contracting State or that the competent authority of the other Contracting State would learn of the taxable object without the information.

311. The 2011 Report identified that 40 of Germany's 89 DTCs that were in force at the time of that report did not specifically allow for exchange of information for the enforcement of the domestic laws of the requesting

18. Those are: DTCs with Armenia, Australia, China (People's Republic of), Costa Rica, Finland, Hungary, Israel, Japan, Mauritius, Netherlands, Philippines and Turkey; TIEA with the Cook Islands; and Protocols to DTCs with Georgia, Ireland, Slovenia, Turkmenistan, United Kingdom and Uzbekistan.

jurisdiction.[19] Those DTCs had all been signed before 1997 (with the exception to the DTC with Kuwait signed in 1999 and the one signed with Switzerland in 2002). Since the 2011 Report, a number of these EOI relationships have been brought in line with the standard:

- Germany ratified and brought into force the Multilateral Convention. Nineteen jurisdictions with which Germany has deficient DTCs are also parties to this Convention and 15 of them have also brought the Convention into force, and therefore can exchange information to the standard with Germany under the Convention.[20]
- Germany has updated its bilateral agreements with eight jurisdictions (Armenia, China (People's Republic of), Hungary, Israel, Japan, Philippines, Switzerland and Turkmenistan) bringing them in line with the standard. All those agreements are in force, except the ones with Armenia and Turkmenistan;
- Germany can exchange information in line with the standard under the EU Directive on Mutual Administrative Assistance in Tax Matters with other EU members (including the Czech Republic, Hungary and the Slovak Republic, which are also signatories to the Multilateral Convention).

312. During the review period, Germany could not reply to 11 requests for exchange of information from four EOI partners because these requests were not covered by the EOI agreement in force (e.g. because the agreements do not specifically allow for exchange of information for the enforcement of the domestic laws of the requesting jurisdiction).

313. Moreover, even in relation to EOI instruments that fail to meet the foreseeable relevance standard, Germany has some discretion to provide assistance based on article 117(3) of the German Fiscal Code:

19. Those were the ones with Argentina, Armenia, Bangladesh, Bolivia, Bosnia and Herzegovina, China (People's Republic of), Côte d'Ivoire, Czech Republic, Ecuador, Egypt, Hungary, India, Indonesia, Iran, Israel, Jamaica, Japan, Kenya, Kuwait, Liberia, Moldova, Mongolia, Morocco, Namibia, Pakistan, Philippines, Serbia, Slovak Republic, South Africa, Sri Lanka, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkmenistan, Ukraine, Venezuela, Viet Nam, Zambia and Zimbabwe.

20. Argentina, China (People's Republic of), Czech Republic, Hungary, India, Indonesia, Israel, Jamaica (once in force in Jamaica), Japan, Kenya (once in force in Kenya), Kuwait (once in force in Kuwait), Moldova, Morocco (once in force in Morocco), Pakistan, Philippines (once in force in Philippines), Slovak Republic, South Africa, Switzerland, Tunisia and Ukraine.

> The revenue authorities may at their duty-bound discretion provide international legal and administrative assistance upon request in other cases where
>
> 1. reciprocity is assured;
>
> 2. the requesting state guarantees that the information and the documents supplied will be used only for the purposes of its taxation or criminal tax procedure (including procedures related to administrative offences) and that the information and the documents supplied will be disclosed only to such persons, authorities or courts as are concerned with the processing of the tax case or the prosecution of the tax crime;
>
> 3. the requesting state guarantees that it is prepared to avoid any double taxation on income, capital gains and assets by way of mutual agreement procedure through the appropriate adjustment of the basis of taxation; and
>
> 4. compliance with the request is not detrimental to the sovereignty, security, public order or other essential interests of the Federation or its political subdivisions and there is no danger of the person concerned in Germany incurring damage incompatible with the purpose of the legal and administrative assistance in the event that a trade, industrial, commercial or professional secret or a business process which is to be communicated on the basis of the request is disclosed.
>
> To the extent that international legal and administrative assistance concerns taxes administered by the Länder revenue authorities, the Federal Ministry of Finance shall take a decision in mutual agreement with the competent highest authority of the Land concerned.

314. This provision has occasionally been used to allow for exchange of information under agreements that limited the exchange to gathering information relevant to establish taxation under the agreement. In practice, Germany advises that it does not ask for "full reciprocity", as it recognises that processes and procedures of jurisdictions are different and not all sources of information may be directly available to its foreign counterparts. Germany has never refused to exchange information with a treaty partner on the basis of lack of reciprocity.

315. Germany requires that the requesting jurisdiction provide sufficient information to demonstrate the foreseeable relevance of their request. The German competent authority does not require a specific EOI request template apart from the e-Form for use with EU member states. Over the review period, 15 requests for information were declined by Germany on the basis that foreseeable relevance had not been demonstrated, including cases where background information was not provided by the requesting jurisdiction.

Germany advised during the on-site visit that it would first request clarification from the requesting jurisdiction before declining to reply the request. Although one peer considered that Germany's requests for clarification were excessive; no systemic problem was identified during the review.

316. Germany can process group requests. Germany adheres to the Commentary to Article 26 of the OECD Model Convention and considers that the requesting jurisdiction should provide that the following information (paragraph 5.2 of the Commentary): (i) a detailed description of the group, (ii) the specific facts and circumstances that have led to the request; (iii) an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis; and (iv) a showing that the requested information would assist in determining compliance by the taxpayers in the group.

317. In practice, the possibility of Germany replying to group requests has been confirmed by German courts. When receiving these types of requests, the German competent authority (i.e. the Federal Central Tax Office) consults with the Federal Ministry of Finance to ensure that the requests meet the foreseeable relevance standard, including that the group is adequately identified. Once the request is accepted, the same procedures for collection of information described under part B would apply to group requests.

318. During the review period, Germany received two group requests. One of them was answered. Germany considered that the other request was a fishing expedition (i.e. the requests referred to the German sourced income of all taxpayers of the requesting jurisdiction).

319. Foreseeable relevance was also tested in a decision from the Cologne Fiscal Court (1375/15) regarding a multilateral exchange of information. The Court considered that the foreseeable relevance standard had not been met. This request referred to an initiative from six jurisdictions that were analysing business models used in the digital economy. The participating countries sought to exchange information among themselves about transactions carried out by companies in this sector. According to the German authorities, the distinctive feature of this initiative was that it did not relate to actual external audits or taxation of companies in multinational groups by all of the other five countries participating. One of the companies involved objected to the group of countries exchanging its company data and appealed to the Cologne Fiscal Court. In subsequent preliminary injunction proceedings, the court determined that, although the information to be exchanged among the countries could be relevant to future planned tax legislation in the respective countries, there was no connection to the actual taxation of the group companies in Germany or the other countries. According to the court, this type of case was not covered by Article 26 of the OECD Model Convention (or the associated provisions) as the information to be exchanged was not "foreseeably

relevant" to the actual taxation of the group companies involved. German authorities advised that they did not agree with the ruling, but there was no appeal. German authorities also stressed that this does not affect the standard of foreseeable relevance in Germany and that all requests for information must continue to clearly demonstrate that foreseeable relevance has been met in line with the standard. Finally, the German authorities sustained that this decision does not have any relevance to group requests. Under German law, requests are also permissible in cases affecting not individual taxpayers but a group of taxpayers. That applies regardless of whether the group is identified by means of the names of the taxpayers or by means of other facts or relevant aspects.

ToR C.1.2: Provide for exchange of information in respect of all persons

320. The 2011 Report found that Germany's older treaties (in particular the ones signed before 1997) effectively restricted the jurisdictional scope of the exchange of information provisions to certain persons, for example those considered resident in one of the contracting parties. As noted under C.1.1, approximately half of these EOI relationships have been brought in line with the standard by the ratification and entering into force of the Multilateral Convention, the legislation transposing the EU Directive 2011/16/EC on Administrative Co-operation in the field of direct taxation and the update of some bilateral agreements. Germany is nevertheless recommended to continue to work with its EOI partners to ensure that their EOI relationships are in line with the standard.

321. The additional agreements that Germany has entered into since the 2011 Report provide for exchange of information in respect of all persons. Peers have not raised any issues in practice during the current review period.

ToR C.1.3: Obligation to exchange all types of information

322. The 2011 Report noted that most of Germany's EOI instruments in force at the time of that report (78 out 89 DTCs) did not include a provision equivalent to that provided by paragraph 5 of Article 26 of the OECD Model Tax Convention. Paragraph 5 provides that a contracting state may not decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. The Report noted that many of the German DTCs were older agreements that pre-dated the incorporation of that paragraph into Article 26 of the OECD Model Tax Convention.

323. The Report further noted that Germany does not require a provision equivalent to paragraph 5 to be able to access and exchange information held by a financial institution, nominee or person acting in an agency or a fiduciary capacity. Germany also confirmed that it will exchange such information regardless of whether its treaty partner is able to do the same in the absence a provision

akin to Article 26(5) of the OECD Model Tax Convention. Nonetheless, some of Germany's partners may have domestic restrictions to access information in the absence of a provision akin to Article 26 (5) of the OECD Model Tax Convention. Such restriction exists in the case of Trinidad and Tobago. Further, there are 21 jurisdictions whose EOI relation with Germany is also solely based on a DTC without Model Article 26(5) which have not yet been reviewed by the Global Forum and, therefore, whether they require such provision to exchange information held by a financial institution, nominee or person acting in an agency or a fiduciary capacity remains unknown.[21] As noted under C.1.1, since the 2011 Report, Germany has made efforts to update its treaty network. Moreover, all DTCs and TIEAs signed since the 2011 Report contain a provision akin to Article 26 (5) of the OECD Model Tax Convention. No issues have arisen in practice during the review period.

ToR C.1.4: Absence of domestic tax interest

324. The 2011 Report noted that all of Germany's EOI instruments signed or amended by protocol after 2005 contain Article 26(4) of the OECD Model Tax Convention, obliging the contracting parties to use information gathering measures to exchange requested information without regard to a domestic tax interest.

325. While Germany's older DTCs did not contain such a provision, Germany's domestic law allows it to access and exchange all types of information under its EOI agreements regardless of domestic tax interest, even in the absence of a provision akin to Article 26(4) of the OECD Model Tax Convention. Germany also confirmed that it will exchange such information regardless of whether its treaty partner is able to do the same in the absence a provision akin to Article 26(4) of the OECD Model Tax Convention. The 2011 Report further noted that a domestic tax interest requirement may however exist in some of Germany's EOI partners. In such cases, the partners may need a provision equivalent to paragraph 4 of Article 26 to exchange information when they have no interest in obtaining the information for their own tax purposes. As in the case of obligation to exchange all types of information, such restriction exists in the case of Trinidad and Tobago which is also not a Party to the Multilateral Convention. Further, the DTCs with the same 21 jurisdictions listed under C.1.3 do not contain a provision equivalent to paragraph 4 and these jurisdictions have not yet been reviewed by the Global

21. These 21 jurisdictions are Armenia, Bangladesh, Belarus, Bolivia, Bosnia and Herzegovina, Côte d'Ivoire, Ecuador, Egypt, Iran, Kyrgyzstan, Mongolia, Namibia, Serbia, Sri Lanka, Tajikistan, Thailand, Turkmenistan, Venezuela, Viet Nam, Zambia and Zimbabwe. Germany has already concluded new DTCs containing a provision akin to Article 26 (5) of the OECD Model Tax Convention with Armenia and Turkmenistan. Those DTCs are not yet in force.

Forum to identify whether they need that provision to exchange information in the absence of a domestic tax interest requirement.

326. The other additional agreements that Germany has entered into since the 2011 Report all include a provision equivalent to paragraph 4 of Article 26 of the OECD Model Tax Convention. Peers have not raised any issues in practice during the current review period.

ToR C.1.5: Absence of dual criminality principles

327. The 2011 Report identified an issue of dual criminality with regard to the 2002 Protocol to the DTC with Switzerland. At the time of the 2011 Report, Germany and Switzerland had already signed a new protocol in 2010; however, that protocol was not yet in force. Since then, the protocol, which does not include dual criminality provisions, has been brought into force. Moreover, Germany and Switzerland are both parties to the Multilateral Convention which does not contain a principle of dual criminality.

328. The additional agreements that Germany has entered into since then do not include dual criminality provisions. No issues have arisen in practice.

ToR C.1.6: Exchange information relating to both civil and criminal tax matters

329. The 2011 Report found that Germany was able to exchange information in both civil and criminal matters and no issues arose in practice.

330. The additional agreements that Germany has entered into since then provide for exchange of information in both civil and criminal tax matters.

ToR C.1.7: Provide information in specific form requested

331. The 2011 Report concluded that there was no restriction in the exchange of information provisions in Germany's DTCs and TIEAs that would prevent Germany from providing information in a specific form, as long as this is consistent with its own administrative practices

332. Similarly no issues arose in practice during the current review period.

ToR C.1.8: Signed agreements should be in force

333. The 2011 Report noted that the time period between the signature of an EOI arrangement and its entry into force could be quite long. The Report considered that this could be due to the German Federal organisation which requires the consent of the *Länder* (through the *Bundesrat*, the Länder Chamber) for the ratification of an EOI arrangement as the *Länder* have to approve (by majority vote) any legislation affecting their tax revenue.

334. Germany has made progress in bringing its EOI instruments in force in a timely manner. With regard to the bilateral EOI instruments signed by Germany since the 2011 Report, Germany has been able to complete its ratification procedures in approximately one year in most cases. Where there have been delays over two years (e.g. the TIEAs with St Kitts and Nevis and with Dominica not yet ratified), they were caused by the need to make corrections and amendments to the instruments after signature. There are only two bilateral agreements that are not in force in Germany, a TIEA with Dominica and a DTC with Finland. The TIEA with Dominica has not been ratified as Germany and Dominica are currently agreeing some corrections on the text of the signed agreement. Ratification will take place after the corrections are approved by both parties. In relation to the DTC with Finland, it has been signed approximately one year ago. While waiting for the entry into force of that DTC, Germany and Finland can exchange under their 1979 DTC, the EU Directive or the Multilateral Convention, all in line with the standard.

335. The process to bring bilateral EOI instruments into force involves the following steps:

- According to the Basic Law all DTCs and TIEAs must be implemented by way of a federal law. As such, they require the approval of the German legislative bodies (*Bundestag* and *Bundesrat*).
- The Chancellor first sends the *Bundesrat* draft legislation containing the respective DTC or TIEA. The *Bundesrat* generally has six weeks to provide a response to which the German Federal Government may also issue a written reply. The Federal Chancellor then submits the draft legislation along with the reply to the *Bundestag.*
- The draft legislation must first be sent to the President of the *Bundestag* before it may be discussed by its members. The draft legislation is then sent to all members of the *Bundestag, Bundesrat* and federal ministries.
- As a rule, draft legislation is considered at three plenary sessions (readings) of the *Bundestag.* During the first reading a debate is only held if this is recommended by the Council of Elders or demanded by one of the parliamentary groups. After the first reading the draft legislation is referred to the responsible Committees that will substantively evaluate the draft legislation and prepare it for the second reading. The *Bundestag* Finance Committee is generally responsible for legislation related to the domestic approval of DTCs and TIEAs.
- Once consideration has been concluded, the lead committee submits a report to the plenary. Its concluding recommendations comprise the basis for the second reading in the plenary body. As a rule, the second reading includes a general debate. An additional debate is held at the third reading only if demanded by a parliamentary group

or at least five percent of the members of parliament. The final vote is held at the end of the third reading.

- If the draft legislation receives the required majority in the *Bundestag* it is forwarded to the *Bundesrat* as a law. The consent of the *Bundesrat* is mandatory in the case of laws approving DTCs and TIEAs.
- After the draft legislation has passed both *Bundestag* and *Bundesrat* it is then submitted to the Federal President and the minister whose remit includes the relevant subject matter for signature.
- Subsequently the Federal President receives the law for issuance. He or she then reviews whether the law was enacted in accordance with the Basic Law. Following this review, the Federal President signs the law and sends it for publication in the Federal Law Gazette.
- On average, this entire process takes six to twelve months. Any ongoing legislative proceedings are suspended in the event a new *Bundestag* is elected (principle of discontinuity). The new government is not bound by draft legislation from its predecessor.

336. The following table summarises the status of Germany's bilateral instruments.

Bilateral EOI Mechanisms

A	Total Number of DTCs/TIEAs	A = B+C	116
B	Number of DTCs/TIEAs signed (but pending ratification), i.e. not in force	B = D+E	5 [1]
C	Number of DTCs/TIEAs signed and in force	C = F+G	111
D	Number of DTCs/TIEAs signed (but pending ratification) and to the Standard	D	5
E	Number of DTCs/TIEAs signed (but pending ratification) and not to the Standard	E	0
F	Number of DTCs/TIEAs in force and to the Standard	F	87
G	Number of DTCs/TIEAs in force and not to the Standard	G	24 [2]

Notes: 1. There are five instruments signed by Germany which are not yet in force – those are the EOI instruments with Armenia, Dominica, Finland, South Africa and Turkmenistan. Notwithstanding the above, Germany can exchange information in line with the standard under other existing EOI arrangements with two of those partners (Finland and South Africa). It can exchange information under instruments that do not meet the standard with two partners (Armenia and Turkmenistan). Germany cannot currently exchange information with Dominica.

2. Those are the EOI mechanisms with Armenia, Bangladesh, Bolivia, Bosnia and Herzegovina, Côte d'Ivoire, Ecuador, Egypt, Iran, Jamaica, Kenya, Kuwait, Liberia, Mongolia, Morocco, Namibia, Serbia, Sri Lanka, Thailand, Trinidad and Tobago, Turkmenistan, Venezuela, Viet Nam, Zambia, and Zimbabwe. Four of these jurisdictions (Jamaica, Kenya, Kuwait, and Morocco) are also signatories of the Multilateral Convention. Germany will be able to exchange information in accordance with the international standard with these jurisdictions once they bring the Multilateral Convention into force. Moreover, Germany has entered into new

DTCs with Armenia and Turkmenistan and will be able to exchange information in line with then once these agreements enter into force. As a result, there remains 18 bilateral relationships that Germany needs to bring in line with the international standard. Those are: Bangladesh, Bolivia, Bosnia and Herzegovina, Côte d'Ivoire, Ecuador, Egypt, Iran, Liberia, Mongolia, Namibia, Serbia, Sri Lanka, Thailand, Trinidad and Tobago, Venezuela, Viet Nam, Zambia, and Zimbabwe.

337. In addition to Germany's bilateral mechanisms, Germany signed the Amended Protocol to the Multilateral Convention on Mutual Administrative Assistance on 3 November 2011. Germany ratified the amended protocol on 28 August 2015 and it entered into force in Germany on 1 December 2015. Moreover, Germany transposed the EU Directive on administrative co-operation in the field of taxation in 2013.

338. Today, based on all Germany's bilateral and multilateral EOI mechanisms, Germany has EOI relationships with 139 jurisdictions and 118 of those are in line with the international standard.

ToR C.1.9: Be given effect through domestic law

339. Germany has in place the legal and regulatory framework to give effect to its EOI mechanisms. No issues were raised in the 2011 Report in this regard, and similarly no issues arose in practice during the current review period.

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

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

340. The 2011 Report concluded Germany's network of agreements covered all relevant partners, meaning all those partners who were interested in entering into an EOI agreement with Germany. Element C.2 was therefore considered to be "in place" and was rated "Compliant".

341. Germany's network of DTCs and TIEAs covers a wide group of jurisdictions across Europe, Asia, Africa, the Americas and Oceania. Since the 2011 Report, Germany's EOI network has expanded considerably with the entry into force of the Multilateral Convention, the implementation of the EU Directive on Mutual Administrative Assistance in Tax Matters and the signature of 19 EOI bilateral instruments in line with the international standard (including DTCs, TIEAs and protocols to existing DTCs). Currently, Germany has an EOI relationship with 139 jurisdictions and 118 of those are in line with the international standard.

342. Comments were sought from Global Forum members in the preparation of this report and no jurisdiction advised that Germany refused to

negotiate or sign an EOI agreement with it. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Germany is recommended to maintain its negotiation programme so that its exchange of information network continues to cover all relevant partners.

343. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place.		
Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

C.3. Confidentiality

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

344. The 2011 Report found that the laws (including the applicable treaty provisions and statutory rules that apply to officials with access to treaty information) and practice in Germany regarding confidentiality were in accordance with the standard. No issues in practice were found.

345. There have been no changes in the legal framework and practice since 2011.

346. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place.		

Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

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

347. The 2011 Report concluded that all of Germany's DTCs require that information exchanged under the Convention be treated as secret, though the exact language differs depending on the age of the Convention. The majority of German DTCs reflect the language in *Article 26 (1) of the 2005 OECD Model Tax Convention* i.e. "information shall be treated as secret in the same manner as information obtained under the domestic laws". The new treaties entered into by Germany since the 2011 Report all contain appropriate provisions regarding confidentiality and the majority of Germany's DTCs permit the disclosure of information only for use for tax purposes. However, the exchange of information article in more recent DTCs (such as the ones with Australia, Finland, Ireland, Japan, Uzbekistan) contain the additional provision that the information exchanged may be used for other purposes if the laws of both jurisdictions permit such use and if the competent authority of the state supplying the information authorises such use.

348. The EU Mutual Assistance Directive also contains safeguards corresponding to those in *Article 26 (1) of the OECD Model Tax Convention* restricting the disclosure of information by the competent authority of the receiving state. Where information is communicated to the German competent authority under the EU Directive it is subject to the same requirements of secrecy described above in relation to DTCs.

349. The 2011 Report found that the public officials were subject to the obligation to observe tax secrecy pursuant to section 30 of the Fiscal Code. Violation of tax secrecy is punishable by imprisonment of up to two years or by a fine (Section 355 of the Criminal Code).

350. Additional confidentiality rules and procedures are detailed in the Guidance Note on International Administrative Assistance through Exchange of Information in Tax Matters, issued by the Federal Ministry of Finance on 23 November 2015, Section 1.6.1.

351. Taxpayers in Germany have under certain circumstances a right to inspect their tax files maintained by the local tax offices. The EOI request itself is not part of these files as the requests are not forwarded to the local tax authorities.

ToR C.3.2: Confidentiality of other information

352. The 2011 Report noted that the confidentiality provisions in Germany's exchange of information agreements and domestic law did not draw a distinction between information received in response to requests and information forming part of the requests themselves. The rules that apply were therefore the same ones as those described above.

Confidentiality in practice

353. During the review period, procedures to ensure the confidentially of information sent and received by Germany were in place.

354. Confidential information received from another jurisdiction is clearly labelled as such. The EOI Unit does not keep hard copy of requests or other related documents. All hard copies of requests received are destroyed after they are scanned and filed in the EOI unit electronic system. The access to the IT system for tracking and retrieval of requests is restricted to the members of the EOI units. Computers are password protected and cannot be used out of the EOI unit premises. Physical access to the premises of the EOI unit is restricted. Cabinets are locked and a clean desk policy applies.

355. Procedures exist to carry out background investigations for all public servants including the employees of the EOI Unit. New staff are required to take an oath that they would comply with rules which include observance of tax secrecy. Regular training is provided to staff in relation to data protection and information security. Most employees of the tax administration belong to the "civil servant" status which is based on a special public law relationship that imposes on them additional obligations in terms of the duty of confidentiality. Access to premises at *Länder* or local level is also restricted.

356. The transmission of information is also secured by a number of procedures. Communication within the tax administration is performed using a secured network or encrypted e-mails. Communication between the competent authority and other EU member States is done via the CCN Network. With EOI partners outside EU, Germany uses encrypted e-mail or normal post. The German competent authority's preference is the use of encrypted e-mail for both security and cost-saving reasons; however, some partners expressed preference to receive documentation in physical mail. Germany is not aware of cases where information has not been sent or received because of the use of normal post and documents sent carry a confidentiality stamp or are sent in an encrypted CD-ROM. Germany is nonetheless recommended to only send physical mail via an international registration system where a mail tracking function is in place. In that way, it is ensured that information is adequately received by the addressee.

357. The German authorities are not aware of any case where confidential information received from a treaty partner has been improperly disclosed. Similarly, whereas there have been cases of external attempts of cybercrime, Germany is not aware of any cases of improper disclosure of German tax data/information including information sent/received under EOIR.

358. Decisions of tax courts (including any appeal proceedings related to EOI) are published without the names of the taxpayers.

Disclosure of information received by Germany under EOI as a requesting jurisdiction

359. Under German criminal law, the taxpayer that is the suspect of a tax crime and his/her defence counsel are allowed access to all files and evidence that will be presented to the criminal court if a prosecution is brought. This applies throughout the entire course of the proceedings not just at the time of the trial, but also whilst the investigation is ongoing. The German authorities interviewed during the on-site visit explained that during the investigation phase carried out by a public prosecutor, the German taxpayer would already have the status of an "accused person" under German law. As an accused person, the taxpayer would have the full right of defence including the right to access to the files kept on his case by the public prosecution authorities.

360. The right of access to the files by the taxpayer and his/her defence council means that there is mandatory disclosure of all letters to and from the authorities that form part of the ongoing investigation as they take place. The taxpayer under investigation is not prevented from disseminating copies of competent authority letters to third parties, if they wish.

361. One EOI partner raised concerns that, in relation to a request Germany made to that partner, Germany disclosed information which the partner was not aware it would be disclosed by Germany in the specific case. This case referred to a request involving criminal tax matters sent by Germany's Federal Office of Justice, which is a delegated competent authority for criminal tax matters under the relevant TIEA entered by Germany and the partner. The Federal Office of Justice is generally involved in cases of judicial assistance, including on criminal tax matters and as such is listed as a competent authority in some of Germany's EOI instruments. In that case, German's EOI partner reports that (in addition to the EOI request and the response), communications about the formulation of the EOI request and suggestions for changes made by it had been made available to the taxpayer and the taxpayer's defence council by the German Federal Office of Justice. The EOI partner and Germany are finalising revised working procedures on how to work requests in the future.

362. Germany is recommended to inform its treaty partners of the rights and safeguards applicable in Germany, in particular the rights that come with

the status of "accused person" in the course of investigative procedures initiated by public prosecution authorities. In particular, Germany should inform its partners that letters by the competent authority or communications around the request itself may be released. In this sense, it is noted the declaration deposited by Germany with its instrument of ratification of the Multilateral Convention make a reference to this aspect:

> Paragraph 9. (…). Under German Law, confidentiality cannot be guaranteed in all preliminary investigations by public prosecutors, because in Germany the principle of confidentiality may be overridden with reference to the right of access to information not only in court proceedings but also in preliminary criminal investigations.

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

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

363. The 2011 Report concluded that Germany's information exchange mechanisms allow the parties to decline to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*). The new EOI mechanisms entered into by Germany contain the same provisions.

364. Input from Germany's peers did not indicate concerns regarding the application rights and safeguards in Germany or their impact on EOI in practice during the period under review.

365. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place.		
Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

ToR C.4.1: Exceptions to provide information

366. The international standard allows requested parties not to supply information in response to a request in certain identified situations. The limits on information which can be exchanged that are provided for in the OECD Model TIEA and Article 26 of the OECD Model Tax Convention are included in each of the EOI agreements concluded by Germany. That is, information which is subject to legal privilege; which would disclose any trade, business, industrial, commercial or professional secret or trade process; or would be contrary to public policy, is not required to be exchanged.

367. As noted under B.1.5, members of specific professions, such as attorneys at law, notaries and tax consultants (section 102 (1) no. 3 of the Fiscal Code) can refuse to furnish information that is entrusted to them or becomes known to them in their professional capacity. This provision only protects client-related secrets that become known to members of such professions or their assistants in a professional capacity. In other words, this provision could not protect a person from disclosing the evidence of the fact of a transaction, such as contracts, deeds or other instruments. More specifically, if a lawyer, accountant, tax advisor or other professional covered by secrecy obligations acts as a trustee or a nominee or holds documents such as accounting records, shareholder registers, contracts on behalf of their client, the professional secrecy provisions do not impede the provision of information or documents by these professionals to the revenue authorities.

368. A trade or business secret is considered to exist where it concerns facts and circumstances which are of considerable economic significance, can be put to practical use and whose unauthorised use could lead to extensive damages (Federal Fiscal Court decision of 20 February 1979, Federal Tax Gazette II p. 268). The way in which business relations are conducted between two companies affected by the exchange of information does not qualify as a trade or business secret. This also applies where the business relations are conducted through the intermediary of a third party or via a third country or territory (see Guidance Note on International Administrative Assistance through Exchange of Information in Tax Matters, issued by the Federal Ministry of Finance on 23 November 2015, Section 5.3.1.3).

369. Germany has defined the term *ordre public* in some of its EOI instruments as well as in the declaration deposited with the instrument of ratification of the Multilateral Convention. The latter includes that data will not be transmitted in proceedings that could lead to the imposition of death penalty or that threaten to violate minimum standards of human rights and due process.

370. During the review period, Germany did not decline to provide information in response to an EOI request on the basis that it would disclose trade,

business, industrial, commercial or professional secret or trade process, or on the basis that the disclosure of information would be contrary to public policy (*ordre public*).

C.5. Requesting and providing information in an effective manner

> The jurisdiction should request and provide information under its network of agreements in an effective manner.

371. In order for exchange of information to be effective, jurisdictions should request and provide information under its network of EOI mechanisms in an effective manner. In particular:

- *Responding to requests*: Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or provide an update on the status of the request.
- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.
- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

372. The 2011 Report concluded that Germany was fully committed to exchange information with its international partners and its competent authority was sufficiently resourced even considering the very large number of EOI requests it managed. However, that report also noted that, while Germany was very active in exchanging information with its partners and keen to provide answers, the peer input received showed some weakness in its capacity to respond expeditiously to incoming requests. It was noted that, in most cases, Germany was not able to respond within 90 days to international requests for information in tax matters and did not commonly provide requesting parties with status updates. Germany was recommended to ensure that its authorities set appropriate internal deadlines to be able to 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, to provide a status update. Element C.5 was rated Largely Compliant.

373. During the current review period, the German competent authority took measures to improve its internal processes and procedures as well as the monitoring of deadlines given by the *Länder* authorities involved in the collection of information. The changes made have shown results: response times have consistently improved. During the previous review period, only 12% requests of the requests received were replied within 90 days and approximately half within 180 days. Out of the approximately 4 000 requests

Germany received during the current review period, it managed to reply to approximately 43% within 90 days and 74% of the requests within a 180-day timeframe.

374. Peer input received in the current review indicated that Germany is an important partner to a number of jurisdictions and that peers were generally satisfied with the quality of the information received from Germany. However, some peers indicated that response times were long and sometimes not timely. The German system for access and exchange of information involves many steps and may occasionally inhibit quicker response times. Moreover, the relationship with some partners may have suffered of lack of effective communication.

375. Some peers also indicated that interim responses and updates were rarely received and, when they were received, they often did not indicate an estimate response date or the reasons for the delay. The German authorities attributed the failures in providing status updates to some partners to staff changes and occasional staff shortages during the review period which would now have been resolved. The German competent authority is currently undergoing a reorganisation that will involve splitting the EOI work within two different units. Germany believes this will lead to improved staff management and the organisation of the work and it will allow Germany to better cope with the volume and complexity of requests. This reorganisation will also involve a closer monitoring of the relationship with peers.

376. Germany should also improve the communication of some of its EOI partners. Germany should examine how it could speed up the processes for obtaining and providing information to ensure more timely responses. Germany is also recommended to monitor the implementation of the new organisation of its competent authority to ensure that it consistently provides updates to EOI partners within 90 days in those cases it is not possible to provide a substantive response within that timeframe.

377. The 2016 ToR include51s an additional requirement to ensure the quality of requests made by assessed jurisdictions. Procedures are in place at the EOI unit to ensure the quality of Germany's outgoing requests. Peers were generally very positive of the quality of Germany's EOI requests, although some peers noted that requests did not always meet the foreseeable relevance standard and clarifications were only provided after a very long period. Germany is recommended to further enhance its procedures to ensure that its requests are in line with the foreseeable relevance standard, supported by appropriate elements and communicated effectively. Germany should also ensure that requests for clarification from its EOI partners are responded in a timely manner.

378. The new table of determinations and ratings is as follows:

Determination: Not Applicable		
	Underlying Factor	**Recommendation**
Deficiencies Identified in the Implementation of EOI in Practice	While progress has been made, some of Germany's partners still have pointed to delays in Germany's processes to obtaining information and responding to requests. Some delays have also been observed in Germany's responses to their EOI partners' requests for clarification on Germany's requests. The relationship with some EOI partners appeared to have suffered from lack of effective communication. Moreover, the various steps required in the EOI process appear to inhibit quicker response times.	Germany should examine how it could (i) speed up and ensure consistency in the processes for obtaining and providing information requested under EOI; and (ii) improve the communication with its EOI partners in relation to inbound and outbound EOI requests, including by providing timely responses to requests for clarification.
	Germany has not consistently provided status to all its treaty partners in relation to requests that cannot be replied within 90 days.	Germany should systematically provide an update or status report to its EOI partners in situations when the competent authority is unable to provide a substantive response within 90 days.
Rating: Largely Compliant		

ToR C.5.1: Timeliness of responses to requests for information

379. Over the period under review (1 July 2013-30 June 2016), Germany received a total of 3950 requests for information from 60 EOI partners. The information requests in these requests[22] related to (i) ownership information (125 cases), (ii) accounting information (2072 cases), (iii) banking information (354 cases) and (iv) other type of information (e.g. tax residency status

22. Please note that some requests entailed more than one information category.

information) (735 cases). Germany's most significant EOI partners for the period under review (by virtue of the number of exchanges with them) are Poland, France, Austria, Spain and the Netherlands. For these years, the number of requests where Germany answered within 90 days, 180 days, one year or more than one year, are tabulated below (statistics were provided by Germany at the time of completion of the assessed jurisdiction questionnaire).

Statistics on response time

	2013/14		2014/15		2015/16		Total	
	Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	1 312	100	1 342	100	1 296	100	3 950	100
Full response: ≤90 days	540	41	598	45	572	44	1 831	43
≤180 days (cumulative)	1 005	77	1 034	77	923	69	3 026	74
≤1 year (cumulative)	1 169	89	1 241	90	1 027	77	3 501	86
>1 year	35	3	56	4	7	1	98	2
Declined for valid reasons	44	3	17	1	16	1	77	2
Status update provided within 90 days (for responses after 90 days)	599	84.6	519	73	439	63	1 557	73
Requests withdrawn by requesting jurisdiction	1	0.08	0	0	2	0.3	3	1
Failure to obtain and provide information requested	19	1.2	16	1	6	0.7	41	1
Requests still pending at date of review	44	3	45	3	262	20	351	9

Germany 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.

380. In relation to the pending requests, Germany attributes the delay in answering the requests to the following reasons:

- an external audit of the taxpayer is planned and the requested information is going to be collected on the occasion of the audit. The intention is to provide the most complete reply to the EOI partner;
- criminal proceedings are pending in Germany regarding the taxpayer and under German law taxpayers and some safeguards exist in such case against self-incrimination, as referenced in element B.1;
- Germany has requested additional background information on the EOI requests to the requesting jurisdictions and is waiting for a reply;
- the requests were considered complex (e.g. transfer pricing cases);

- there have been a large number of new staff in the EOI unit, causing some disruptions in particular in the last year of the review period; and
- some cases have been delayed because the taxpayer has requested for a hearing or filed an objection after receiving a notification concerning the EOI request. All objections need to be carefully examined and no information can be provided before a decision is made regarding the objection (or even before the timeline for an appeal in court has expired). Even in cases when the objections are rejected, this adds time to the process.

381. The assessment team further noted the following features of the German EOI organisation:

- the competent authority has no direct access to sources of information (including tax databases and tax returns data). All requests must be transferred to the *Länder* authorities, and, in turn, to the local tax offices;
- every *Länd* has a different structure and internal policies to deal with EOI requests. It is the responsibility of the *Länder* authorities to determine in each case the best way to collect information (e.g. issuing a notice for production of information or waiting to collect information during a tax audit);
- when a request is received, its validity is checked both at the level of the competent authority and at *Länder* level (sometimes at both the level of the Land central liaison office and the local level). Similarly, the responses to the requests are also checked at several levels;
- the competent authority at federal level has in general no direct contact to the tax officer direct collecting information at local level and, therefore, is not always informed of the precise status of the answer and cannot directly provide clarifications that are requested. Where necessary in special circumstances (e.g. to speed up the procedures or to clarify the case) a direct contact however is possible, when agreed upon with the *Land* central liaison office.

382. While collecting information in the course of an audit may be an appropriate route depending on the facts and circumstances, Germany should consider whether this would be the most appropriate method for answering EOI requests considering the need to provide a timely response to its EOI partners, especially when an audit is planned for months ahead. Partners may sometimes prefer receiving some information in a shorter timeframe to waiting for a more detailed response several months or more than a year when an audit would be in place. Liaising with EOI partners would determine this at the outset.

Requests for clarification

383. In the period under review, Germany made 142 requests for clarification to the requesting jurisdictions. This included cases where the foreseeable relevance of the requests was not adequately established or the requesting jurisdiction did not include a statement that it had pursued all domestic means to obtain information (except those that would give rise to disproportionate difficulties). Only one peer questioned the requests for clarification from Germany. Other peers did not express concerns. One peer has indicated that Germany declined to answer a request without asking for clarification. The case was subsequently clarified between the two competent authorities. It referred to a request for the enforcement of domestic laws while the double tax treaty in force between the parties only allowed EOI for carrying out its own provisions.

Status updates

384. It is the competent authority's policy to provide status updates. However, this policy has not been consistently applied during the period under review due to staff changes and staff shortage in the last year of the review period. While some partners indicated they always received updates, others indicated they never received or only received them when they prompted Germany. Moreover, peers complained that status updates did not always indicate an estimated response date or the reasons for the delay. In terms of the internal processes, the local tax offices are requested to inform the competent authority only when deadlines cannot be met. In cases where the EOI unit does not receive information about specific reasons for delay or the expected date of answer, the EOI case worker will generally provide a standard status update within the 90-day deadline. The German competent authority is currently undergoing a reorganisation that will involve splitting the EOI work within two different units to better manage staff and the volume and complexity of requests. This reorganisation will also involve the closer monitoring of the relationship with peers. Germany is therefore recommended to monitor the implementation of the new organisation of its competent authority to ensure that it consistently provides updates to EOI partners within 90 days in those cases it is not possible to provide a substantive response within that timeframe.

Declined requests

385. During the review period, Germany declined to respond to 77 requests for the following reasons:

- the foreseeable relevance of the request had not been demonstrated, including cases where background information was not provided by the requesting jurisdiction;

- the information could not be identified (e.g. banks or bank accounts which did not exist in Germany);
- the requesting jurisdiction did not allow Germany to contact the information holder (and the information would not be accessible otherwise);
- the requesting jurisdiction was not able to confirm that all means of investigation had been exhausted (except those that would give rise to disproportionate difficulties);
- circumstances where the information requested could not be exchange under the EOI agreement (e.g. instances where the requests were not related to taxes/tax assessment; the request had no connection to Germany; the EOI agreement did not meet the standard or requests for purposes of taxes not covered under the agreement; or the EU form was neither used nor correctly filled in[23]).

Failure to obtain and provide information

386. During the review period, Germany was not able to reply to 51 requests. Germany was not able to confirm categorically the circumstances involved in each one of these cases. Germany believes that these requests may have involved the following:

- domestic participants made use of their right of refusal to furnish information and documents under German law (sections 101 to 106 of the Fiscal Code; for example, if relatives of the taxpayer are asked to furnish information on his or her circumstances);
- Germany could not apply coercive measures due to a prohibition in German law to the use in the taxation procedure coercive measures against taxpayers where this would force them to incriminate themselves in a tax crime or tax-related administrative offence which they committed;
- Domestic participants refused to provide information without legal basis and the information could not be obtained even after threat and use of enforcement measures;
- the retention period for the maintenance of information had expired and the information was no longer available or there were no specified retention period for the maintenance of certain documents.

23. In these instances, Germany would invite the EOI partner to re-submit the request.

387. The failures corresponded to a very small number of requests and no systemic issues have been identified.

ToR C.5.2: Organisational processes and resources

388. The Federal Ministry of Finance is the competent authority under the German EOI instruments and has the overall responsibility for Germany's EOI programme. The Federal Central Tax Office serves by delegation as competent authority. The Federal Ministry of Finance issued an order on 29 November 2004 (IV B 6 – S1304 – 2/04) transferring to the Federal Central Tax Office its responsibility for international administrative assistance.

389. As such, the exchange of information function under DTCs, TIEAs, the Multilateral Convention and the EU Directive is centralised in the Federal Central Tax Office (EOI unit St I 7, "the EOI unit"). Its responsibilities extend through EOI on request, spontaneous EOI, automatic EOI (implementation of the Common Reporting Standard (CRS), exchanges under the US FATCA, exchange of tax rulings and country by country reports, simultaneous audits, legal assistance and participation in the OECD and EU discussions. The EOI unit is responsible for all aspects of exchange of information requests for both incoming and outgoing requests.

390. As noted above, the German competent authority is currently undergoing a reorganisation that will involve splitting the EOI work within two different units to improve staff management and the organisation of the work and to better cope with the volume and complexity of requests. The unit that currently manages EOI in relation to VAT and requests concerning recovery of taxes will transfer the VAT duties to another unit and would instead of that also be handling most of the operational work of EOI requests concerning direct taxes (e.g. requests concerning tax residency). Most EOI staff will be transferred into that unit. A small team will be responsible for complex cases, automatic EOI, legal assistance and simultaneous audits. It is anticipated that additional staff will also be hired.

391. The German competent authority's contact details are well-known to its treaty partners and are also available at the Global Forum Competent Authority website and the secure EU website.

392. One peer has noted that the German competent authority is easy to be contacted but not the person actually working to collect information on the case. Another peer also noted that the German authorities were reluctant about discussing requests over the telephone or in face-to-face meetings. The German competent authority explained that indeed it exercises caution about engaging on telephone or face-to-face discussions with other competent authorities due to taxpayer data protection rules in Germany that would preclude the German authorities from communicating about taxpayer matters

without informing the taxpayer. During the on-site visit it was acknowledged that this should not prevent telephone calls from taking place if they would clarify matters regarding the EOI request or help with the process, or providing the requesting jurisdiction with general information on the EOI or information gathering processes in Germany. Germany should continue to ensure a good level of communication with its EOI partners.

Staff

393. The EOI unit is staffed by 23 persons, including two civil servants of higher service grade, five in the higher-intermediate service and ten in the intermediate service. The remaining six staff members are non-tenured employees with duties at the same level as the civil servants of intermediate service grade. The higher grade civil servants are qualified lawyers. Their duties include management and steering functions.

394. In light of the increase in requests as a result of the automatic exchange of information, additional personnel were requested for 2016: two upper grade and two middle grade civil service positions. One upper grade position remains unfilled. Two additional employees have been requested for 2017 who are intended to process the exchange of information under the Multilateral Convention and EU Directive.

395. There has been a significant turnover of staff in 2016 and seven employees were replaced in in a relatively short timeframe. This created some disruption in the work (in particular concerning the provision of status updates), as new staff needed to be trained.

Training

396. The education of the civil servants in the German tax administration (both at federal and Länder level) includes the subject of exchange of information. The Länder also ensures that civil servants working further knowledge or training of the field for which they have responsibility; this would include further training on EOI for civil servants engaged in this work. With respect to the competent authority, new staff members of the EOI unit receive carefully planned training on the legal provisions and instructions that must be observed. They are assisted in this by a mentor with long experience in administrative assistance. At present, five colleagues are receiving this training. In the last three years training was provided to five other members of staff.

397. At least every two months the EOI unit has a team meeting where EOI topics are discussed and information/news from international meetings are provided.

398. External training sessions are provided in specific subject areas (such as international tax law). To date, two staff members have completed the course in international tax law offered by the Federal Finance Academy, a government-run training institution.

399. There are also annual meetings between the EOI unit and the *Länder* authorities to provide an update on the current developments on EOI and to discuss important cases.

400. Staff members of EOI unit attend an English language course that runs parallel to their duties.

EOI under cross-border agreements

401. Specific rules are in place under the cross border agreements signed by Germany with some of its neighbouring countries. These agreements are signed under the provisions of the applicable bilateral DTC or/and the EU Directive. In those cases, the requests can directly be sent to the local authorities designated, in the applicable cross-border agreement, as competent authority without any need for the requesting authorities to send the requests to the EOI unit at the Federal Central Tax Office. This is the case in relation to:

- Austria: there are direct exchanges between the local tax office of Salzburg (Austria) and the regional authorities in urgent cases;
- Czech Republic: the local tax office of Chemnitz is acting as competent authority for all requests coming from Saxony while the requests coming from Bavaria can be sent to the Czech authorities by the regional authority; and
- France: regional authorities of the East side of France are allowed to directly send their requests to the German authorities of Baden Württemberg, Saarland and Rheinland-Pfalz and vice-versa.

402. Germany received 39 EOI requests in 2013, 39 in 2014, 32 in 2015 and 29 in 2016 under the cross-border agreements. No statistics on the timeliness of responses are available at federal level.

Internal controls

403. The EOI unit has regular meetings to discuss on-going requests. Moreover, quarterly reports are prepared as an internal control measure and submitted to the head of the Federal Central Tax Office. These reports include information on new requests received, cases processed, time for the EOI unit to process the request (period between receipt and first processing of a request), percentage of requests completed within six months, cost per request (in EUR) and labour per request (in hours) as well as the number of objections received.

EOI Manual

404. The Guidance Note on International Administrative Assistance through Exchange of Information in Tax Matters, issued by the Federal Ministry of Finance on 23 November 2015 and approved by the *Länder* details the rules and procedures to be followed in relation to incoming and outgoing requests. It covers several aspects from the EOI process from the work of the EOI unit to the procedures for collecting information and sending and waiving taxpayer notifications by the *Länder*/local authorities. The EOI unit is currently considering developing further written guidance to its case officers on the steps to be followed on their day-to-day work.

Processing incoming requests

405. When a request is received by the EOI Unit, it is given an individual file number. Files are kept in electronic form only, with the assistance of special document management software (the DOMEA database). Any written material received is scanned in and imported into the electronic file. The registration programme also allows monitoring of all deadlines that are set for each case.

406. The EOI case workers send the request for the translation division of the Federal Central Tax Office. They also verify whether requests meet all requirements in order to be accepted (e.g. foreseeable relevance standard, relevant EOI instrument, signed by the appropriate competent authority). The case workers can rely on the four tax officers should they have questions. The case officer will send an acknowledgement of receipt to the requesting jurisdiction.

407. Subsequently, the case officer will send a memorandum with the background of the request (including the relevant competent authority and details about the foreign investigation) and the details of the information requested to the liaison office in the respective *Land*.

408. The liaison officer at *Land* level will also perform an admissibility check of the request. If there are questions on the foreseeable relevance, the liaison officer will contact the EOI unit for clarification. This may then involve having the EOI unit sending a request for clarification to the requesting jurisdiction. The liaison officer will then send the memorandum to the local tax office whose geographical jurisdiction covers the relevant taxpayer or third party with the instruction to collect the information. The local tax officer in charge may also verify the validity of the request and raise concerns with the liaison officer at the *Land*. Communication generally takes place by e-mail via a secure network.

409. The local tax officer collects the requested information from the tax files or from taxpayers or third parties (please see B.1 for more information) and sends the notification. The local tax officer also decides on whether to waive the notification, in consultation with the liaison office at the *Land* level and the EOI unit (see discussion on B.2).

410. If an objection or request for a hearing is filed, then the decision on whether the objection is justified is taken by the EOI unit, which will reply directly to the taxpayer or third party information holder.

411. The local tax officer will also decide the most appropriate means for collecting the information (e.g. issuing a notice for production of information or collecting the information in the course of a planned audit). Once the information is collected by the local tax officer, the liaison officer verifies it and whether it fully answers the request. The same check is also performed by a case officer at the EOI unit. The case officer will also liaise with the translation division of the Federal Central Tax Office for the translation of the response where appropriate.

412. The EOI unit also has established procedures for sending feedback (normally upon request from its treaty partners) as well as reviewing the feedback received. During the period under review, Germany has provided feedback in relation to 103 requests and requested feedback in 85 instances.

Outgoing requests

413. Rules and procedures for outgoing requests are established in the Guidance Note on International Administrative Assistance through Exchange of Information in Tax Matters which is available throughout the *Länder*.

414. An outgoing request is usually initiated by a local tax auditor or a local tax officer. The auditor would normally fill in a specific form for exchanges under the EU Directive or use a template for exchange under TIEAs or the EU form for exchanges with EU member countries. The draft is then sent to the liaison officer at *Land* level who performs an initial check on both format and substance and then forwards it to the EOI unit.

415. The EOI unit registers the request in its database and provides a final check on its foreseeable relevance and other requisites. It also checks the relevant EOI instrument and if it has been agreed with the EOI partner that the request can be sent in German. If a translation is required, the EOI unit will liaise with the translation division of the Federal Central Tax Office. The EOI unit will also transmit the request to the treaty partner and monitor the response times in its database. If a request for clarification is received, the case officer would then forward it to the liaison officer at the *Land*, who in turn would contact the local tax auditor. The three-step procedure back to

the EOI officer is followed when the answer to the clarification is received. If no response is received from the EOI partner within the deadline, the EOI officer sends reminders and keeps the liaison officer posted of any development. When the answer is received, the EOI sends it to the liaison office who in turn forwards it to the tax auditor.

416. During the review period, Germany has sent a total of 4 515 EOI requests. The table below shows the number of requests sent by Germany in each year of the review period:

	2013/2014	2014/2015	2015/2016
Total number of requests sent	1 587	1 423	1 505

417. The statistics above do not include the requests for EOI criminal tax matters sent by the Federal Office of Justice. Statistics on such requests are not available. The Federal Office of Justice reports that it does not distinguish between requests in tax matters and requests in other judicial matters. The Federal Office of Justice in Bonn is the central service authority of Germany's Federal Judiciary, and is the first point of contact for cross-border criminal, civil and commercial matters, (international mutual assistance). The Federal Office of Justice is subordinated to the Federal Ministry of Justice.

Peer input on quality of outgoing requests

418. Most peers were positive about the quality of Germany's EOI requests. However, some peers noted that some of Germany's requests required further clarifications to allow requests to be fully understood and acted upon or to determine whether the requests met the foreseeable relevance standard. Germany did not keep records of the number of requests for clarification received. Based on peer input, in roughly 10% of requests made by Germany some sort of clarification was required. It is noted peers do not all count requests in the same manner and, therefore, there may be mismatches between the number of requests for clarifications made by peers and the actual number of requests reported by Germany. In summary, cases where clarifications were requested involved the following circumstances:

- in relation to approximately 70 cases clarifications were requested by the EOI partner because the requests in reference were complex or in some cases additional background information was sought to support the partner's domestic administrative practices;
- in relation to 16 requests, clarification/additional information was required mainly to (correctly) identify the persons involved in the request;

- in relation to one German case that involved 254 request letters, the EOI partner raised concerns about their foreseeable relevance after it became aware of a court decision in Germany that in the view of the peer appeared to restrict Germany's taxing rights in relation to the persons involved in the requests;
- in relation to one bulk request, one partner has indicated having asked for a large number of clarifications;
- in approximately 100 cases clarifications were requested by an EOI partner about the legal situation in Germany and/or further details on the facts of the request;
- in relation to three cases, the EOI partner considered that the request did not meet the standard and has required further clarification.

419. Germany is recommended to further enhance its procedures to ensure that its requests are in line with the foreseeable relevance standard, supported by appropriate elements and communicated effectively.

420. Regarding timeliness to respond to partners' requests for clarification, many EOI partners reported having received clarification in good time; however, five partners reported that responses to their requests for clarification remain outstanding. Three of these partners raised concerns about the timeframe taken by Germany to reply to clarification requests which can at times take many months or in a small number of cases more than a year. One peer reported that clarifications had not been received and the cases had to be closed. Germany should also ensure that requests for clarification from its EOI partners are responded in a timely manner.

421. One peer noted that correspondence received from Germany is mostly in German and rarely includes a courtesy translation which affects the response times. Although it is not part of the standard, Germany advised that in the future it will provide a courtesy translation with its requests to the peer in question.

ToR C.5.3: Unreasonable, disproportionate or unduly restrictive conditions for EOI

422. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI.

Annex 1: Jurisdiction's response to the review report[24]

Germany would like to express its high appreciation for the work done by the assessment team in evaluating Germany for this 2017 Exchange of Information on Request Peer Review Report. Germany expresses his consent with the report.

In order to improve the legal framework and the practical arrangements for the exchange of information on request Germany will work on the implementation of the recommendations made in the report.

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

Annex 2: List of Jurisdiction's EOI mechanisms

1. Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Date signed	Date entered into force
1	Albania	DTC	06.04.2010	23.12.2011
2	Algeria	DTC	12.11.2007	23.12.2008
3	Andorra	TIEA	25.11.2010	20.01.2012
4	Anguilla	TIEA	19.03.2010	11.04.2011
5	Antigua and Barbuda	TIEA	09.04.2010	12.12.2011
6	Argentina	DTC	16.09.1996	30.06.2001
7	Armenia	DTC	24.11.1981	15.06.1983
			29.06.2016	Not yet in force
8	Australia	DTC	24.11.1972	15.02.1975
		DTC	12.11.2015	07.12.2016
9	Austria	DTC	24.08.2000	18.08.2002
10	Azerbaijan	DTC	25.08.2004	28.12.2005
11	Bahamas	TIEA	09.04.2010	12.12.2011
12	Bangladesh	DTC	29.05.1990	21.02.1993
13	Belarus	DTC	30.09.2005	31.12.2006
14	Belgium	DTC	11.04.1967	30.07.1969
		Protocol to DTC	05.11.2002	28.12.2003
		Protocol to DTC	21.01.2010	Not yet in force
15	Bermuda	TIEA	03.07.2009	06.06.2012
16	Bolivia	DTC	30.09.1992	12.07.1995
17	Bosnia and Herzegovina	DTC	26.03.1987	25.12.1988
18	British Virgin Islands	TIEA	05.10.2010	04.12.2011

	EOI partner	Type of agreement	Date signed	Date entered into force
19	Bulgaria	DTC	25.01.2010	21.12.2010
20	Canada	DTC	19.04.2001	28.03.2002
21	Cayman Islands	TIEA	27.05.2010	20.08.2011
22	China (People's Republic of)	DTC	28.03.2014	05.04.2016
23	Côte d'Ivoire	DTC	03.07.1979	08.07.1982
24	Cook Islands	TIEA	03.04.2012	11.12.2013
25	Costa Rica	DTC	13.02.2014	10.08.2016
26	Croatia	DTC	06.02.2006	20.12.2007
27	Cyprus [1]	DTC	18.02.2011	16.12.2011
28	Czech Republic	DTC	19.12.1980	17.11.1983
29	Denmark	DTC	22.11.1995	25.12.1996
30	Dominica	TIEA	21.09.2010	Not yet in force
31	Ecuador	DTC	07.12.1982	25.06.1986
32	Egypt	DTC	08.12.1987	22.09.1991
33	Estonia	DTC	29.11.1996	30.12.1998
34	Finland	DTC	05.07.1979	04.06.1982
			19.02.2016	Not yet in force
35	France	DTC	20.12.2001	01.06.2003
36	Georgia	DTC	01.06.2006	21.12.2007
		Protocol to DTC	11.03.2014	16.12.2014
37	Ghana	DTC	12.08.2004	14.12.2007
38	Gibraltar	TIEA	13.08.2009	04.11.2010
39	Greece	DTC	18.04.1966	08.12.1967
40	Guernsey	TIEA	26.03.2009	22.12.2010
41	Hungary	DTC	28.02.2011	30.12.2011
42	Iceland	DTC	18.03.1971	02.11.1973
43	India	DTC	19.06.1995	19.12.1996
44	Indonesia	DTC	30.10.1990	28.12.1991
45	Iran	DTC	20.12.1968	30.12.1969
46	Ireland	DTC	30.03.2011	28.11.2012
		Protocol to DTC	03.12.2014	30.12.2015
47	Isle of Man	TIEA	02.03.2009	05.11.2010
48	Israel	DTC	21.08.2014	09.05.2016

	EOI partner	Type of agreement	Date signed	Date entered into force
49	Italy	DTC	18.10.1989	27.12.1992
50	Jamaica	DTC	08.10.1974	13.09.1976
51	Japan	DTC	17.12.2015	28.10.2016
52	Jersey	TIEA	04.07.2008	28.08.2009
53	Kazakhstan	DTC	26.11.1997	21.12.1998
54	Kenya	DTC	17.05.1977	17.07.1980
55	Kyrgyzstan	DTC	01.12.2005	22.12.2006
56	Korea	DTC	10.03.2000	31.10.2002
57	Kuwait	DTC	18.05.1999	02.08.2002
58	Latvia	DTC	21.02.1997	26.09.1998
59	Liberia	DTC	25.11.1970	25.04.1974
60	Liechtenstein	TIEA	02.09.2009	28.10.2010
61	Lithuania	DTC	22.07.1997	11.11.1998
62	Luxembourg	DTC	23.4.2012	30.09.2013
63	Former Yugoslavian Republic of Macedonia	DTC	13.07.2006	29.11.2010
64	Malaysia	DTC	23.02.2010	21.12.2010
65	Malta	DTC	08.03.2001	27.12.2001
		Protocol to DTC	17.06.2010	19.05.2011
66	Mauritius	DTC	07.10.2011	07.12.2012
67	Mexico	DTC	09.07.2008	15.10.2009
68	Moldova (DTC with former USSR)	DTC	24.11.1981	15.06.1983
69	Monaco	TIEA	27.07.2010	09.12.2011
70	Mongolia	DTC	22.08.1994	23.06.1996
71	Morocco	DTC	07.06.1972	08.10.1974
72	Namibia	DTC	02.12.1993	26.07.1995
73	Netherlands	DTC	12.04.2012	01.12.2015
74	New Zealand	DTC	20.10.1978	21.12.1980
75	Norway	DTC	04.10.1991	07.10.1993
76	Pakistan	DTC	14.07.1994	30.12.1995
77	Philippines	DTC	09.09.2013	18.12.2015
78	Poland	DTC	14.05.2003	19.12.2004

	EOI partner	Type of agreement	Date signed	Date entered into force
79	Portugal	DTC	15.07.1980	08.10.1982
80	Romania	DTC	04.07.2001	17.12.2003
81	Russian Federation	DTC	15.10.2007	15.05.2009
82	Saint Kitts and Nevis	TIEA	19.10.2010	19.09.2016
83	Saint Lucia	TIEA	07.06.2010	28.02.2013
84	Saint Vincent and the Grenadines	TIEA	29.03.2010	07.06.2011
85	San Marino	TIEA	21.06.2010	23.12.2011
86	Serbia	DTC	26.03.1987	25.12.1988
87	Singapore	DTC	28.06.2004	12.12.2006
88	Slovak Republic	DTC	19.12.1980	17.12.1983
89	Slovenia	DTC	03.05.2006	19.12.2006
		Protocol to DTC	17.05.2011	30.07.2012
90	South Africa	DTC	25.01.1973	28.02.1975
			09.09.2008	Not yet in force
91	Spain	DTC	03.02.2011	18.10.2012
92	Sri Lanka	DTC	13.09.1979	20.02.1982
93	Sweden	DTC	14.07.1992	13.10.1994
94	Switzerland	DTC	12.03.2002	24.03.2003
		Protocol to DTC	27.10.2010	21.12.2011
95	Syria	DTC	17.02.2010	30.12.2010
96	Tajikistan	DTC	27.03.2003	21.09.2004
97	Thailand	DTC	10.07.1967	04.12.1968
98	Trinidad and Tobago	DTC	04.04.1973	28.01.1977
99	Tunisia	DTC	23.12.1975	19.11.1976
100	Turkey	DTC	19.09.2011	01.08.2012
101	Turkmenistan	DTC	24.11.1981	15.06.1983
			29.08.2016	Not yet in force
102	Turks and Caicos Islands	TIEA	04.06.2010	25.11.2011
103	Ukraine	DTC	03.07.1995	03.10.1996
104	United Arab Emirates	DTC	01.07.2010	14.07.2011
105	United Kingdom	DTC	30.03.2010	30/12/2010
		Protocol to DTC	17.03.2014	29.12.2015

EOI partner	Type of agreement	Date signed	Date entered into force
106 United States of America	DTC	01.06.2006	28.12.2007
107 Uruguay	DTC	09.03.2010	28.12.2011
108 Uzbekistan	DTC	07.09.1999	14.12.2001
	Protocol to DTC	14.10.2014	29.12.2015
109 Venezuela	DTC	08.02.1995	19.08.1997
110 Vietnam	DTC	16.11.1995	27.12.1996
111 Zambia	DTC	30.05.1973	08.11.1975
112 Zimbabwe	DTC	22.04.1988	22.04.1990

Note: 1. Note 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".

Note 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.

2. Convention on Mutual Administrative Assistance in Tax Matters (amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the amended Convention).[25] The Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The amended Convention was opened for signature on 1 June 2011.

25. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

Germany signed the 1988 Convention on 17 April 2008 and the Protocol amending the 1988 Convention on 3 November. The Convention and its amending Protocol entered into force for Germany on 1 December 2015.

Currently, the amended Convention is in force in respect of the following jurisdictions[26]: Albania, Andorra, Anguilla (extension by the United Kingdom), Argentina, Aruba (extension by the Kingdom of the Netherlands), Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Costa Rica, Croatia, Curacao (extension by the Kingdom of the Netherlands; Curaçao used to be a constituent of the "Netherlands Antilles", to which the original Convention applies as from 01-02-1997), Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands (extension by the Kingdom of Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by the Kingdom of Denmark), Guernsey (extension by the United Kingdom), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, the Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Kingdom of the Netherlands; Sint Maarten used to be a constituent of the "Netherlands Antilles", to which the original Convention applies as from 01-02-1997), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Kingdom and Uruguay.

In addition, the following are the jurisdictions that have signed the amended Convention, but where it is not yet in force: Burkina Faso, Cook Islands, Dominican Republic, El Salvador, Gabon, Guatemala, Jamaica, Kenya, Kuwait, Morocco, Philippines, Saint Lucia, Turkey, United Arab Emirates and the United States (the 1988 Convention in force on 1 April 1995, the amending Protocol signed on 27 April 2010).

26. This list includes State Parties to the Convention, as well as jurisdictions, which are members of the Global Forum or that have been listed in Annex B naming a competent authority, to which the application of the Convention has been extended pursuant to Article 29 of the Convention.

3. EU Directive on Mutual Administrative Assistance in Tax Matters

Germany can exchange information relevant for direct taxes upon request with EU member states under the EU Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation (as amended). The Directive came into force on 1 January 2013. All EU members were required to transpose it into their domestic legislation by 1 January 2013. Germany can exchange information within the framework of the Directive with Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

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

Civil Code, excerpts

Commercial Code, excerpts

Stock Corporation Act, excerpts

Limited Liability Companies Act

Fiscal Code

Income Tax Act, excerpts

Money-Laundering Act

Guidance Note on International Administrative Assistance through Exchange of Information in Tax Matters, issued by the Federal Ministry of Finance on 23 November 2015

Annex 4: Authorities interviewed during on-site visit

Federal Ministry of Finance
- International Tax Division
- Anti-Money Laundering Division
- Federal Data Technical Unit
- Tax Department
- Financial Market Policy Department

Federal Ministry of Justice and Consumer Protection

Federal Central Tax Office

Regional tax office – Land North-Rhine Westphalia and Land Berlin

Federal Financial Supervisory Authority

Annex 5: List of in-text recommendations

The assessment team or the PRG may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. A list of such recommendations is presented below.

- A.3 – Record-keeping requirements – "Germany should ensure that the method for identifying the beneficial owner of a legal person as part of customer due diligence is adequately set out in its legal framework."
- A.3 – Outsourcing the performance of customer due diligence obligations – "Germany should ensure that it has adequate access to all due diligence files."
- A.3 – Germany is recommended to monitor that its AML supervisory staff is kept at appropriate levels to ensure that the obligations to maintain beneficial ownership are adequately monitored in practice.
- B.1 – Access to information – "Peer input indicated that some requests were not answered in a timely manner or have been pending for more than a year. Whilst Germany always attempts to provide the most complete and accurate answers to the requests, Germany should also ensure that information can be accessed in a timely manner. For instance, in some cases sending a letter for the production of information to the information holder may provide a more expeditious answer than waiting to collect information in the course of a planned audit. Germany is recommended to ensure that information for EOI purposes is accessed in a timely manner."
- B.2 – During the review period, Germany received approximately 129 objections by taxpayers against exchange of information following the notification to the taxpayer. Following the receipt of an

objection, the German competent authority has to review whether the objection has merit and issue a written decision. If the decision considers that the objection has no merit, then the taxpayer is given the opportunity to file an appeal at the Cologne Fiscal Court and seek provisional relief. The competent authority holds the information for an additional period of four weeks before exchanging with the requesting jurisdiction. Based on the discussions with authorities during the on-site visit this is the most likely reason some peers reported delays. The authorities reported that in most cases the taxpayers' objections are considered unfounded and may have been made with the purposes to delay EOI. Germany is recommended to monitor this issue to ensure that this does not become a systemic problem and ensure that its rights and safeguards are compatible with effective exchange of information.

- C.2 – As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Germany is recommended to maintain its negotiation programme so that its exchange of information network continues to cover all relevant partners.
- C.3 – Germany is nonetheless recommended to only send physical mail via an international registration system where a mail tracking function is in place. In that way, it is ensured that information is adequately received by the addressee.
- C.3 – Germany is recommended to inform its treaty partners of the rights and safeguards applicable in Germany, in particular the rights that come with the status of "accused person" in the course of investigative procedures initiated by public prosecution authorities.
- C.5 – Germany should continue to ensure a good level of communication with its EOI partners.
- C.5 – Germany is recommended to further enhance its procedures to ensure that its requests are in line with the foreseeable relevance standard, supported by appropriate elements and communicated effectively.

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Peer Review Report on the Exchange of Information on Request GERMANY 2017 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 140 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, please visit ***www.oecd.org/tax/transparency***.

This report contains the 2017 Peer Review Report on the Exchange of Information on Request of Germany.

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