GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

LUXEMBOURG

2019 (Second Round)

OECD

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PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 150 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

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

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 definition of beneficial ownership, as the FATF definition is used 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 (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (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.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that 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 mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbreviations and acronyms

2015 Report	Peer review report on Luxembourg's implementation of the standard in practice
2016 Methodology	2016 Methodology used for peer reviews and reviews by non-members, approved by the Global Forum on 29 and 30 October 2015.
2016 Terms of Reference (ToR)	Terms of Reference concerning the exchange of information on request (EOI), approved by the Global Forum on 29 and 30 October 2015
ACD	*Administration des contributions directes* or Direct Tax Administration
ADA	*Administration des douanes et accises* or Customs and Excise Administration
AED	*Administration de l'enregistrement et des domaines* or Indirect Tax Administration
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
ASSEP	*Association d'épargne-pension* or Pension Savings Association
CAA	*Commissariat aux assurances* or Insurance Commission
CDD	Customer due diligence
CdN	*Chambre des notaires* or Chamber of Notaries
Circular of 31 December 2013	Administrative circular modifying the practice of the tax authorities in the collection process of information for international exchange purposes

Competent authority	The person(s) or government authority(ies) designated by a jurisdiction as being competent to exchange information pursuant to an exchange of information instrument, for instance a double tax convention, a tax information exchange agreement, and EU Directive or any other regional EOI instrument.
CSSF	*Commission de surveillance du secteur financier* or Financial Sector Supervisory Commission
CSSF Law	Law of 23 December 1998 setting up a Supervisory Commission for the Financial Sector
DTC	Double Tax Convention
EBA	European banking authority
ECB	European Central Bank
ECJ	European Court of Justice
EOI	Exchange of information on request
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FSP	Financial sector professionals
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
L1915	Law of 10 August 1915 (amended) on commercial companies
Law of 12 November 2004/AML/CFT Law	Law of 12 November 2004 on the prevention of money-laundering and terrorist financing
Law of 19 December 2002	Law of 19 December 2002 (amended) concerning the register of commerce and companies as well as book-keeping and the annual accounts of companies, and amending certain other legal provisions
Law of 27 July 2003	Law of 27 July 2003 ratifying the Hague Convention of 1 July 1985 on the Law applicable to the trust and its recognition, providing for a new regulation of fiduciary contracts and amending the Law of 25 September 1905 on the transcription of rights on immoveable property.

Law of 25 November 2014	Law of 25 November 2014 providing for the procedure applicable to the exchange of information in tax matters and the Law of 31 March 2010 approving tax treaties and providing for the procedure to be applied in the exchange of information on request.
Law of 13 February 2018	Law of 13 February 2018 implementing the provisions of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or the financing of terrorism (4th Anti-Money Laundering Directive)
Law of 1 August 2018	Law of 1 August 2018 implementing the provisions of Directive (EU) 2016/2258 of the European Council of 6 December 2016 and amending Directive 2011/16/UE regarding access by the tax authorities to information relating to the fight against money laundering and terrorist financing
LFS Law	Law of 5 April 1993 on the financial sector
LGI	*Loi générale des impôts* (*Abgabenordnung*) or general tax Law
Memo	Memorandum
Mémorial	The official gazette of Luxembourg
Multilateral Convention (MAC)	Multilateral Convention on the Mutual Administrative Assistance in Tax Matters
PRG	Peer Review Group in the Global Forum
RCS	*Registre de commerce et des sociétés* or Register of Commerce and Companies
RESA	*Recueil électronique des sociétés et associations* or the computerised register of companies and associations (formerly *Mémorial C*)
SA	*Société anonyme* or public limited company
SARL	*Société à responsabilité limitée* or limited liability company
SARL-S	*Société à responsabilité limitée simplifiée* or simplified limited liability company

SCA	*Société en commandite par actions* or partnership limited by shares
SCS	*Société en commandite simple* or limited partnership
SCSP	*Société en commandite spéciale* or special limited partnership
SE	*Société européenne* or European company
SEPCAV	*Société d'Epargne-Pension à Capital Variable* or open-end pension savings company
SICAF	*Société d'investissement à capital fixe* or investment company with fixed share capital
SICAR	*Société d'investissement à capital de risque* or investment company in risk capital
SICAV	*Société d'investissement à capital variable* or investment company where the capital is not fixed
SIF	Specialised Investment Fund
SNC	*Société en nom collectif* or general partnership
SOPARFI	*Société de participation financière* or Financial Holding Company
SPF	*Société de gestion de patrimoine familial* or family wealth management company
TCSP	Trust and Company Service Providers
TIEA	Tax Information Exchange Agreement
VAT	Value-Added Tax
UCI	Undertaking for collective investment
UCIT	Undertakings for Collective Investment in Transferable Securities

Executive summary

1. This report analyses Luxembourg's implementation of the international standard for transparency and exchange of information on request, as part of the second round of evaluation conducted by the Global Forum based on the Terms of Reference of 2016. It assesses the legal implementation of the standard on 19 December 2018 and its application in practice, particularly with regard to the requests for information received and sent during the period from 1 October 2014 to 30 September 2017. This report concludes that Luxembourg is overall "**Largely Compliant**" with the standard.

2. Luxembourg has already been the subject of three assessments by the Global Forum in application of the 2010 Terms of Reference, in 2011 (legal framework), 2013 (legal and practical framework for the years 2009-11) and in 2015 (legal framework and practice for the period 1 January 2012 to 30 June 2014). The 2013 report concluded that Luxembourg was Non-Compliant with the standard. Luxembourg then made rapid progress to obtain the overall rating of "Largely Compliant" in October 2015 (hereinafter the 2015 Report) following the evaluation of the Phase 2 supplementary report.

3. The following table compares the results of the 2015 Report with those of this report.

Element		Round 1 report (2015)	Round 2 report (2018)
A.1	Availability of ownership and identity information	Largely Compliant	Largely Compliant
A.2	Availability of accounting information	Compliant	Compliant
A.3	Availability of banking information	Compliant	Compliant
B.1	Access to information	Largely Compliant	Compliant
B.2	Rights and Safeguards	Largely Compliant	Largely Compliant
C.1	EOIR Mechanisms	Largely Compliant	Compliant
C.2	Network of EOIR Mechanisms	Compliant	Compliant
C.3	Confidentiality	Largely Compliant	Compliant
C.4	Rights and Safeguards	Compliant	Compliant
C.5	Quality and timeliness of responses	Largely Compliant	Largely Compliant
	Overall rating	**Largely Compliant**	**Largely Compliant**

Progress made since previous review

4. Luxembourg continues to make progress in the application of the international standards on transparency and EOI on request. Already in 2015 Luxembourg had made improvements to its legal framework and its EOI practice, such that the majority of recommendations made in 2015 related to monitoring the implementation of these changes.

5. This report establishes that Luxembourg has generally applied the international standards for EOI on request satisfactorily during the peer review period (from 1 October 2014 to 30 September 2017), resulting in an upgraded rating on three assessed elements out of ten.

6. Progress was made in particular on EOI related to banking information, which was previously of concern. The legal framework and the EOI practice in Luxembourg are now in line with the international standards, and Luxembourg has applied sanctions where the information holder refused to provide the said information (see section B.1).

7. More generally, Luxembourg's EOI network is now broad in scope and in line with the EOIR standards, in particular due to the application of the Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) since 2014. The interpretation of the Luxembourg treaties is also satisfactory, especially on the application of the foreseeable relevance standard related to requested information for tax purposes. During the review period, the Luxembourg tax administration has sent only a very few number of requests for clarification and has not rejected any EOI request on the basis of lack of foreseeable relevance (see sections C.1 and C.2). Further, the practices of the past years regarding confidentiality removed all concerns on Luxembourg disclosing too much information provided by the requesting jurisdiction (see section C.3).

8. Finally, regarding the transparency on ownership of companies, Luxembourg carries out appropriate monitoring activities on the obligation to immobilise bearer shares. This monitoring was conducted effectively by means of a tax campaign for the taxable year 2016 and is carried out on an ongoing basis by the AML/CFT supervision of custodians (section A.1).

9. Luxembourg's EOI partners generally expressed their satisfaction regarding its EOI practice during the review period and noted important progress after such period. All the recommendations on the elements mentioned above have been implemented and are removed. However, there remains a few elements where improvement is required.

Key recommendations

10. In this report, Luxembourg is requested to make improvements on three essential elements: 1) the availability of beneficial ownership information on Luxembourg stock companies and partnerships, 2) the application of rights and safeguards of taxpayers, and 3) the timeliness of response to EOI requests from Luxembourg EOI partners.

11. First of all, the availability of beneficial ownership information on companies and legal arrangements is an extension of the international EOIR standard from 2016. Luxembourg meets this requirement through the application of its AML/CFT framework. Although the AML/CFT framework is broad in scope, it does not cover all Luxembourg stock companies and partnerships and Luxembourg must ensure that this information is available for all of them. Luxembourg amended its legal framework in 2018 (amongst others, by improving the definition of beneficial owner) and improved the supervision of the AML-obliged persons under the AED's control in 2016. Luxembourg must now ensure that these changes are applied effectively in practice (see section A.1).

12. Further, Luxembourg experienced several changes in the rights and safeguards of taxpayers in recent years. While the law had been amended in 2014 to abolish the former appeals procedure against the injunctions from the tax administration to provide the information requested by its EOI partners, a judgement from the European Court of Justice (ECJ) dated 16 May 2017 (Berlioz judgement) partially put this abolition into question. In its Berlioz judgment, the ECJ modified the requirements to appeal against sanctions applied against a person failing to provide the requested information to the tax administration. In light of the uncertainty brought by the Berlioz judgement in Luxembourg, Luxembourg will have to monitor the appeals (element B.2). This is because since the Berlioz judgement, at least 37 appeal proceedings have been introduced before the administrative courts to challenge the legality of the injunction decision notified to the information holders, which led to important delays in EOI. It is therefore recommended that Luxembourg amend its domestic law to consider the Berlioz judgement while ensuring an effective EOI in practice.

13. Finally, Luxembourg must improve its response time to EOI requests from its partners. Over three years under review, the number of EOI requests increased by 40% (from 1 380 in the period from 1 January 2012 to 30 June 2014 to 2 309 EOI requests in the period from 1 October 2014 to 30 September 2017) and response times have lengthened. Luxembourg increased the staff in charge of EOI and optimised the EOI team's resources to the maximum, but this was not enough to avoid a deterioration in timeliness over the period, and the number of EOI requests increased again

afterwards. Since then, Luxembourg has set up a Task Force to respond to delays in responses. Luxembourg should continue to improve the timeliness of responses and ensure that adequate resources are allocated to EOI activities.

Overall rating

14. In the light of the recommendations set out above, Luxembourg's overall rating remains Largely Compliant.

15. During the peer review period (from 1 October 2014 to 30 September 2017), Luxembourg received 2 309 EOI requests of which 92.5% came from EU partners; France representing 52% of the EOI requests, followed to a lesser extent by, Belgium, Spain, Denmark and Sweden. Most EOI requests received related to accounting information and banking information; a smaller number of requests concerned the ownership of companies and identity information. Despite a tangible fall in performance in terms of the timeliness of responses, Luxembourg still remains a reliable partner overall which strives to meet the conditions of the standard. Luxembourg encountered no difficulties in responding to group requests, since it had agreed with its EOI partners on the details to be provided in the EOI request. In addition, Luxembourg has been very active in other fields of tax transparency, notably EOI on rulings and APAs, which added to the resources constraints of the EOI team.

16. The 2016 Terms of Reference now evaluate the quality of the requests made, and Luxembourg has a good system for ensuring that its requests meet the requirements of EOI agreements (Luxembourg sent 46 EOI requests during the review period).

17. The Report was approved by the Peer Review Group at its meeting from 11 to 14 February 2019 and was adopted by the Global Forum on 15 March. A follow-up report on the measures taken by Luxembourg to implement the recommendations made by the Peer Review Group should be produced by 30 June 2020, in accordance with the procedures adopted in the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determinations and Ratings	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)*		
The legal and regulatory framework is in place, but certain aspects of the legal implementation of the element need improvement.	Although Luxembourg financial institutions and other professionals subject to the AML/CFT framework must identify beneficial owners of their clients, not all Luxembourg stock companies and partnerships are obliged to maintain a relationship with a Luxembourg AML-obliged person.	Luxembourg should ensure that information about beneficial owners of Luxembourg stock companies and partnerships is available in all cases.
Largely Compliant	Since 2011, the AED has been responsible for overseeing certain non-financial professions (accountants, tax advisors, and corporate and trust service providers). Since 2016, the AED has developed an appropriate prevention and supervision plan.	It is recommended that the AED continue the effective implementation of its Non-Financial Professions Supervision Programme.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place		
Compliant		
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place		
Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place.		
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)*		
The legal and regulatory framework is in place, but certain aspects of the legal implementation of the element need improvement.	Since the ECJ Berlioz judgement, at least 37 appeals have been brought before the administrative court to challenge the legality of the injunction decision notified to information holders. As at 19 December 2018, 34 appeals are still pending before the administrative court, generating major delays in the exchange of information in the cases concerned. These appeals cast uncertainties over the consequences of the Berlioz judgement for Luxembourg's domestic law.	It is recommended that Luxembourg adapt its domestic law to take account of the Berlioz judgement and to ensure that information can be effectively exchanged in practice.
Largely Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		
Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place		
Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		
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:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
Largely Compliant	Despite the fact that Luxembourg has increased staff numbers during the peer review period, these resources were not sufficient to cope with the substantial increase in the number of EOI requests received from its partners. The EOI team was organised to provide maximum efficiency, but the timeliness of response was affected by the lack of staff.	It is recommended that Luxembourg continue to improve the timeliness of responses and ensure that adequate resources are allocated to the EOI activities.

Overview of Luxembourg

18. This overview presents basic information about Luxembourg for the purpose of providing some context for the analysis of this report. It does not claim to be a complete picture of the legal and regulatory systems of the jurisdiction.

Legal system

19. Luxembourg is one of the 28 members of the EU. European regulations are directly applicable to it. EU directives, notably those relating to the EOI and administrative co-operation on fiscal matters for the prevention of money laundering, must be transposed into Luxembourg's law.

Tax system

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

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

Financial services and non-financial professions

22. Luxembourg is an important financial centre. At 31 December 2017, its banks' balance sheets amounted to EUR 743 831 million, compared to EUR 769 981 million at 31 December 2016. The financial and insurance activities sector, expressed as a percentage of GDP, represents around 25% of the total value added created in Luxembourg in 2017.

23. The table below contains the number of financial institutions falling within the remit of the Financial Sector Supervisory Commission (CSSF) for the period from 2015 to 2017.

Financial institutions	31.12.2017	31.12.2016	31.12.2015
Credit institutions	141	141	143
Investment companies	103	108	106
FSPs	191	196	202
Payment institutions	9	8	9
Electronic money institutions	6	4	5
AIF managers	227	216	198
Asset management companies (Chapters 15 and 16)	373	373	381
Undertakings for collective investment (Parts 1 and 2 of the 2010 Law; SIF and SICAR)	4 071	4 175	4 182
Approved securitisation organisms	34	34	32
Pension funds	13	14	14

24. The financial sector is regulated by the Financial Sector Act of 5 April 1993 and various specific laws regarding each category of professional concerned. The CSSF, which operates under the authority of the Minister of Finance, is the competent authority for the prudential supervision of:

- credit institutions and other professionals in the financial sector within the meaning of the Law of 5 April 1993 on the financial sector
- alternative investment fund managers approved under the Law of 12 July 2013 on alternative investment fund managers, collective investment schemes, pension funds in the form of SEPCAV or ASSEP
- authorised securitisation organisations, fiduciary representatives working with a securitisation organisation, SICARs
- payment institutions, electronic money institutions, postal financial services provided by the post and telecommunications company, markets for financial instruments, including their operators and auditors.

25. The CSSF is also the competent authority for the public oversight of the audit profession. The CSSF is also responsible for examining the approval files of all professionals in the financial sector who come under its supervision as defined in Article 2 of the CSSF Law. On the other hand, approval is given by the European Central Bank for credit institutions and respectively by the Ministry of Finance and the CSSF for other professionals in the financial sector.

26. As for holding companies, commonly known as SOPARFI (Financial Holding Company), they do not constitute a particular type of company, and are governed by the general law applicable to companies (L1915). Their purpose is the management of the interests of a group of companies but they may also have a commercial activity directly or indirectly related to the management of its holdings. As a SOPARFI does not constitute a specific type of company, it is subject to general taxation rules and the same legal obligations as all other legal entities with regard to the availability of information, provided for by Luxembourg company law.

27. In Luxembourg, notaries, bailiffs, lawyers, auditors, chartered accountants and real estate agents are all regarded as constituting non-financial professions and companies under the AML/CFT legislation, and are thus required, pursuant to this legislation, to perform customer due diligence.

AML/CFT legal framework

28. The Law of 12 November 2004 on the prevention of money-laundering and terrorist financing (AML/CFT Law), among others, defines predetermined categories of institutions and professions with special AML/CFT obligations, sets out the powers of supervision and penalisation by the self-regulatory and supervisory bodies, and also deals with co-operation between the different authorities, including the financial intelligence unit, the CRF.

29. The last evaluation by the Financial Action Task Force (FATF) dates back some time, to 2010. It found deficiencies in the AML/CFT legal framework, especially those identified by the former recommendation 5 (new recommendation 10) which deals with customer due diligence, professional secrecy, third parties and introducers, designated non-financial businesses and professions (new recommendation 22), and the beneficial owners of companies and trusts and similar legal arrangements. Luxembourg has strengthened its legislative and regulatory framework to address the deficiencies identified in the 2010 evaluation. The 2014 follow-up report concluded that Luxembourg could be removed from the ongoing FATF monitoring.

30. Luxembourg has made much progress in terms of legislation and operations as concerns AML/CFT since the FATF's mutual evaluation in 2010. It has enacted the essentials of the fourth European Directive on money laundering and terrorist financing in its Law of 13 February 2018[1] which is designed to introduce the changes needed to the country's legal framework to transpose the provisions of the fourth AML/CFT Directive.[2] The AML/CFT Law, amended by the Law of 13 February 2018, aims to bring Luxembourg's legal framework into line with the changes made to the recommendations of the FATF when these recommendations were reviewed in 2012, especially those changes that concerned how to define the "beneficial owner" of companies and trusts. The fourth Directive goes further, instituting a register of beneficial owners, although Luxembourg has yet to transpose these particular provisions into its domestic law. However, Luxembourg indicates that it will put in place a public register of beneficial owners within the deadlines set by the 5th AML/CFT Directive,[3] that is by 10 January 2020 at the latest.

31. Aggravated evasion and tax fraud (*fraude fiscal aggravée/escroquerie fiscale*) are prosecuted in the criminal courts, on the grounds that they are particularly serious offences. Both are also considered predicate offences for money laundering, according to the requirements of the revised 2012/2013 FATF standard and the fourth AML/CFT Directive cited above.

32. The tax authorities may pass on to the CRF, at its request, information likely to be of use to a probe into money laundering or terrorist financing. This provision is designed to ensure that the extension of the money-laundering offence to primary offenses of aggravated tax evasion and tax fraud subject to criminal proceedings enables the CRF to ask the tax administrations for information that is likely to be useful when it carries out an analysis of money laundering or terrorist financing. In addition, the judicial authorities may share any information with the tax administration that may be useful to them in fulfilling the missions entrusted to them.[4]

1. Law of 13February 2018, Memorial No. 131 of 14 February 2018.
2. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on prevention of the use of the financial system for the purpose of money laundering or terrorist financing.
3. Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on prevention of the use of the financial system for the purpose of money laundering or terrorist financing, and Directives 2009/138/EC and 2013/36/EU.
4. Memorial A – No. 274 of December 27, 2016, page 5139, http://legilux.public.lu/eli/etat/leg/loi/2016/12/23/n11/jo.

Recent developments

33. Recent legislative developments concern: (i) anti-money laundering measures; (ii) the availability of information on the beneficial owners of companies and fiducies and (iii) changes to Luxembourg's legal framework following the Berlioz judgement;

1. Concerning the fight against money laundering, the Law of 23 December 2016 enacting the 2017 tax reform provides to the tax administrations and to the competent authorities with new legal tools for detecting and penalising fraud. This law also extends the offence of money laundering to criminal tax offences.

2. Luxembourg recently implemented the fourth and fifth AML Directive as regards the establishment of a register of beneficial owners by Law of 13 January 2019[5] (the Register of Beneficial Owners (RBE Law)). The RBE Law, which will enter into effect on 1 March 2019, requires all entities that are registered with the Luxembourg trade and companies register (*Registre de Commerce et des Sociétés*, or RCS) to:

   a. obtain and hold adequate, accurate and current information on their beneficial ownership and

   b. disclose, and regularly update, information as to their beneficial owners with the RCS.

   The obligation also covers the Luxembourg branches of foreign companies. This register will grant public access to this information. The RBE Law also covers Luxembourg investment funds, as well as Luxembourg branches of commercial or civil companies established in other jurisdictions. The existing entities subject to this law will have to comply before 1 September 2019 by providing the identity of their beneficial owners to the RCS. Any change in beneficial ownership information will have to be filed to the RCS within one month. Fines ranging from EUR 1 250 to EUR 1 250 000 may be imposed on the entities and their beneficial owners for non-compliance with their filing requirements. However, this report does not consider this recent development, as its adoption and publication took place after the cut-off date of this report.[6]

5. As Law of 13 January 2019 was adopted after the cut-off date of this report (19 December 2018), it could not be taken into consideration in this report.

6. Paragraph 19 of the 2016 Methodology for peer reviews and non-member reviews provides that "The last date on which changes to the legal and regulatory framework can be considered will be the date that the draft report is first sent to the

3. The Law of 10 August 2018 on information to be obtained and retained by the fiduciaires (fiduciaries) of fiducies transposes Article 31 of Directive (EU) 2015/849.[7] The Law of 1 August 2018 grants the tax administration formal access to information relating to the AML, aiming to ensure compliance with the due diligence obligations by financial institutions in Luxembourg for automatic EOI purposes. Luxembourg has confirmed that the lack of such a law has not prevented the tax administration from accessing information within the framework of the EOI on request, which is covered by Article 2 of the Law of 25 November 2014, requiring all third-party information holders to provide information requested in the injunction decision.

4. Concerning the Berlioz judgement (see element B.2), a bill tabled in Parliament on 19 December 2017 aims to update the Law of 25 November 2014 on access to information by allowing the holder of the information to file an action for annulment with the administrative tribunal. The taxpayer may also access the "minimal" or "additional" information concerning the request for information. Under the Bill, the tax administration will remain required to verify the formal regularity as well as the foreseeable relevance of the request for information; the holder of the information will have the right to appeal against the injunction decision issued against him/her. However, the request for information will not be disclosed to the information holder. In case of a judicial proceeding against the injunction decision, the claimant will have access to the minimal information in relation to the identity of the taxpayer concerned and the tax purpose for which the information is sought. Only the judge will have access to the request letter and any additional information supplied by the requesting tax authority. The proceedings before Court will be shorter than those provided for under ordinary law (appeal within one month instead of three months, etc.)

5. Luxembourg has also strengthened its EOI team to cope with the increase in EOI requests (see element C.5).

PRG for written comments (hereafter "cut-off date"). For this purpose, legislation will be considered only if it is in force by the cut-off date".

7. EU Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

Other recent developments concerning the exchange of information in the broad sense

34. Since the 2015 Report, Luxembourg has been engaged in the automatic exchange of financial information within the framework of the Global Forum based on the Standard for automatic exchange of financial account information in tax matters (common reporting standard, CRS). The first exchanges took place in September 2017.

35. The OECD (BEPS action plan) and the European Commission provide for the exchange of tax rulings (including Advance Pricing Agreements (APA)) by multinational businesses. Between December 2016 and December 2017, therefore, Luxembourg exchanged, on its own initiative, over 11 200 information on rulings and APAs under BEPS Action 5 framework. Luxembourg has exchanged the Country-by-Country Reports under the BEPS programme in 2018.

Part A: Availability of information

36. Elements A.1, A.2 and A.3 assess the availability of ownership and identity information for relevant legal persons and legal arrangements, and the availability of accounting information and banking information.

A.1. Information on ownership, beneficial ownership and identity

Jurisdictions should ensure that their competent authorities have information on legal ownership, beneficial ownership and identity for all relevant legal persons and arrangements.

37. The 2015 Report concluded that element A.1 was legally in place and that its implementation complied with the standard for the most part. The practical implementation of these obligations and the supervisory measures were considered satisfactory. The legal retention period for the information (at least five years or indefinitely, as the case may be) and the penalty regime associated with the legal requirements in the case of non-compliance ensure that information is available in practice.

38. From the comments made by the peers, it was clear that the competent authority in Luxembourg was able to provide information in respect of all relevant entities and arrangements. Just one monitoring recommendation was introduced, concerning the practical implementation of the new obligations concerning the immobilisation of bearer shares.

39. Since the publication of the 2015 Report, there have not been any changes in the legal framework that would constitute grounds on which to challenge the conclusions of that report with regard to the elements assessed. The supervisory measures applied in practice to guarantee the availability of information about legal ownership remain satisfactory.

40. The 2016 Terms of Reference strengthened the obligation of jurisdictions by requiring information to be adequate, accurate and up to date, kept for at least five years and made available in a timely manner. The main amendment consists in the introduction of the concept of beneficial owner.

Luxembourg has yet to transpose into its domestic laws that section of the fourth EU Directive on anti-money laundering measures, which requires the creation of a register of beneficial ownership of legal entities and legal arrangements in all Member States, and it meets its obligations relating to beneficial owners through its AML/CFT framework.

41. The obligation to identify beneficial owners does not cover all stock companies and partnerships in Luxembourg as required by the EOI standard, since they do not have the obligation to engage in a stable customer relationship with a person subject to the AML/CFT Law. However, the AML/CFT coverage is broad as it encompasses banks and financial institutions, notaries, lawyers, certified accountants and Trust and Company Service Providers. Accordingly, in practice, the identity of beneficial owners is likely available from financial institutions and regulated professionals. The deficiency needs to be corrected and Luxembourg should ensure that information about beneficial owners of stock companies and partnerships in Luxembourg is available in all cases.

42. Luxembourg has made much progress in terms of legislation and operations as concerns AML/CFT since the FATF's mutual evaluation in 2010. Recently, with the Law of 13 February 2018, Luxembourg has improved the definition of beneficial owner, which is now fully in line with the international standard. Since 2011, moreover, the AED has been responsible for the oversight of non-financial professions. Since 2016, the AED has drawn up a satisfactory prevention and supervision plan. These professions include, but are not limited to, accountants, tax advisors, and corporate and trust service providers, who are relevant to the availability of beneficial ownership information. Notaries, lawyers, chartered accountants and auditors remain self-regulated. It is recommended that Luxembourg ensure that the new provisions of the Law of 13 February 2018, especially insofar as they concern the definition of the term "beneficial owner", be effectively implemented in practice and that the AED pursue the effective deployment of its programme for the supervision of non-financial professions.

43. During the peer review period, Luxembourg received over 2 300 requests, of which just a hundred concerned information about the ownership of Luxembourg entities. Almost all requests for information about ownership concerned SARLs (the commonest type of company in Luxembourg) and to a lesser extent SAs. Luxembourg received no requests regarding fiducies. The information was available in all cases. Peers were generally satisfied with the information received.

Table of determinations and ratings

Legal framework		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	Although Luxembourg financial institutions and other professionals subject to the AML/CFT framework must identify beneficial owners of their clients, not all Luxembourg stock companies and partnerships are obliged to maintain a relationship with a Luxembourg AML-obliged person.	Luxembourg should ensure that information about beneficial owners of Luxembourg stock companies and partnerships is available in all cases.
Conclusion: the element is in place but needs improvements		
Practical implementation of the standard		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of the standard in practice	Since 2011, the AED has been responsible for overseeing certain non-financial professions (accountants, tax advisors, and corporate and trust service providers). Since 2016, the AED has developed an appropriate prevention and supervision plan.	It is recommended that the AED continue the effective implementation of its Non-Financial Professions Supervision Programme.
Rating: Largely Compliant		

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

44. In 2015, five types of stock company could be created in Luxembourg: the **Société anonyme** (SA) or "public limited company", the **Société Européenne** (SE) or "European company", the **Société en commandite par actions** (SCA) or "partnership limited by shares", the **Société à responsabilité limitée** (SARL) or "limited liability company" and the **Société coopérative** or "co-operative company".

45. Since the 2015 Report, two new forms of company have been created, namely:

- The **SARL simplifiée** (SARL-S),[8] which can be created by private deed and for which it is thus no longer necessary to go before a notary, has been possible since 16 January 2017. The SARL-S is generally subject to the same rules as a SARL, with two important differences:
  - Unlike the SARL, the SARL-S is reserved for natural persons.
  - The SARL-S may only engage in commercial, industrial or artisanal activities or liberal professions. Unlike the SARL, the SARL-S are restricted to engaging in financial activities; it may not act as a holding company, for example, or a financing company.
- The **Société par actions simplifiée** (SAS),[9] which is similar to the SA, but has more flexible governance rules. Like the SA but unlike the SARL-S, it need not publish the identity of the partners in the RCS.

46. These types of entity are required to hold information about their legal owners in accordance with the requirements of business and tax law. SARL and SARL-S companies must also identify their partners in the RCS. Under the AML/CFT Law, moreover, professionals setting up companies in Luxembourg (such as domiciliation agents, banks, lawyers, etc.) must identify their clients, the legal owners and beneficial owners of these companies. Each of these regimes is subject to appropriate surveillance by the various authorities.

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

8. The SARL-S was introduced into Luxembourg's statute books by the Law of 23 July 2016 for the purpose of creating the simplified limited liability company.
9. The SAS was introduced into Luxembourg's business law by the Law of 23 July 2016.

48. It should be noted that several types of tax and regulatory regime are applicable in Luxembourg to investment vehicles (see below: Particular cases of investment companies (SICAV, SICAF, SICAR and SPF) and holding companies (SOPARFI)). These companies must nevertheless be incorporated in one of the legal forms that a legal entity can take in Luxembourg.

49. At 30 December 2017, the total numbers of legal entities registered in the RCS (including branches of foreign companies), were:

Type of company	Total number
Société à responsabilité limitée (SARL) or "limited liability company"	70 360
Société anonyme (SA) or "public limited company"	49 631
Société en commandite par actions (SCA) or "partnership limited by shares"	1 704
Foreign companies (branches/place of effective management)	1 393
Société à responsabilité limitée simplifiée (SARL-S) or "simplified limited liability company"	519
Société par actions Simplifiée (SAS) or "simplified public limited company"	147
Société coopérative or "co-operative company"	127
Société européenne (SE) or "European company"	27
Total number	123 908

Obligations regarding information on legal ownership and identity

50. Information concerning the legal ownership of stock companies can be obtained from the RCS, the tax administration and the company itself. The compliance level of taxpayers in Luxembourg (see A.2 *Oversight by the tax administration in practice*) combined with strict recording processes on the RCS and supervision by the RCS and tax administration guarantee the availability of information on legal ownership of stock companies. This information has been available whenever it has been requested, as confirmed by Luxembourg's EOI partners in their inputs.

Transmission to the Register of Commerce

51. All stock companies must file their incorporation papers with the RCS subject to penalties. In practice, the Luxembourg authorities report that companies generally file their incorporation papers in good time, since doing so is a prerequisite for the company and its partners to benefit from their rights and safeguards. The RCS verifies the information submitted to it (crosschecking the information in the memorandum and articles of association against the information given in the papers of incorporation). In the event that they are found to be non-compliant, they are not recorded, and the company has no legal existence or identity. Luxembourg branches of foreign companies that are not registered with the RCS will not benefit from a RCS registration number and therefore will not be able to benefit from the application of the law (including registration for VAT purposes).

52. Notaries carry out the background check when the company is incorporated. All companies, with the exception of co-operative companies and SARL-S, must be incorporated by notarial deed. When a company is set up in Luxembourg, the notary responsible for preparing the articles of incorporation must check all the information required for said incorporation, including information about ownership and identity, in order to meet the requirements of AML/CFT regulations.

53. Any changes affecting the identity of partners in an SARL, SARL-S or a co-operative company must be recorded with the RCS in the month following said changes.[10] However, the deed of incorporation of SA, SE, S.e.c.s and foreign companies does not necessarily contain identity and ownership information. Any change not recorded with the RCS is not enforceable against third parties. It is thus in the best interest of the new partners that the information be published as soon as possible in order to make it enforceable against these parties. Where it appears that the information has not been provided to the RCS, the RCS forwards the files to the State Prosecutor; for instance when board members have resigned and have not been replaced or annual accounts have not been filed.

54. Information on the identity of the sharehe is not available from the RCS, but from the companies themselves in the register of shareholders. Furthermore, in case of general meetings held before a notary (for example where there is an amendment to the articles of association), the share register will be checked by the notary to assess whether the General Assembly is valid. Finally, the share register is open to inspection at the registered office by any shareholder.

Record keeping by companies

55. Company law requires all companies, including foreign companies with a branch or its place of effective management in Luxembourg, to keep a register of nominative shares at the company's headquarters.[11] This register may be consulted by partners and the tax authorities. If nominative shares are converted to bearer shares, the register will record the date on which this conversion takes place (see section A.1.2 on bearer shares). This information must be kept for at least 5 years, including for companies that ceased to exist (see A.2. Companies that ceased to exist).

56. Control of the register of shares/units held by the company comes under the responsibility of the partners/shareholders themselves. Ownership of shares in SAs, SASs, SEs and SCAs is established on being recorded in the register, which means that transfers are only effective from the point of view of

10. Article 19-1 of the Law of 19 December 2002.
11. Articles 430-3 and 430-4 of the Law of 1915.

the company and third parties from the date of them being recorded in the register of shareholders. Hence, dividends will be paid to the owner whose name has been entered in the register. The company must ensure that the register is up to date before each general assembly. In practice, general assemblies of companies with many shareholders are often prepared with the help of a chartered accountant, domiciliation agent or notary. The representatives of these professions state that they rarely encounter difficulties over register entries. Checking whether registers of shareholders or partners are properly kept is one of the elements that are checked in the course of a tax audit (see below and section A.2).

Compliance with tax obligations

57. All companies engaging in a commercial activity as their main or secondary line of business must register with the tax administration, which checks the existence of companies. When registering, all companies must provide information on identity and ownership. Companies that are liable for VAT must also register with the AED and provide information about their shareholders.

58. Companies are also required to submit an annual tax return to the ACD. This return must include the names of shareholders holding at least 10 % of the company's capital. Additional information about shareholders must also be disclosed, such as information necessary for the application of some fiscal provisions (exemption from withholding tax on dividends, taxation of benefits granted to shareholders), the attendance list of partners and shareholders and the minutes of the general meetings of shareholders. Fines are applicable for the late filing of tax returns (see element A.2. Availability of accounting information).

59. The ACD verifies the retention of records during tax audits. The Luxembourg authorities have confirmed that in practice, whenever they request information, companies always provide it. During the reporting period, the ACD conducted 171 onsite visits, representing a very small percentage of registered companies (see element A.2). In addition, during the period under review, the ACD launched bankruptcy proceedings for 245 taxpayers[12] and referred these cases to the State Prosecutor for liquidation of the company (in cases of non-compliance with tax or accounting obligations, including keeping the shares register). Similarly, the AED, which is responsible for auditing the records of companies it controls, initiated a bankruptcy process for 1 182 taxpayers and sent 1 228 files to the State Prosecutor for liquidation of companies. The verification of the shares register forms part of these tax audits but Luxembourg does not have specific statistics for checks of share registers or sanctions applied.

12. This is the ultimate possibility of recourse for recovery of tax debts in case of persistent credit default or insolvency of the company.

Compliance with AML/CFT obligations

60. AML/CFT obligations overlap largely with obligations under tax and company law, and are therefore only complementary in ensuring the availability of information on the ownership of companies. They have proved their relevance in establishing beneficial ownership, however, as shown in the dedicated section below.

Nominee shareholders

61. The Anglo-Saxon concept of "nominee shareholders" does not exist in Luxembourg civil and commercial law, which does not contain a concept comparable to the Anglo-Saxon nominee. The closest concept in Luxembourg is that of proxy. Under the proxy, if an agent acts in the name and on behalf of the principal, the identity of the beneficial owner (the principal) will be known. As mentioned in the 2015 Report, the AML/CFT legislation nevertheless provides for the obligation of a complete range of service providers to ensure the identification of their customers, including when a shareholder is a nominee shareholder. Any professional serving as nominee shareholder for another person (e.g. in application of a foreign law) is considered to be providing services to companies and trusts. This professional is furthermore subject to due diligence obligations with respect to customers.

62. In practice, given that the professionals acting as nominees (lawyers, accountants, notaries and service providers) are subject to the AML/CFT obligations, ownership and identity information is available. The Luxembourg authorities received around 50 requests for nominee shareholder information during the period under review. They also confirmed that they had no knowledge that non-professional nominees would have acted in this capacity in Luxembourg, all the more so that this concept does not exist in Luxembourg civil law.

Investment companies (SICAV, SICAF and SICAR) and SPF

63. Three types of investment company can be created in Luxembourg: **SICAVs** (under the form of an SA or an SE), **SICAFs** (under the form of an SA, an SE, an SCA, an SARL, an SCS, an SNC or a co-operative company), and **SICARs** (investment company in risk capital, under the form of an SA, an SARL, an SCA or an SCS). **Family wealth management companies** (sociétés de gestion de patrimoine familial, SPF) do not constitute either a new type of company as such; they take the form of an SARL, an SA, an SCA or a co-operative company, and their exclusive purpose is to acquire, hold, manage and realise financial assets.

64. Information for these companies is available and verified by various means, on the same basis as other companies. As of 31 December 2017, the total number of SICARs, SICAFs, SICAVs and SPFs, which managed EUR 4 159.6 million, was as follows:

Legal entity	Total number
SICAV	2 196
SICAF	25
SICAR	286
SPF	2 094

65. Since the aforementioned companies must be incorporated according to one of the legal forms that a legal person may assume in Luxembourg, the availability of information relating to their ownership is ensured under the same conditions as those applicable to the companies of which they take the form. They must be registered with the AED and file a quarterly return for payment of the subscription tax. The AED verifies that all the conditions required for the registration of the company are met; otherwise, the entity loses its qualification and special tax treatment. The AED also performs audits to ensure that these companies have paid the subscription tax and that sanctions are provided for in case of default.

Information about beneficial owners

66. The 2016 Terms of Reference introduced the obligation to make information about beneficial owners available. This element has not been specifically assessed in the 2015 report, although some paragraphs are dedicated to it (see paragraphs 115, 116 and 117).

67. To a great extent, and thanks largely to its AML/CFT legislation, the main source of which is the Law of 12 November 2004, now several times amended, Luxembourg meets its obligations with regard to the availability of information[13] about the beneficial owners of stock companies. Luxembourg has transposed the provisions of the Fourth Directive, including the definition

13. The Act of 12 November 2004 on the fight against money laundering and the financing of terrorism, amended several times and recently by the Law of 13 February 2018 and by two Laws of 10 August 2018: one relating to the information to be obtained and keep the trustees implementing Article 31 of the 4th AML/CFT Directive and the other on the organisation of the Financial Intelligence Unit (FIU).

of beneficial owner and all improvements concerning the risk analysis of customers and their service by AML-obliged persons. The availability of this information is based on the due diligence obligations imposed on entities subject to the AML/CFT requirements, which do not fully cover the 2016 Terms of Reference, as is the case for the 13 February 2018 Law which replaces it.

68. Although there are some legal obligations[14] for a Luxembourg company to engage an AML-obliged person who would have the obligation to hold the identity of the beneficial owners, these obligations do not ensure that information on the beneficial ownership of Luxembourg companies is available in all cases. AML/CFT legislation, however, covers all professionals relevant to the standard (i.e. financial institutions, investment fund management companies, chartered accountants and auditors, lawyers and tax advisers as well as all professionals considered as service providers for companies). The Luxembourg authorities identified that around 95% of entities registered for tax purposes have a bank account with a bank in Luxembourg. This data does not mean necessarily that the other 5% do not have an engagement with a Luxembourg AML-obligated person who would avail of the beneficial ownership information on their customer. However, it demonstrates that the gap is likely to be somewhat limited in practice.

69. Although the use of service providers (e.g. domiciliary agents, accounting services) is not mandatory, it is very common in Luxembourg. The Luxembourg authorities add that in practice and for reasons of security and legal reliability, stock companies use these professionals to exercise their legal and regulatory obligations. These service providers are bound by the AML/CFT obligations like all banks and must identify their clients and retain information on the identity of their clients and the beneficial owners of partnerships, as well as all information regarding transactions conducted, for five years. Luxembourg companies generally have a bank account with a bank in Luxembourg (see Element A.3 for banks' AML/CFT obligations).

14. For example, the law requires medium-sized companies as well as large corporations to use the services of an auditor to audit accounts. Small companies may use them but are not required to do so. However, there is no provision in commercial law that requires a legal entity to have a bank account, but Luxembourg indicates that in practice it is virtually inconceivable for a legal entity to be able to operate without having a bank account. Finally, even if notaries are solicited for the incorporation of the company (except for simplified private limited companies and co-operative companies), there are no notarial deeds for a simple transfer of shares or shares.

Obligations to identify clients and beneficial owners

70. The AML/CFT Law (Article 3 (2) AML/CFT)[15] provides that all AML-obliged persons are required to identify their customers by means of due diligence measures including:

- identifying the customer and checking their identity, based on documentation, data or information from reliable, independent sources[16]
- (…) identifying the beneficial owner and taking "reasonable steps" to check their identity, in such a way as to assure the professional that they know who the beneficial owner is, and, for legal entities, fiducies and similar legal arrangements, taking "reasonable steps" to understand the ownership and control structure of the customer
- Obtaining information about the purpose and proposed nature of the business relationship
- Exercising constant vigilance in the business relationship, especially by examining the transactions conducted throughout the duration of the business relationship and, if necessary, the origin of the funds, in such a way as to ensure that these transactions are consistent with what the professional knows about the customer, its business activities and risk profile, and regularly updating documents, data and information in their possession. (Article 3 (2) AML/CFT).

71. The customer due diligence obligations (like the definition of beneficial owner (see below)) are compliant with the standard. Moreover, the requirement to hold documents applies for at least five years after the business relationship with the customer has ceased or after the date of single transaction is concluded. These obligations are restated in Article 25 of Regulation CSSF 12-02.

72. The verification and updating of information in a timely manner is a further requirement of AML/CFT legislation.[17] This obligation to exercise constant due diligence must be fulfilled in the light of each customer's risk profile. The CSSF states that it is imperative to introduce a procedure and

15. Article 3 (3) of the AML/CFT Law has been amended by the Law of 13 February 2018.
16. Article 18 (1) of the CSSF Regulation 12-02 of 14 December 2012 provides that the identification of natural persons must be carried out with a valid official identification document issued by a public authority and bearing the signature and a photo of the client (e.g. client's passport, identity card or residence card).
17. Article 3 (5) of the AML/CFT Law, Article 1 (4) of the Grand Ducal Regulation of 1st February 2010 and Article 35 of the CSSF Regulation.

system for the evaluation and management of risks, which must take account of the following (non-exhaustive) list of factors:

- identification and verification of the identification of the customer
- verification of the nature of the customer (business sector or profession, geographical origin, public authority or listed company, politically exposed persons, etc.)
- obtaining information about the purpose and proposed nature of the business relationship
- information about the origin of the funds (close scrutiny of transactions throughout the duration of the business relationship)
- risks connected with the company's business activity (allocation of a headquarters and "nesting" structure)
- services offered to customers
- research inventory (RCS, internet, publications, blacklist, reputation, etc.)
- risk assessment (low, medium, high)
- alert management
- result of risk analysis.

73. Luxembourg indicate that each AML/CFT supervisory authority determines in its risk analysis the time frame for the updating of the due diligence requirements, adapted to the supervised professional sectors and the risk factors identified (this is adapted to each professional activity). Moreover, Article 1 (4) of the Regulation of 1 February 2010 states that for the application of the due diligence measures with respect to existing customers, "adequate moments on the basis of an assessment of risks" must be understood as follows; either when the risk is high, when it is a numbered account, or when a situation arises, justifying these measures and in particular a following situation:

- a significant transaction occurs
- the rules for customer identification documents change substantially
- in the banking sector, an important change occurs in the manner in which the account works
- the professional realises that he does not have information about an existing customer.

Although this article provides guidance on the due diligence requirement, it is recommended that the Luxembourg authorities clarify the rules concerning the updating of the information "in a timely manner" to ensure the proper application of this standard by the AML-obliged persons.

74. The rules concerning the use of a third party[18] also comply with the standard. The use of a third-party introducer is subject to the following requirements:

- Professionals relying upon a third party shall immediately obtain from the third party the necessary information concerning the following elements of the customer due diligence process:
  - identification of customers and, if appropriate, of their proxies
  - identification of the beneficial owners
  - purpose and intended nature of the business relationship.
- Professionals shall take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to customer due diligence requirements will be made available from the third party upon request without delay.
- Professionals shall also satisfy themselves that the third party meets the following conditions:
  - The due diligence and record-keeping requirements the third party applies to customers are consistent with those laid down in this Luxembourg law or by Directive (EU) 2015/849
  - They are subject, with the requirements of the Luxembourg law, Directive (EU) 2015/849 or equivalent rules applicable to them, to be supervised in a manner consistent with Chapter VI, Section 2 of Directive (EU) 2015/849.
- The ultimate responsibility for the performance of due diligence obligations rests with professionals who use third parties.[19]

Definition of beneficial owner

75. In compliance with the standard, the Law of 13 February 2018 defines the "beneficial owner" as "any natural person who ultimately owns or controls the customer or any other natural person for whom a transaction is carried out or an activity performed".

76. More precisely, for companies, the Law of 13 February 2018 expresses the cascading test for the definition of beneficial owner in the following terms:

> i) "any natural person who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or a share in the capital of that entity,

18. Article 3-3 of the AML/CFT Law, Article 6 of the Grand Ducal Regulation of 1st February 2010 and Article 36 of the CSSF Regulation 12-02.
19. Article 3-3 (2) of the AML/CFT Law of 12 November 2004.

> including through bearer share holdings, or control through other means, other than a company listed on a regulated market that is subject to disclosure requirements compatible with the law of the European Union or equivalent international standards that guarantee sufficient transparency for information concerning ownership.
>
> A shareholding of 25% of the shares plus one or a share in the capital of the customer of over 25%, held by a natural person, is a sign of direct ownership. A shareholding of 25% of the shares plus one or a share in the capital of the customer of over 25%, held by a company which is controlled by one or more natural persons, or by several companies, which are controlled by the same natural person or persons, is a sign of indirect ownership.
>
> ii) if, after having exhausted all possible means, and provided that there are no grounds for suspicion, none of the persons referred to in point i) has been identified, or if it is unsure whether the person or persons identified are the beneficial owners, the natural person holding the position of main manager".

77. This definition is compliant with the standard. Prior to the Law of 13 February 2018, the definition of beneficial owner[20] of companies did not fully contain the aforementioned cascading test, nevertheless it contained very similar concepts. On the other hand, the CSSF has not issued practical guidance for its application (both for the old and the new definition). It is recommended that Luxembourg provide guidance to help AML-obliged professionals apply the definition of beneficial owner in practice and include its implementation in practice in its supervision.

20. The definition of beneficial owner of a corporation before the Law of 13 February 2018 is as follows:

> i) any natural person who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or a share in the capital of that entity, including through bearer share holdings, or control through other means, other than a company listed on a regulated market that is subject to disclosure requirements compliant with the law of the European Union or with equivalent international standards; a percentage of more than 25% is considered sufficient to meet this criterion;
>
> ii) any natural person who otherwise exercises control over the management of a legal entity.

Checks and supervision measures/Monitoring and coercive measures

78. In practice, however, the competent authority has obtained information on the beneficial owners from the companies themselves and, service providers (notaries, auditors, lawyers, chartered accountants, domiciliation agents) and financial institutions are required to identify their client (and the beneficial owners of their clients) under anti-money laundering (AML/CFT) legislation. This section discusses only the supervision of the aforementioned service providers, which can be an important source of information. The supervision of banks by the CSSF is analysed in section A.3.1. Availability of information on beneficial owners of accounts. All these service providers must keep the CDD on their customers, including beneficial ownership information, for at least 5 years from the termination of the customer's relationship.

79. There exist two types of supervision for non-financial professions in Luxembourg. On the one hand, the supervision of certain professions is done directly by the self-regulatory body, and is generally well assured. The Luxembourg authorities ensure that adherence to AML/CFT obligations is properly supervised by these self-regulatory bodies on an ongoing basis. On the other hand, the AED has been supervising certain non-financial professions since 2011.

Supervision of notaries by the Chamber of Notaries

80. The Chamber of Notaries ensures that AML/CFT obligations are complied with by notaries in Luxembourg. It can carry out on-site inspections of notaries' premises and request all information from notaries that it judges necessary for verifying their compliance with the professional obligations under the AML/CFT legislation.

81. The number of notaries is limited to 36 in Luxembourg. In the period under review, all of the notaries were reviewed in respect of their AML/CFT obligations. The reviews are carried out by a team of two other notaries. During the review, the notary whose practice is being inspected must stand ready to answer any questions put to him or her by the inspection team. The inspection team checks actual cases and verifies that the AML/CFT obligations have been properly adhered to in day-to-day notarial practice. The results are written up in a report which is submitted to the Chamber of Notaries. The Chamber of Notaries then decides on any further action.

82. According to the Chamber of Notaries, their inspections have not given rise to any important AML/CFT finding with regard to the biggest notarial practices, more exposed to the risk of money laundering because of their activities (major real estate or acquisition projects). For smaller notarial practices, the findings were in relation to small errors. During the review

period, the Chamber of Notaries notably noted things to perfect in terms of the materialisation of AML/CFT controls. Indeed, although AML/CFT controls were carried out, all the written records relating to them were not always in the files accompanying the controlled acts. Moreover, in certain specific cases, the use of electronic search tools made available to notaries by the Chamber of Notaries has been disrupted due to technical problems (in the meantime resolved). During the period under review, two disciplinary measures were initiated. The Chamber of Notaries indicated that these audits demonstrated that the notaries were well informed of their AML/CFT obligations, that the information was available and that appropriate controls were in place.

83. On-the-spot checks are carried out in accordance with procedures established by the Chamber of Notaries. Other disciplinary measures include simple warnings, reprimands, the removal of the right to vote in the General Assembly and exclusion of up to six years from membership of the Chamber of Notaries, a fine of between EUR 500 and EUR 20 000, suspension of the right to practice the profession for a term which may not be less than 15 days and not more than one year, or definitive removal from the right to practice the profession.

84. Concerning disciplinary measures, the Chamber of Notaries reports that during the 36 inspections of notary's offices mentioned above, the various inspection teams found that further investigations were not necessary and that no fines had to be imposed.

Supervision of lawyers by the Bars

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

86. About 2 000 lawyers in Luxembourg are under the supervisory authority of either the Bar of Luxembourg or the Bar of Diekirch (the Bars). Like the Chamber of Notaries, the Luxembourg Bar Council may carry out on-site inspections of its members and request all information it judges necessary from them for the purpose of establishing compliance with their professional obligations under AML/CFT legislation.

87. According to the AML/CFT Committee of the Luxembourg Bar Association, which is responsible for inspections of law firms, it pays particular attention to the existence and observation of customer due diligence measures, internal control mechanisms and observance of the other AML

obligations. The Committee carries out ad hoc inspections of law firms. During these inspections, case files are made available to the members of the AML/CFT Committee, without prejudice to other supporting documentation and/or explanations. Inspections are followed by an inspection report which will make recommendations, edited and endorsed by the Bar Council and passed on to the law firm concerned. Firms which fail the inspection are given a deadline for compliance, after which a second inspection is held at a future date. Sanctions may be imposed on law firms that do not meet their obligations under AML/CFT legislation; these may consist of fines, warnings or disciplinary procedures.

88. For judicial years 2014/2015 and 2015/2016 (15 September 2014 to 14 September 2016), the AML/CFT Committee carried out eleven on-site inspections, concerning around 150 lawyers. Site visits have become more frequent, with twelve on-site inspections involving some 300 lawyers. In 2017/2018, there were 32 on-site inspections, concerning 27 law firms as well as five new inspections, involving a total of 815 lawyers. A serious penalty was imposed on one lawyer, struck off with immediate effect, and two other disciplinary sanctions were applied in 2017.

89. In conclusion, the Anti-Money Laundering Commission has stepped up its efforts over the last three years on the supervision of lawyers with regard to their due diligence obligations. These efforts resulted in a strong prevention policy thanks to internal resources (group of three people in charge of training) and on-site inspections (seven people in charge).

Supervision of chartered accountants and statutory auditors

90. There are almost 1 100 chartered accountants and 550 accounting firms in Luxembourg that are subject to AML/CFT obligations on all their activities and that are supervised by the Association of Chartered Accountants (Ordre des Experts-Comptables – OEC). The Committee dedicated to AML checks has changed. The initially confraternal control, therefore performed by peers, is now assisted by experts who are not necessarily members of the OEC but approved by the Board of the OEC for these missions.

91. The audit profession has more than 570 company auditors and 80 auditing firms under the supervision of the Luxembourg Institute of Company Auditors (IRE) with regard to AML/CFT. Since 2009, AML/CFT obligations of its members have been subject to a specific control process. The controls of the IRE are based on an accounting firm approach with 20 to 25 control missions per year. The IRE subjects each independent auditor and each audit firm to an AML/CFT audit, based on a risk analysis, but at least every 6 years. The period between two checks can be shortened if the results have been unsatisfactory or if the level of risk requires it. The IRE Council

delegated the implementation of AML/CFT controls to a working committee composed of seven people including one representative of the CSSF. The means applied for a control vary according to the size of the accounting firm and the risk to be assessed. A mission lasts an average of 20 to 24 hours for a small office and 70 to 80 hours for a large office. The IRE publishes the results of its audits in its annual activity report available on its website. The professional standards of the IRE on the prevention and control of AML/CFT are regularly updated to comply with the legislative developments including the guidelines on primary tax offences.

92. With regard to chartered accountants, the OEC has updated its guidelines and trainings on AML/CFT. The OEC has the power to inspect and request relevant information as well as the power to fine non-compliant entities up to EUR 250 000 for failure to comply with AML/CFT requirements (Article 38-1 of the 1999 Law). In addition, Article 27 of the 1999 Law provides for a wide range of sanctions that can be imposed on chartered accountants, from the warning and the fine to the withdrawal of the licence.

93. The statistics for the controls carried out by the IRE and the OEC show a control rate per on-site visit of about 10% per year for the OEC, which audits the chartered accountants and more than 25% per year for the IRE, which audit the auditors.

OEC statistics

	2016/17	2015/16	2014/15
Closed missions			
Without in-depth control	14	33	26
• After in-depth control [a]	–	7	18
• Current missions			
Out of in-depth control	12	7	–
• In-depth control	2	4	–
Subtotal	**28**	**51**	**44**
Missions postponed, not applicable or cancelled [b]	7	4	4
Total	**35**	**55**	**48**
Total number of firms	**530**	**530**	**502**
% controlled	**7%**	**10%**	**10%**

Notes: a. The objective of close monitoring is to verify that the auditing firms and independent auditors concerned have taken appropriate corrective measures to comply with the AML/CFT legislation and professional standard. Depending on the shortcomings noted, close monitoring is scheduled within twelve, twenty-four or thirty-six months after the report is issued.

b. Withdrawal from the profession, inactive firms, in liquidation, etc.

IRE statistics

	2016/17	2015/16	2014/15
Without observations or minor observations	8	4	3
Observations not requiring in-depth control	4	14	10
In-depth controls			
• Next campaign	1	1	6
• 2nd campaign	3	-	1
• 3rd campaign	-	3	1
Statement by the Presidents (IRE/Commission)	-	-	-
Recommendation to open a disciplinary investigation	-	-	1
Subtotal	**16**	**22**	**22**
Missions postponed, not applicable or cancelled [a]	4	2	4
Suspended mission [b]	1	1	-
Total	**21**	**25**	**26**
Total number (Cabinets + Self-Employed RE)	**92**	**89**	**96**
% controlled	**22%**	**28%**	**27%**

Notes: a. Withdrawal from the profession, inactive firms, in liquidation, etc.

b. The mission was suspended pending the conclusion of a non-contentious administrative procedure initiated by the public supervisory authority of the audit profession.

Supervision by the AED

94. The Law of 27 October 2010 on AML/CFT appointed the AED as the competent authority for the supervision and inspection of certain non-financial professions' compliance with AML/CFT obligations. The AED's AML unit was set up on 1 January 2011. Its main objective is to guide and sensitise the AED's professionals and officials in setting up the obligations of the AML/CFT Law. These professionals include accountants, tax counsellors and providers of services to companies and trusts, but they do not include notaries, lawyers, chartered accountants and auditors.

95. The AED has the following resources:

- Surveys in the form of questionnaires.
- On-site and desk-based inspections. Prior to these inspections, the AED analyses the responses to the annual questionnaires sent to professionals about their AML/CFT practices. This analysis helps it to identify the professionals who will be inspected on site and to strengthen the risk analysis.
- Sanctions in the form of fines issued by the director of the AED. Fines can be between EUR 250 and 250 000 in the event that the professional does not co-operate or fails to comply with AML/CFT obligations.

96. In addition, the AED receives copies of suspicious transaction reports from the CRF (on a case-by-case basis, if the information contained in the declaration is likely to be useful for the work of the AED) and co-operates with the judicial and administrative authorities. The AED reports that since 2017, requests for inter-administrative and judicial co-operation have increased steadily and co-operation with the judicial authorities has intensified. Requests for inter-administrative and judicial co-operation increased from 5 to 25 during the timeframe from 2014 to 2017.

97. The AED has seen its resources increase steadily since 2014. It reports having developed a supervisory strategy based on prevention and the education of professionals, using an annual questionnaire, the distribution of guides to professionals, collaboration with associations and professional bodies[21] whose members are subject to AED surveillance, and the creation of a dedicated website which presents all AML/CFT relevant information.

98. The questionnaires were initially conceived as a means of guiding the Anti-Fraud Service (*Service Anti-Fraude*, SAF) in choosing which professionals to inspect. According to the AED, the questionnaires needed to be adapted to make them more comprehensible, and they were therefore given a complete review in 2017, with more targeted questions that were specifically adapted to the relevant business sector in order to obtain more exhaustive responses.

99. The Anti-fraud unit (SAF) of the AED, which is in charge of the AML inspections since 2014, supervises around 10 000 entities. The table below lists the number of checks carried out and sanctions applied by the AED as part of its AML/CFT mission.

	2014	2015	2016	2017	Total
AML/CFT inspections	42	37	54	32	177
Sanctions (fines)	19	20	44	28	120

100. In 2017, the SAF carried out 32 on-site AML inspections in various business sectors. As a result, it issued 28 fines for non-compliance with professional obligations, and collected a total of EUR 161 250. The number of checks fluctuated during the peer review period.

21. Within the framework of its AML/CTF supervisory and enforcement activities, the AED works with professional chambers and professional associations (private sector) which include amongst others: the Chamber of Crafts, the Chamber of Commerce, the Luxembourg Confederation of Commerce, the Real Estate Board, Luxembourg Association of Business Centers and the Luxembourg Association of tax advisors.

101. The AED has said that it will pursue the ongoing drive in the surveillance and inspection of professionals, with improved risk identification and management by professional sector and optimised co-operation with other surveillance authorities.

102. The AED has stepped up its efforts and the results are very encouraging. However, due to the recent implementation of the supervisory system, it is nevertheless recommended that the AED continue to improve the effective implementation of its supervision programme of non-financial professions to ensure that due diligence obligations in the area of AML/CFT (especially beneficial owners) are indeed implemented in practice by the relevant non-financial professionals.

A.1.2. Bearer shares

103. Luxembourg has introduced a mechanism for the immobilisation of bearer shares in accordance with the standard, the implementation of which in practice since 18 February 2016 is subject to adequate and effective supervision. The monitoring recommendation introduced in the 2015 Report is therefore removed. However, it is recommended that Luxembourg continue its supervision efforts on the immobilisation of existing bearer shares.

Legal framework for shares and bearer shares

104. Only SAs, SCAs and the investment vehicles SICAV, SIF, SICAF and SICAR may issue bearer shares, and they are all covered by the Law of 28 July 2014.[22] Under this Law (which came into force on 18 August 2014), the Boards of Directors of all companies which had issued or were issuing bearer shares were required to designate, before 18 February 2015, a custodian with which to deposit all bearer shares before 18 February 2016. Bearer shares that were not immobilised had to be cancelled, and the issued capital had to be reduced accordingly. These amounts had to be deposited to the *Caisse de consignation* (official depositary of the government) until the legitimate holder, who can prove its claim, asks for the repayment (Article 6(5)).

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

22. UCIs in the form of mutual funds may also issue bearer "units". For the sake of simplicity, only the term «bearer shares» is used in this report.

entities subject to AML obligations generally deny companies with bearer shares as new or even existing customers because they are high-risk clients and are subject to enhanced due diligence.

106. The law introduced the following obligations, which ensure the effectiveness of the immobilisation mechanism for bearer shares:

- The custodian must be a professional subject to AML/CFT obligations and oversight by either the CSSF or its own professional order with regard to compliance with AML/CFT obligations. The custodian may not be a shareholder of the company.
- The identity of the professional custodian must be published in Luxembourg's RCS. The designated custodian must hold, in Luxembourg, a register of bearer shares which must include the name of all holders, the number of shares held, the date of deposit and the date of transfer or conversion of bearer shares to registered shares. A fine of between EUR 500 and 25 000 may be imposed on custodians that do not keep the register in accordance with the law.
- The transfer of bearer shares is only effective and enforceable if the shares have been deposited with the custodian, and the related rights may only be exercised if the shares have been deposited with the custodian and all the related information has been recorded.
- A fine of between EUR 5 000 and 125 000 may be imposed on managers and directors that have not designated a custodian or that recognise the rights attached to bearer shares that have not been immobilised.

Results of the 2016 immobilisation

107. Under the terms of the law, any bearer shares not immobilised were to be cancelled and the company's issued capital reduced accordingly. These amounts resulting from the cancellation of the bearer shares were to be deposited at the Caisse de Consignation (official depositary of the government) until a legitimate holder or entitled person is able to prove its claim asked for it to be repaid. After validation of the refund file by the Caisse de Consignation, the refund is made in the form of a transfer in cash to a bank account at a European banking institution.

108. The Caisse de Consignation reports a total of EUR 1 391 284 456 on consignment for bearer shares which could not be immobilised when the holder failed to declare the requisite information. Just 24 % of these assets have been refunded to the holder (i.e. a total of EUR 333 662 562). For 2017, the total amount of shares in consignment was limited to EUR 90 418 258, of which just 15 % has been refunded to the holder (i.e. a total of EUR 13 658 720). Return of these funds takes place only when the holders of the cancelled shares meet the requirements of declaration and documentation making it

possible to establish the identity of the legitimate holder. In the interests of brevity, this report will not set out the detail of the several steps involved in the procedure; these are, however, sufficient to guarantee the integrity of the system of restitution. Holders will have thirty years as of receipt of the notification of consignment to request the restitution of their funds.

109. The application of the law is ensured by (1) the supervision of issuing companies by the tax administration and (2) the supervision of authorised custodians subject to AML/CFT obligations.

Supervision of issuing companies by the tax administration

110. The administration has set up: (i) continuous monitoring within the regular framework of company audits; and (ii) a one-off project for the verification of the immobilisation of bearer shares issued before 18 August 2014.

(i) Regular assessment during tax audits

111. During companies' regular audits, the inspectors systematically check whether companies that have issued bearer shares have indeed immobilised them with a custodian. This obligation is set out in an internal instruction, issued on 3 February 2015 which also states that any irregularity must be reported to the State Prosecutor. The Luxembourg tax authorities have confirmed that in practice, its inspectors systematically check compliance with the legal obligations of the law of 28 July 2014 during their on-site inspections and during the taxation process. Although these checks do not specifically target companies issuing bearer shares, they support the one-off intervention connected to the 2016 tax return described below.

(ii) One-off campaign connected to the 2016 tax return

112. The administration inserted an additional section in the tax return for 2016[23] requiring SAs, SCAs and the management companies of mutual funds (SICAR, SIF, SICAV and SICAF) to provide information about:

- whether (or not) bearer shares were issued prior to the entry into force of the Law of 28 July 2014
- whether (or not) they were deposited with an official custodian before the deadline of 18 February 2016
- whether (or not) any bearer shares have been cancelled and the issued capital reduced accordingly
- whether (or not) the funds were consigned at the Caisse de Consignation after cancellation of the bearer shares.

23. Article 22 of the Law of 23 December 2016.

113. The ACD began reviewing the results of the additional section (1st questionnaire) upon receipt of the 2016 fiscal year returns. In the event of incomplete or inconsistent answers, the ACD has sent out a second questionnaire as a reminder to avoid fines being imposed on the basis of data that has been supplied but not correctly interpreted by the companies. In October 2018, the ACD has issued 769-call warning letters to companies that did not respond to the 2nd questionnaire. At the beginning of December 2018, penalties of EUR 1 200 per company were imposed on 158 companies for lack of response within the given deadline. In April 2018, the ACD sent the Caisse de Consignation a first file containing the results of the questionnaires relating to more than 75% of the taxpayers concerned. Since May 2018, the ACD has been submitting an update of these files monthly. As a follow-up to the fines imposed on 158 companies in December 2018, these companies were included in the updated file submitted to the Caisse de Consignation.

114. The Caisse de Consignation also carries out an analysis of the responses provided by companies subject to the Law of 28 July 2014 on the immobilisation of bearer shares. An initial analysis identified a total of 853 respondents (out of 28 564 responses analysed) who were considered at first instance not to comply with the above-mentioned Law. At the end of October 2018, the Caisse de Consignation issued a reminder letter to all of these companies asking for a position on the analysis of responses within two weeks. Based on the responses received, the Caisse de Consignation has updated the response file obtained from the ACD. In addition, the companies were informed in this letter that, in the absence of a response from them within the time allowed, the Caisse de Consignation will presume that the company has not complied with the provisions of Article 6, paragraph 5, of the Law of 28 July 2014. Finally, the Caisse de Consignation has requested the companies to immediately take the measures necessary to comply with the Law of 28 July 2014 and in addition, it has informed the companies that it reserves the right to take additional steps in relation to Article 6, paragraph 6 of the Law of 28 July 2014. In case of non-compliance reported to the Public Prosecutor (by the Caisse de Consignation), managers or directors are punishable with a fine of EUR 5 000 to EUR 125 000 pursuant to Article 6(6) of the law of 28 July 2014 regarding immobilisation of bearer shares and units.

115. The aforementioned measures have enabled the Caisse de Consignation to update the response file obtained from the ACD and to identify a list of companies that are considered to be non-compliant with the Law of 28 July 2014. This non-compliance will be reported to the Public Prosecutor's Office pursuant to Article 6 (6) of the same Law.

Oversight of custodians

116. Since it is mandatory for custodians to be subject to the requirements of AML/CFT framework, the monitoring of their activities as depositary is the responsibility of their oversight body (professional order or CSSF; see section A.1.1. Checks and supervision measures, and A.3 Oversight of the banks). At 31 December 2017, there were 140 depositaries registered with the RCS, including 105 legal entities (of which 58 were banks in Luxembourg) and 35 were individuals.

117. Regarding custodian banks, the CSSF reports that it has not identified any deficiencies in the implementation of the bearer share regime, but that this issue is checked automatically during on-site inspections. The question of bearer shares is also raised in the annual questionnaires sent out by the CSSF which aim to collect key information about the AML/CFT risks to which the professionals supervised by the CSSF are exposed. Specifically, the objective is to gather information about professionals' business relationships with clients who have issued bearer shares, whether the companies issuing the bearer shares are based in Luxembourg, Europe or high-risk countries, whether bearer shares have been deposited with any professionals and, if so, whether the depositor was a Luxembourg company or a foreign company, etc. Other questions ask whether the professionals' clients comply with the provisions of the Law of 28 July 2014 concerning bearer shares, whether the professional acts as a custodian for bearer shares, etc. The different questions relating to bearer shares in these questionnaires are adapted to the business activities of the professionals concerned.

Exchange of information on bearer shares

118. Luxembourg did not receive any request for information about bearer shares issued by Luxembourg companies either during the period under review or during the period reviewed by the 2015 Report.

A.1.3. Partnerships

119. Information about the identity of the members of partnerships is available from the RCS, ACD and the partnerships themselves; the implementation of legal obligations in practice is satisfactory. Information concerning the beneficial owners of partnerships is available from persons designated under AML/CFT Law working for partnerships. Partnerships must call on a notary for all transfers of shares, and generally use a bank account in Luxembourg. Foreign partnerships which have their principal establishment in Luxembourg (effective place of management or a branch in Luxembourg) are subject to the same formalities as partnerships governed by Luxembourg law, whether that be under commercial or tax law. These foreign partnerships

are required to register with the RCS in Luxembourg, following the same rules as those that apply to Luxembourg partnerships; they must register with the ACD, and they must submit annual tax returns to the ACD. They are also required to keep a register of shares in the same conditions as those that apply to Luxembourg partnerships. Consequently, information on these partnerships is available under the same conditions as those described above for Luxembourg partnerships.

120. Under the Luxembourg legislation (Law of 10 August 1915 and Civil Code), four types of partnerships can be created in Luxembourg:

- The Société en Nom Collectif (SNC). A "general partnership" or "unlimited company". There were 441 SNCs registered in the RCS at 30 September 2017.
- The Société en Commandite Simple (SCS). A "limited partnership". There were 1 341 SCSs registered in the RCS at 30 September 2017.
- The Société en Commandite spéciale (SCSP). A "special limited partnership". This is a form of SCS, differentiated from the latter in that it has no legal personality. Most provisions on the special limited partnership, however, have been taken over from the limited partnership regime and have been adapted in order to take account of the particular characteristics resulting from the lack of legal personality (e.g. management and dealings with third parties). This form is generally used for investment funds. There were 1 541 SCSPs registered in the RCS at 30 September 2017.
- The Société civile, a "partnership under civil law". This form has legal personality but its purpose may only be civil (not commercial). It can be formed by notarial or private deed. There were 4 749 such partnerships registered in the RCS at 30 September 2017.

121. These entities are required to maintain information about their partners under both tax and commercial law requirements. In addition, AML/CFT legislation requires professionals involved in the formation of partnerships to identify the partners of their clients. Each of these regimes is subject to appropriate oversight by the various authorities (See section A.1.1 on oversight by these authorities).

122. Information about the above-mentioned partnerships must be provided to the RCS upon registration and when any modifications are made.[24] All information is verified beforehand by a notary (if the partnership was

24. The registration with the RCS also apply to the SCSP, even if it does not have legal personality, however the identity of the limited partners does not have to be published.

created before a notary). If the partnership was not created before a notary, the information is verified by the RCS upon registration. The Luxembourg authorities indicate that in practice, it is virtually impossible to run a partnership without registering it. Such partnership being in breach with the company laws would be at risk to be placed into judicial liquidation at any time. In addition, information related to the partnership, which would not have any legal capacity, would not be enforceable against third parties.

123. Information on all forms of partnerships is also available from the tax authorities, since partnerships are required to register with the ACD and provide the name of their partners. Although the income of partnerships is taxable in the hands of their members, such entities are required to submit an annual declaration to the ACD which contains the names of the partners.

124. The practical monitoring of these obligations to register with the RCS and to make an annual declaration to the ACD is the same as for companies (see A.1.1. Obligations regarding information on legal ownership and identity).

125. The requirements of the AML/CFT legislation for the identification of beneficial owners described in section A.1.1 relating to stock companies also apply to partnerships, including the recommendation included in A.1.1.

Conclusion

126. In practice, identity information on partnerships and their beneficial owners is verified in various contexts and is available through various sources to the relevant authorities. Considering these multiple requirements for registration and the practices of the Luxembourg authorities, the availability of information (including identity and ownership information), is verified and available through different means and hence is in line with the standard set out in the Terms of Reference, except for the recommendation mentioned under section A.1, which applies equally to beneficial ownership of partnerships. For the period under review, approximately 1% of the requests for information received related to information on partnerships; the information was available and exchanged in all cases.

A.1.4. Trusts established under foreign law and Luxembourg fiducies (ToR A.1.4)

127. Luxembourg law does not know the concept of "trust", but only that of "fiducies". As a signatory to the Hague Convention of 1 July 1985 on the law applicable to trusts and its legal recognition (Law of 27 July 2003 on trusts and fiducie contracts), Luxembourg recognises trusts under foreign law. When a professional acts as a fiduciary for a Luxembourg fiducie or

trustee for a foreign trust, he identifies settlors, protectors (if any) and beneficial owners of assets, in accordance with AML/CFT legislation and tax obligations. The rules regarding maintenance of ownership information in respect of trusts and fiducies in Luxembourg were found to be in accordance with the standard and were effective in practice.

Fiducies under Luxembourg law

128. The Law on trusts and fiducies specifies that only certain professionals covered by AML/CFT obligations can act as fiduciaries. As a result, the relationship between a Luxembourg fiducie or a foreign trust and an AML-obliged person is established by law, so that information on the beneficial owner (s) of Luxembourg fiducies and foreign trusts are available from these AML-obliged persons.

129. Luxembourg law requires the registration with the AED of fiducie contracts that concern real estate, aircraft, ships or boats registered in Luxembourg. To date none are registered with the AED.

130. Luxembourg taxation rules provide that income from Luxembourg sources received via a fiducie is taxable in the hands of the settlor. The resulting tax obligations depend on the nature of the settlor (natural or legal person). Paragraph 164 of the general tax law provides that where a taxpayer claims to derive income as a fiduciary agent or representative, he has to demonstrate for whose benefit he acts. If this is not the case the income is allocated to the fiduciary agent. The tax law also provides that any person holding an asset in the capacity of fiduciary must be able, upon demand, to identify the real owner of the property, and this implies the availability of such information. The Luxembourg authorities point out that in practice, the use of fiducies in Luxembourg is rather limited. In any case, the fiduciary must be able to identify the settlor to the tax authorities.

131. It is not foreseen by law for a non-professional to act as a fiduciary of fiducies concluded in Luxembourg. Considering AML/CFT obligations applicable to professionals and other financial institutions in Luxembourg, information on fiducies is available when requested, as confirmed by peers.

Foreign trusts

132. Luxembourg law recognises foreign trusts and does not prohibit a resident from acting as trustee, administrator or manager or from having the responsibility to distribute profits or to administer a trust that is constituted under foreign legislation. Thus, for example, and contrary to the situation of fiducies, a trustee administering a foreign trust does not have to belong to a specific category of professionals. It is conceivable that non-professionals act

as trustees of foreign trusts. The Luxembourg authorities indicate that in their view the number of non-professional trustees of foreign trusts is limited. The activity of professional trustee is mainly exercised by financial institutions.

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

Availability of information on beneficial owners

134. The obligations imposed on stock companies by AML/CFT legislation, described in section A.1.1, also apply to fiduciaries. Lawyers, notaries, tax advisors, credit establishments and financial intermediaries are subject to AML/CFT Law and must carry out customer due diligence in all circumstances. All professionals providing services to companies and fiducies and foreign companies fall under the AML/CFT legislation when they help a client to prepare or carry out transactions concerning the incorporation, management, provision of an address for domiciliation or management of Luxembourg fiducies or foreign trusts. These service providers must identify their clients and retain information on the identity of their clients and beneficial owners, as well as all information regarding transactions conducted, for five years.

135. The AML/CFT Law defines the beneficial owners of the Luxembourg fiducies and foreign trusts in compliance with the standard as the following:

- the settlor
- any fiduciary or trustee
- the protector, if applicable
- the beneficiaries or, if the people who are to be the beneficiaries of the legal arrangement or entity have not yet been designated, the category of person in whose chief interest the legal arrangement or entity was created or operates[25]
- any other natural person who ultimately exercises control of the fiducie or trust through direct or indirect ownership or through other means.

25. In the Grand-Ducal Regulation of 1st February 2010, Article 1 (2) explicitly mentions that beneficiaries must be identified (without mention of percentage of detention).

136. These multiple requirements, taken together, ensure the availability of information on the settlors and beneficiaries of fiducies and trusts administered by professional trustees in Luxembourg.

137. During the period under review, Luxembourg received nine requests in relation to fiducies or foreign trusts administered by Luxembourg-resident professional trustees. The information was available and provided in a timely manner in all cases. None of these requests related to non-professional trustees.

A.1.5. Foundations

138. In Luxembourg, foundations are non-profit entities established for purely philanthropic purposes (social, religious, scientific, artistic, pedagogic, sporting or tourism-related nature). As at 30 September 2017, there were 211 foundations registered in Luxembourg.

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

140. For the definition of the beneficial owners of foundations, the AML/CFT Law stipulates that the definition of trusts and fiducies should be used to determine any natural person occupying the equivalent or similar functions to those identified for Luxembourg fiducies and foreign trusts (see A.1.4).

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

142. Given the philanthropic nature of Luxembourg foundations, the obligations concerning their registration and recognition, and the obligations for reporting information to the supervisory authorities, Luxembourg legislation ensures conservation of the necessary information with respect to the

founders, directors and beneficiaries of foundations. Luxembourg's authorities have mentioned that they have not received any requests in relation to foundations for the period under review.

A.2. Accounting records

Jurisdictions must ensure that reliable accounting records are maintained for all relevant entities and arrangements.

A.2.1. General requirements

143. The 2015 Report determined that enforcement and monitoring mechanisms in Luxembourg ensure the availability of accounting records' underlying documentation on all relevant entities and arrangements (including foreign companies having their place of effective management in Luxembourg and branches of foreign companies) and all professionals (including professionals acting as trustees).

144. Luxembourg's accounting law has remained unchanged since 2015 and complies with the standard. In practice, the annual accounts of all Luxembourg companies are available from the RCS. The RCS monitors submissions and applies sanctions when financial statements are not sent to it for publication. The ACD, moreover, carries out a dual supervision: the initial formal monitoring of all tax declarations to ensure that the annual financial statements and the balance sheet have duly been appended to the return, and a more detailed inspection in the form of tax audits.

145. During the period under review (from 1 October 2014 to 30 September 2017), Luxembourg received 1 397 requests for accounting information (out of a total of 2 309 requests) and did not report any problems with the availability in practice of this information. Luxembourg's partners said they were fully satisfied with the quality of the accounting information received.

146. Consequently, the determination of element A.2 remains "in place" and the rating remains Compliant.

147. The table of determinations and ratings is as follows:

Legal framework
Determination: in place
Practical implementation of the standard
Rating: Compliant

Obligations derived from accounting legislation

148. Pursuant to articles 8 to 21 of the Commercial Code, as well as articles 24 et seqq of the law of 19 December 2002, all companies and partnerships (SA, SE, S.e.c.a, S.à.r.l, S.e.n.c, and S.e.c.s) must keep accounting records. These obligations also apply to investment companies such as SICAVs, SICAFs, SICARs or SPFs. Foreign companies having their place of effective management in Luxembourg as well as the branches of foreign companies are subject to the same obligations. All professionals (including professionals acting as trustees) are required to observe general accounting obligations applicable to all professionals established in Luxembourg. This ensures the availability of such information and allows the entities' transactions to be traced for purposes of establishing their financial positions and preparing their financial statements.

149. The accounts must cover all operations, assets and obligations of any kind, debts, obligations and commitments of any kind (article10 of the code). All accounting is based on a system of books and accounts and conducted in line with the customary regulations for double entry bookkeeping (article11). All transactions are recorded promptly, reliably and fully, in chronological order (article11). The tax law also requires accounting records to be kept and filed for all entities, except for exempt investment companies (SICAVs, SICAFs and SPFs). SICAVs, SICAFs, and SPFs merely required to declare and pay the subscription tax to the AED. As entities subject to commercial laws, these companies are however not exempted from record keeping requirements.

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

151. All businesses and fiduciaries are required to file annual accounts with the RCS (see below).

Oversight in practice

152. There are two forms of supervision of accounting information: (i) monitoring by the RCS of accounting obligations under commercial law, and (ii) monitoring by the Luxembourg tax authorities of the tax obligations of stock companies, partnerships and Luxembourg fiducies.

Oversight by the RCS in practice

153. The annual accounts and consolidated accounts are filed with the RCS. Similarly, the balance sheet is filed with the RCS's centralised balance sheet depositary. In practice, the accounts are filed online. The RCS manager checks that companies have duly met their obligation to publish their accounts and file their balance sheet. The RCS has a staff of thirty, supported by twenty subcontractors (in the IT and development team). At 31 December 2017, 131 980 companies, partnerships and Luxembourg branches of foreign companies were registered with the RCS.

154. Within the framework of the implementation of article 1200-1 of the law of 10 August 1915 and Article 1 Section 3 of the Law of 31 May 1999 on the domiciliation of companies, the RCS manager regularly refers the list of case files in which major violations of company law have been observed to the State Prosecutors. One such violation consists in the failure to file the annual financial statements or repeated, lengthy delays (more than 6 months). The RCS referred 582 cases files to the State Prosecutor in 2015, 554 in 2016 and 541 in 2017. During the same period, the State Prosecutor brought 526 applications for judicial liquidation before the courts in 2015, 513 in 2016 and 488 in 2017.

155. The new procedure for the collection of fees in the case[26] of late filing has generated a significant improvement in the timeliness of account submissions and led to a considerable catch-up in late submissions.

Oversight by the tax administration in practice

156. The registration procedure with the ACD remains the same overall (see 2013 Report para. 73 et seq. and 139 et seq.). All Luxembourg entities (companies, partnerships, fiducies and foundations) and foreign companies having their principal establishment in Luxembourg must complete an annual tax return. In addition to the provisions of the commercial code and the law of 19 December 2002, the tax law imposes supplementary obligations with respect to record keeping. Thus, it requires that entries in the books must be continuous and complete, prohibits the use of fictitious names and any changes to the accounting data, and requires that accounting documents be numbered consecutively.

157. Compliance oversight begins with the verification that the taxpayer has filed a tax return with the ACD. People who have not filed a tax return

26. Applicable as of 1 January 2017, Article 6 of the grand-ducal regulation (amended) of 23 January 2003, made under the Law of 19 December 2002, concerning the filing of accounts, provides for the application of fees for late submission in the event that financial information is filed after the expiry of the legal timeframe.

with the ACD before the legal deadline are liable for a penalty of up to 10 % of their tax bill (section 168 of the general tax law (LGI)). As of tax year 2013, the ACD introduced a system for issuing automatic reminders and penalty payments to taxpayers who fail to file a tax return within the legal time limit. The table below shows the compliance rate of entities subject to corporate income tax, business municipal tax and net wealth tax for the period 2014-17 and issued on 31 December 2018.

Taxable year	Compliance rate: Corporate income tax	Compliance rate: Municipal business tax	Compliance rate: Net wealth tax	Aggregate compliance rate
2014	97.14%	97.48%	99.68%	**98.10%**
2015	92.11%	94.74%	97.43%	**94.76%**
2016	88.21%	88.05%	89.11%	**88.46%**
2017	73.57%	73.04%	87.48%	**78.03%**

158. In the period under review, the ACD levied fines for late filing in 17 801 cases, for a total amount of EUR 27 701 836. The ACD may also impose a monetary penalty, the amount may not exceed EUR 25 000 (§202 LGI) where the taxpayer does not respond to reminders. Additional penalties were imposed in 695 cases, for a total amount of around EUR 800 000.

159. The tax office determines, subject to subsequent control, the tax taking into account the taxpayer's tax return (§ 100a LGI). This tax is temporary and can be audited for 5 years by the tax office. After this period, the tax becomes final unless new facts occur (§ 222 LGI). The ACD pre-selects files for in-depth tax audit or on-the-spot inspection e.g. when the declaration is not complete or in case of anomalies detected on the basis of criteria (profit margin, company in recurring loss, etc.). When an element of tax information has not been provided to the tax administration, the persons concerned will be subject to an administrative assessment, pursuant to section 217 of the LGI.

160. The number of checks carried out by the ACD in 2014 is 87 (for a total of EUR 8 873 392 of tax increase), 74 in 2015 (for a total of EUR 15 396 310), 47 in 2016 (for a total of EUR 4 342 299) and 50 in 2017 (for a total of EUR 9 694 858). These statistics show that the number of tax adjustments was very low by comparison with the number of taxpaying companies. Luxembourg states that before proceeding with taxation (provisional or definitive), a formal control of all tax declarations which must contain the annual financial statements and the balance sheet is carried out, ensuring that the annual financial statements and the balance sheet are available in all cases. In practice, desk audits may take place immediately if the formal

check shows an anomaly or at any time during a 5-year period, after which the taxation is definitive. During a desk audit, the agent may request additional information (including accounting information) to the taxpayer, where necessary, for example to check the accuracy of the financial accounts. At times, depending on the situation, the agent requests an interview with the taxpayer or its representatives. These desk audits are not part of any statistics. Luxembourg opines that these desk audits explain the relatively low number of tax adjustments by comparison with the number of taxpaying companies. Controlling the availability of other accounting documents and underlying documents such as invoices and contracts is done in the event of a tax audit. The onsite visits are carried out by the tax offices, which in some cases are assisted by civil servants from the auditing department. They last on average three days. In-depth accounting checks are conducted by the auditing department which consists of sixteen people. The in-depth examination can reach back to ten years of taxation, and the revision process can lasts over four months.

A.2.2. Underlying documentation

161. The 2013 and 2015 Reports determined that Luxembourg accounting legislation requires that all book entries be backed by supporting documentation, which is to be kept in chronological order. These documents can be kept in the form of true copies of the original documents.

A.2 Document retention

162. Luxembourg accounting legislation requires that all accounting records must be kept for ten years after the close of the accounting year to which they relate. In case of dissolution, all documents must be kept for at least five years after liquidation. The documents kept in the RCS may be destroyed when twenty years have elapsed after the entity concerned has been deleted from the register.

163. For tax purposes, the books and accounting records as well as all commercial documents must be kept for ten years after the end of the calendar year that follows the close of the financial year. In the area of VAT, documents must be kept for five years.

Inactive companies and companies that have ceased to exist

164. In practice, companies that no longer have any activity must continue to meet their obligations in terms of the submission of annual accounts to the RCS and filing of corporate income tax returns and payment of the minimum corporate tax.

165. Companies which are under bankruptcy or voluntary or judicial liquidation proceedings remain registered with the RCS albeit with a specific entry. For this reason, although these companies have ceased to exist and their assets have been liquidated, they are not removed from the RCS, which means that the documents registered with the RCS remain available for public consultation. In total, there were 27 719 liquidated companies in 2015, 30 911 in 2016 and 34 166 in 2017.

166. When the inactive company does not file a tax return and does not pay the minimum tax, it is subject to a penalty payment of up to EUR 25 000 and an immediate taxation. During the period under review, 17 756 penalty payments for a total amount of EUR 21 356 177 were charged.

167. Finally, a letter is sent to the State Prosecutor of the district court containing a request to declare the liquidation of the company. During the period under review, the ACD carried out such a procedure in 548 cases (for liquidation resulting from EOI requests, please see section B.1.4 Enforcement Provisions).

168. All the documents covered by the 5-year retention period must be kept after the liquidation of the entity. All documents relating to the liquidation of the company, as well as all documents to be kept, are deposited by the liquidator or the curator at the place indicated in the closing judgement. In case of voluntary liquidation, the meeting of the board of directors of the liquidated company must decide where the documents of the company must be kept. In practice, this may be with a professional service provider (liquidator) or an archiving company that guarantees the maintenance of the documents. In all cases, these documents must be kept for a period of at least five years. In certain situation a company can be dissolved without liquidation (article 1865bis Code civil). In such a case, the notary recording the voluntary dissolution must obtain certificates of the Central Social Security Office, the direct tax administration and the AED stating that all social security contributions, taxes and duties have been paid (article 1100-1 Law 1915).

Exchange of accounting information in practice

169. Over the period under review, Luxembourg authorities received 1 397 requests for accounting information. The comments received from its partners confirm that Luxembourg has been able to respond without difficulty to these requests.

170. A significant number of requests for accounting information addressed to Luxembourg concerned SOPARFIs whose purpose is the management of the participations of a group of companies but which may also have a commercial activity directly or indirectly related to the management of its holdings. In practice, all SOPARFIs are registered with the same tax office,

which facilitates the processing of requests for information, since the information is thus centralised. The Luxembourg authorities have indicated that the information requested was available.

171. Most requests for accounting information were related to underlying documentation. The Luxembourg authorities have stated that the information was available. In addition, given Luxembourg's practices in the exchange of VAT information, which relies mainly on accounting records and the underlying documentation such as invoices and contracts, Luxembourg is able to provide underlying documentation on request. Luxembourg received 1 278 requests for VAT information between 2014 and the end of 2017.

172. Nevertheless, in some cases, there were delays in obtaining the information because the annual accounts and balance sheet had not yet been drawn up by the company. This situation was encountered in only about twenty cases. The Luxembourg authorities have taken measures to minimise these situations and are expected to pursue their monitoring actions at the level of the RCS and the ACD to ensure that: (i) companies and legal arrangements meet the legal deadlines for registering their annual financial statements with the RCS and filing their tax returns with the ACD and the AED; and that (ii) accounting information be made available without delay after the close of the financial year.

173. Overall, the legal framework regarding the availability of information is in place. In addition, despite these few delays and the absence of statistics regarding desk tax audits, it can be ascertained that the availability of accounting information is ensured. Oversight is performed by both the tax administration and RCS, which duly detect and sanction entities for non-compliance with the requirements to maintain accounting information. In addition, Luxembourg was able to answer a significant amount of incoming requests (i.e. 1 397 requests) regarding accounting information and underlying documentation, and the peer inputs received were positive. In light of the above-elements, element A.2 is rated as Compliant.

A.3. Banking information

Banking information must be available to all account holders.

174. The 2015 Report determined that AML/CFT legislation ensures that banking information was available for a period of five years and that its practical application by financial institutions and the measures of control implemented by the CSSF ensure that the financial institutions hold banking information on all account-holders. No problems had been reported with the availability in practice of banking information. The Report determined that element A.3 was "in place" and rated Compliant.

175. Under the 2016 Terms of Reference, information on the beneficial owners of bank accounts must also be available, banking information must be available for five years from the end of the period to which the information refers (or after the closure of the account), and practical implementation must be monitored and appropriate measures taken to ensure the availability of information.

176. Since the 2015 review, the AML/CFT legislation has been strengthened by the Law of 13 February 2018, which transposes the Fourth Directive, that contains a definition of beneficial owner compliant with the standard. Prior to the 2018 Act, the definition of beneficial ownership of companies did not fully reflect the aforementioned cascading test, but the definition at the time contained very similar concepts. On the other hand, the CSSF has not issued practical instructions for its application (both for the old and for the new definition). It is recommended that Luxembourg provide guidance to assist AML-obliged persons apply the definition of beneficial owner in practice.

177. Supervision by the CSSF is adequate and ensures that information is available in all cases. This is confirmed by Luxembourg's partners.

178. The table of determinations and ratings is as follows:

Legal framework
Determination: in place
Practical implementation of the standard
Rating: Compliant

A.3.1. Record-keeping requirements

179. The 2013 and 2015 Report determined that Luxembourg had set up a system in which the availability of information was assured from a legal and practical standpoint. In line with AML/CFT legislation and other commercial laws and regulations, Luxembourg's banks and financial institutions must perform customer due diligence and keep a record of the transactions carried out by their clients for at least five years.

180. The two previous reports also determined that the supervision of banks and other financial institutions by the CSSF for their compliance with AML/CFT obligations was appropriate, using on-site and document-based checks proceeding from a risk-based approach. The statistics for on-site inspections and penalties are given below in the section on Supervision measures and sanctions relating to the availability of banking information.

181. In the event of non-compliance with obligations under AML/CFT legislation, the CSSF may impose administrative sanctions ranging from a notification to a warning, followed by a fine of EUR 250 to 250 000,[27] and finally to a ban on operations. The sanction is based on the seriousness of the breach and can take the form of a letter of observation, an injunction to correct the situation within a certain timeframe or the application of administrative fines. More than one measure/sanction can be applied at once and sanctions can be made public. Any violation of the obligations provided for by the AML/CFT Law is punishable with a criminal fine from EUR 1 250 to EUR 1 250 000.[28]

Information on beneficial owners of accounts

182. The definition of beneficial owners and the due diligence obligations described in sub-section A.1.1 apply to financial institutions. The definition is compliant with the standard.

183. Prior to the 2018 Act, the definition of beneficial owners of companies did not fully reflect the aforementioned cascading test, but the definition at the time contained very similar concepts. On the other hand, the CSSF has not issued practical instructions for its application (both for the old and for the new definition).

Supervision measures and sanctions relating to the availability of banking information

184. Evidence produced by the CSSF concerning its supervision of the banks show that such supervision is effective and adequate, and that it has made substantial improvements since 2010 in both its approach and methodology, and in recruiting more staff of the CSSF to its activity of supervising AML/CFT obligations (from 59 persons in 2014 to 106 persons in 2017). There are two aspects to supervision: prevention and effective supervision, including on-site inspections and sanctions. In this regard, the CSSF has been responsive in the face of new challenges, especially during the Panama Papers scandal, and spearheaded a specific campaign whose results are presented below.

27. The Law of 13 February 2018 significantly modified the amounts of administrative fines (Article 8-4 (2) and (3) of the Law of 12 November 2004) which can be up to EUR 5 000 000.

28. The Law of 13 February 2018 modified the amount of the criminal sanctions which is currently in the amount of EUR 12 500 to EUR 5 000 000 as provided for in article 9 of the Law of 12 November 2004.

Preventive supervision of banks by the CSSF

185. First, the CSSF verifies the long-form annual record drawn up by the external auditor for all the banks, which covers AML/CFT issues. The auditor must check whether the AML/CFT procedures, infrastructure and controls put in place by the establishment, and the extent of the measures taken by the establishment, are appropriate in the light of the AML/CFT risks to which it is or could be exposed through its business activities, the nature of its clients, and the products and services it offers. If any instance of non-compliance with legal or regulatory provisions or any shortcoming is observed, the company auditor must give precise information to the CSSF to enable the latter to assess the situation (number of incomplete files pending, to be compared to the total number of cases audited, details of shortcomings observed, etc.). The CSSF, which performs a quality control check on the external auditors, indicated that it has regular exchanges of information with the IRE and has started a working group with a view to further strengthen this co-operation and align expectations from both supervisors on AML/CFT notably within the banking sector.

186. Controls on files are generally carried out directly by the auditors in the bank surveillance department at the CSSF. High-quality checks are provided by the heads of division in this department. The frequency of inspections is based on regular (annual) information which is obtained from reports, as described below (e.g. reports by external auditors, compliance reports), ad hoc information and even daily information obtained during the course of ongoing bank monitoring. These general measures are applied as a minimum standard to all banks.

Supervision and enforcement by the CSSF

187. On-site inspections of AML/CFT compliance are carried out by a special team of inspectors dedicated to AML/CFT in the department for on-site inspection. The programme for on-site AML/CFT inspections for all entities falling under the supervision of the CSSF is drawn up at the end of each year for the following year. The professional's level of exposure to AML/CFT risk will be determined as a priority, and then the duration and frequency of the on-site inspections, as well as the intensity of the inspection (i.e. the number of officials taking part in the inspection, and the number of cases to inspect).

188. Inspections are carried out by a team of three to five people, depending on the nature and volume of the activities exercised by the professional and the risks identified. The process of preparing an on-site inspection, analysing the information collected by the CSSF, carrying out the inspection itself, writing up the inspection report and the various analyses relating to it can all take several weeks. Generally, the actual visit by the CSSF officials to the premises of the professional lasts for seven to eight days, but may in special cases go on for several months.

189. The CSSF official responsible for supervising the entity takes part, alongside the legal department, in all the consultative meetings that concern the drafting of the final report of the onsite inspection. The purpose of these meetings is to agree on the conclusions and determine action points that are addressed in a letter of observation and also to list all the other actions that require a more robust response from the CSSF. All the conclusions reached during such meetings are detailed in a summary record.

190. There were around 139 banks in Luxembourg during the period under review. The following table gives the number of on-site inspections conducted at the banks during the period between 2015 and 2017, as well as the number and type of sanctions applied.

Year	Number of on-site inspections	Others	Letter of observation	Non-contentious administrative procedure (PANC)-fine	Amount in euros	Injunction letters
2015	10	--	2	1	30 000	1
2016	7	30[a]	5	4	12 853 842	1
2017	7	--	3	5	2 110 000	3

Note: a. 30 controls carried out based on a mandate given to external auditors. See explanations on the Panama Papers campaign.

191. The CSSF reports that the deficiencies detected in the identification of beneficial owners during on-site inspections in the last five years included the following:

- The files did not contain copies of extracts from the RCS or the articles of incorporation, or the extracts from the RCS were too old or the identity card of the beneficial owner had expired or the files contained no information about the purpose of the business relationship or arrangement.
- A certain number of files did not identify the beneficial owner or the identity of the beneficial owner had not been checked or the statements of acting in one's own name or in the name of a third party were missing or indeterminate.

192. As mentioned in A.1.1, Luxembourg indicate that each AML/CFT supervisory authority determines in its risk analysis the time frame for updating of due diligence requirements, adapted to the supervised professional sectors and the risk factors identified (this is adapted to each professional activity). As with the implementation of the beneficial ownership definition in practice, it is recommended that the Luxembourg authorities clarify in

guidance the rules concerning the updating of the information "in a timely manner" to ensure the proper application of this standard by AML-obliged persons.

193. Although the annual rate of on-site inspections stands at around 6 to 7 % of the total number of banks, the CSSF also has powers to take action in special cases. Its responsiveness after the disclosure of the Panama Papers is an illustration. These events also led the CSSF to strengthen its supervision in 2016.

194. The CSSF has launched a special examination of the auditing of accounts of companies in Luxembourg, and more specifically, the verification that the obligation to identify the customer is complied with (KYC – know your customer) and that high-risk transactions are detected (KYT – know your transaction) by entities that fall under CSSF supervision. This verification was subsequently extended to investment companies and some other professionals active in the financial sector in 2017.

195. To carry out this large-scale verification in 2017, the CSSF appointed external auditors (under mandate) to conduct the surveys relating to offshore structures with a large number of banks. In 2016, the CSSF submitted a questionnaire to each of 73 banks offering wealth management services. In addition to examining their responses, the auditors conducted an on-site inspection of the 30 banks holding 80 % of the total number of company accounts connected to offshore structures. A broad sample accounting for at least 20% of these financial statements was controlled at each bank. The 30 banks were selected on the basis of criteria selected by the CSSF.

196. In their reports, the auditors summarised the due diligence measures applied to offshore structures, and identified all cases of failure to comply with the obligations set out in the laws and regulations mentioned above. In the sample of offshore structures selected, they verified that KYC documents and information appeared in the account opening documentation or could be obtained from the bank's staff in order to substantiate the reason for which these offshore structures were set up, information concerning the origin of the funds and the identification of the client, his or her proxy(ies), or the final beneficial owner. Starting with the sample of offshore structures selected and lists documenting all transactions carried out by the accounts linked to these structures since being opened or during the last ten years, the auditors selected, on a risk-based approach, a sample of transactions and carried out a certain number of checks.

197. In general, the CSSF reports that based on these checks, the vast majority of these entities had observed the applicable laws and regulations in force in Luxembourg. In those cases in which the CSSF had observed minor regulatory violations, it handed down injunctions with which the entities

concerned complied immediately. In cases in which moderate or severe violations were observed and objectively established, the CSSF decided to impose administrative sanctions and, if applicable, carried out additional on-site checks in 2017. Sanctions were imposed on nine entities, including four banks, and took the form of administrative fines with the amount reflecting the seriousness of the breach. The total amount of these fines for the 9 entities came to EUR 2 012 000.

198. The CSSF reports that the deficiencies detected did not take place in the recent past and that all the entities sanctioned had launched a procedure for aligning their internal governance with the regulatory requirements, as requested by the CSSF. The CSSF took account of these facts when setting the amount of the fines.

Availability of banking information in practice

199. During the period under review (1 October 2014 to 30 September 2017), Luxembourg received 729 requests for banking information (out of a total of 2 309 requests). In practice, the banking institutions provided the information requested in all cases and the competent Luxembourg authority did not identify any problems with the availability of information. It did happen, however, that a bank experienced difficulties in identifying some accounts. The partner had to provide additional information, which allowed the information holder to identify and provide all of the information requested. In another case with another partner, the information holder in Luxembourg gave an inadequate response to the competent Luxembourg authority. As a result, Luxembourg was not able to respond in a timely manner to the partner's request. It was only after a reminder from the competent Luxembourg authority that the holder of Luxembourg information replied in full in a precise way, without alterations, to the injunction decisions. These two cases are rare exceptions in Luxembourg's practice, which is compliant with the standard.

200. Luxembourg also received 13 group requests, concerning the beneficial owners of bank accounts created with the help of some service providers. In nine cases, it transpired that no bank account had been set up. In the other cases, the number of people concerned varied from 15 to 40.

201. The types of banking information most frequently requested are statements of account, identity of account holders and proxy(ies), the beneficial owners of accounts, opening and closing balances, the person who opened the account, interest paid and taxes withheld from interest.

202. Excluding the two cases detailed above, Luxembourg's partners expressed their satisfaction with the responses received.

Part B: Access to information

203. Sections B.1 and B.2 assess the authority of the competent authorities to obtain and transmit information that is the subject of a request under an information-sharing agreement regardless of who in the territory of the person owns or controls that information and the compatibility of rights and protections with an effective exchange of information.

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

The competent authorities must, by virtue of an information-sharing agreement, have the power to obtain and communicate the requested information to a person under their territorial jurisdiction who possesses or controls such information (regardless of any legal obligation this person is responsible for respecting the confidentiality of this information).

204. The 2013 Report identified problems with access to information, and most of the concerns raised were resolved by Luxembourg when it published the circular of 31 December 2013 and the Law on EOI of 25 November 2014. These texts made major changes to the legal framework and practice in Luxembourg.

205. The 2015 Report then found that Luxembourg's tax administration had broad powers to access information, and found no deficiencies in the legal framework in terms of the ability of the competent authority to obtain and provide information on request for the purpose of exchanging information. It was recommended, however, that Luxembourg monitor the concrete application of the legal obligations introduced in response to the recommendations of the 2013 Report and changes to practice.

206. During the period currently under review (1 October 2014 to 30 September 2017), the Luxembourg tax authorities applied the new procedure. As a general rule, the Luxembourg authorities have not encountered any particular difficulties with information holders, with the exception of a handful of cases mentioned below in section B.1.1. Furthermore, Luxembourg's authorities exercise their coercive powers if necessary, and imposed sanctions in 19 cases of failure to produce the requested information. No bank statement

has been concealed since the introduction of the new procedures (unless so ordered by a court). These good practices were confirmed by the comments received from partners. The monitoring recommendation introduced in the 2015 Report is therefore considered to be fully implemented and is lifted.

207. The 2016 Terms of Reference stipulate that information relating to ownership to which the competent authority must have access also covers beneficial owners. The Law on EOI authorises access to all information for the purposes of EOI, including information on beneficial owners.

208. The table of determinations and ratings is as follows:

Legal framework		
Determination: in place		
Practical implementation of the standard		
	Underlying factor	**Recommendation**
Deficiencies identified in practice		
Rating: Compliant		

209. The 2015 Report examined the general procedures applied to access general information, as well as more specific rules on accessing banking information. Overall, the same rules still apply.

General rules on access to information

210. In Luxembourg, the Ministry of Finance is the competent authority and the ACD is the central authority for managing EOI requests based on any agreements with an EOI provision signed by Luxembourg.

211. The responsibility for responding to EOI requests is divided between the three tax administrations:

- The ACD is responsible for EOI requests in relation to all direct taxes, including individual income tax, corporate income tax (*impôt sur le revenue des collectivités*) and the municipal business tax. The ACD, which acts as the Central Liaison Office, receives the EOI request and either processes it or passes it on to the appropriate tax administration (the AED or ADA, mentioned below).
- The AED, which is responsible for requests in relation to VAT, stamp duties and succession taxes.

- The ADA, which is responsible for excise duties, consumption taxes on alcohol and the vehicle tax.

212. For the period under review, Luxembourg received 2 309 EOI requests, of which 22 for the AED and none for the ADA. All other EOI requests are processed by the ACD. Staff numbers at the EOI team fluctuated during the period under review, from 3.5 persons to 6 persons at the end of the period under review. The EOI team is assisted by four administrative staff (see C.5.2 Organisational processes and resources).

213. The circular of 31 December 2013 changed the practice of the tax authorities when gathering information for international exchange (ECHA No. 1). Therefore, all requests are processed according to the same procedure and directly by the EOI team within the ACD. Moreover, the Law on EOI has abolished the right of appeal (see section B.2 on Notification requirements, rights and safeguards).

214. As mentioned in the 2015 Report, the ACD is empowered to demand the information from the holder of said information by issuing an injunction decision. The holder of the information must provide the totality of the information requested, in a precise manner, without alterations. Article 3(4) states that the injunction decision must include only the minimum information necessary to enable the holder to identify the information requested (this is analysed under point C.3). An anti-tipping off provision has also been included (Article 4(1) and (2)). Finally, the Law on EOI abolishes the right for the taxpayer to appeal against the decision to exchange the information (Article 6). The notification, the injunction decision, the anti-tipping off provision and the abolition of the appeal process will be further analysed in B.2 below.

215. Luxembourg has greatly improved its communication process and provides explanations to its treaty partner when the information cannot be provided. During the period under review, the ACD was unable to access some information:

- When the administrative jurisdictions overturned the injunction decision, in full or in part (for requests received before the entry into force of the Law of 25 November 2014). This situation concerned 11 requests for information received before or during the peer review period. Luxembourg duly informed its treaty partner (see element B.2).
- When the documents had been seized in connection with criminal proceedings, under which circumstances the ACD had no right to share the information. This situation concerned seven requests for information. In these seven cases, the documents were seized for the purposes of a criminal investigation, and no copies were available from the original information holder. Under Luxembourg law,

while a criminal investigation is ongoing, the tax administration can still proceed with collecting the information from the taxpayer if the information is not concerned with the criminal investigation. The Luxembourg tax authorities have power to request information from the judicial authorities for domestic and EOI purposes,[29] except during the criminal investigation period, which is subject to the confidentiality of investigations. This is in line with Article 26(3)(a) of the OECD Model Convention, which provides that "In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation: a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State."

Processing of EOI requests in practice

216. In general, information gathering varies depending on the source of the information.

217. To collect the information requested, the EOI team begins by ascertaining whether the information is available directly, either through the tax administration or from one of the other central administrations in Luxembourg. It has direct access to various databases, including the RCS, which allow the consultation and printing of balance sheets, annual financial statements, certain decisions of general meetings of shareholders and other documents that must be submitted by stock companies and partnerships, the national directory of natural persons and the land register. When the EOI team does not have direct access to the required information, it applies to the relevant tax office to obtain the information kept in the tax files, including tax declarations and their annexes and, where applicable, tax rulings.

218. Thanks to inter-administrative co-operation, information can also be obtained from other administrative authorities, such as information on VAT, real estate, excise duties, taxes on alcohol consumption, Family Wealth Management Corporations (SPF), estate information and motor vehicle owners.

219. If the information is not available from internal sources or from another department of the State, the EOI team must ask the taxpayer or a third party in possession of this information to provide it. To do this, the EOI team sends an injunction decision to the taxpayer or third party who then has one month to provide the information. In general, the injunction decision is sent first to the taxpayer based on the principle of proportionality, i.e. the taxpayer

29. Article 16(3) of Law of 19 December 2008 on inter-administrative and judicial co-operation.

must always be the first person from whom the information is requested before it can be requested from a third party. In the following cases, however, this general rule does not apply:

- when the request concerns banking information, the injunction letter is always sent directly to the banking institution which manages the relevant bank account
- when it has been established that the person concerned by the request is not present in Luxembourg (which is frequent in practice) or if the requesting jurisdiction has expressly requested not to inform the taxpayer of the request, the information is requested directly from the third party in Luxembourg which holds it.

220. If the taxpayer or the third party do not answer the injunction letter within the allotted time of 30 days, penalties may be applied (see B.1.4 for more details).

B.1.1. Ownership and identity information and bank information

Information on legal and beneficial ownership

221. Information on ownership of Luxembourg entities is collected in different ways depending on the case. The authorities can consult the RCS database or request the minutes of general meetings and registers of shareholders.

222. Currently, only those AML-obliged persons are legally required to keep beneficial ownership information. These information holders must provide all the requested information in their possession, whatever the nature thereof (Article 2(2) of the Law of 25 November 2014, which requires all third-party holders of information to supply that information). However, in practice, for complex requests, the EOI team reverts directly to the taxpayer subject to the request. This approach allows the EOI team to request other information such as accounting documents at the same time and thus avoids sending a multitude of injunction decisions in relation to a single request. Luxembourg indicates that the taxpayer subject to the request will not be contacted in cases where the requesting authority requires the request to be kept confidential. Luxembourg responded to 13 group requests, which also concerned the beneficial owners of bank accounts. The number of people ultimately concerned was between 15 and 40. In the case of the group requests, the information about the beneficial owners of bank accounts was available and the Luxembourg authorities had no problem accessing this information.

223. Moreover, the Law of 1st August 2018 also grants the tax administration formal access to information relating to the fight against money

laundering, aiming to ensure compliance with the obligation for due diligence by financial institutions in Luxembourg during the automatic exchange of information.

Banking information

224. The tax administration obtains banking information directly from the banks. The procedure is the same as for any other type of requests for information to a third party holder. The EOI team sends an injunction decision to the bank concerned, which must reply within thirty days. The Luxembourg authorities report that the banking institutions generally reply within that deadline. In the case of requests for a large volume of information, however, especially group requests, the EOI team will agree on a longer deadline with the banking institution. The EOI team will then liaise with the banking institution to track the progress of the information request.

225. This fluid communication between the EOI team and the banking institutions matters because difficulties can arise during the processing of the injunction decision. One peer reported that during the period under review, a digital payment institution which held information had been unable to provide the information requested based on the details given by the requesting jurisdiction. When the requesting jurisdiction provided the additional details required, the information holder did manage to identify and provide all of the information requested. Luxembourg did, moreover, receive 13 group requests for bank information. Good collaboration between the banking institutions and the EOI team allowed these requests to be dealt with relatively quickly. During the on-site visit, the Luxembourg Bankers' Association (l'association des Banques et des Banquiers du Luxembourg, ABBL) stated that its members (Luxembourg's financial institutions) gave their full co-operation to the Luxembourg tax administration, a claim supported by the latter. As a result, practices that were found to be non-compliant with the standard in the 2013 Report (see paragraph 273 of the 2013 Report on some cases of information being only partially provided) are no longer in use by the financial institutions.

226. During the period under review, Luxembourg received 729 requests for bank information. In practice, the banks generally responded within the allotted time (i.e. around thirty days as provided for by Article 2, paragraph 2 of the Law of 25 November 2014). The peers reported that they were satisfied on the whole with the quality of bank information received (see also B.1.5 concerning the contribution of one peer on the subject of bank information).

B.1.2. Accounting records

227. Accounting records – annual accounts and balance sheets – are generally available from the tax administration and the RCS. If the request concerns underlying accounting documents, however, such as invoices or contracts, the EOI team sends a request to the taxpayers concerned. If the requesting jurisdiction requires that the person concerned by the request not be informed, the EOI team shall contact the domiciliation agent where applicable and prohibit it from disclosing to the person concerned or to third persons the existence and the content of the injunction decision on penalty of criminal sanction.

228. During the period under review, the EOI team had no difficulties in collecting the accounting information for the 1 397 requests for accounting information received. The peers said they were satisfied with the quality of the accounting information received in response to their requests.

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

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

230. The 2013 and 2015 Reports determined that there is nothing in Luxembourg legislation to restrict the use of domestic information gathering powers to situations in which the information is required by the ACD for its own use. In practice, no requests for EOI have been turned down because of a domestic tax requirement.

B.1.4. Enforcement provisions

231. If the taxpayer or third-party information holder does not respond to the injunction decision within thirty days, administrative fines of up to EUR 250 000 may be applied. Fines are cumulative (up to EUR 250 000) and the case can ultimately be referred to the State Prosecutor for criminal penalties. As regards sanctions, liquidation of the company failing to provide the requested information about itself was requested in four cases. Luxembourg has confirmed that persons invited to provide information generally respond before the legal deadline.

232. During the period under review, twenty administrative fines were imposed, ranging between EUR 10 000 and 250 000 and concerning 19 cases. The total amount of fines imposed came to EUR 831 500. In one case, the Administrative Court overturned the fine. The Luxembourg authorities reported having been highly vigilant, imposing the fines relatively promptly

after the failure of the taxpayer or information-holder to comply with the injunction decision after a first reminder. They also reported that there is less of a need to use fines because of the awareness among taxpayers and information holders of the stringent application of penalties by the tax administration in the event of non-compliance with the requirement to provide the information requested in an injunction decision.

233. In one case, the Luxembourg information holder had provided an inadequate response to the Luxembourg competent authority. The competent authority issued reminders to the information holder and threatened penalties. The Luxembourg information holder then replied in full, in a precise manner, without alterations, to the injunction decisions. The requesting jurisdiction was satisfied with the quality of the responses, which were received within 180 days.

234. During the period under review, the tax administration was initially unable to obtain the information requested in nine cases. Fines were imposed on the companies requested to provide their own information, which failed to comply with the request. In four cases out of the nine, the tax administration was unable to obtain any of the information requested. Because of these failures, the administration asked the Public Prosecutor to request liquidation of these companies.

235. In addition, Luxembourg is able to impose a penalty in cases in which the requesting jurisdiction has requested the non-notification of the person who is the subject of the request. This penalty, which consists of a fine of between EUR 1 250 and EUR 250 000, is applicable if the third-party holder of the information (or said holder's managers or employees) informs the person who is the subject of the request for information or any third party of the existence and content of the injunction decision. During the period under review, Luxembourg did not impose any such fines because no instance of tipping off was detected.

236. In the light of the above-mentioned developments, the application of sanctions by the Luxembourg tax administration is satisfactory.

B.1.5. Secrecy provisions

237. The 2015 Report determined that the secrecy obligations set out in Luxembourg law could be lifted to allow EOI for tax purposes in compliance with the standard. These provisions and their practical implementation during the period under review are outlined below.

Secrecy obligations of financial institutions and insurers

238. Article 41 of the Law of 5 April 1993 on the financial sector provides that information received from persons working in the banking sector in the context of their professional activity must be kept secret. Disclosure of this information is punished, pursuant to Article 458 of the Criminal Code, by imprisonment of 80 days to six months and a fine of EUR 500 to 5 000. The secrecy obligation ceases when the disclosure of the information is authorised by virtue of a legislative provision, including those predating the law cited (Article 41 of the Law on the financial sector). Section 111-1 of the Law of 6 December 1991 on the insurance sector imposes the same obligations of confidentiality on persons working in the insurance sector.

239. Banking secrecy provided for in article 178bis LGI is lifted if there is an arrangement in force that includes provisions similar to article 26(5) of the OECD Model DTC or if the request is made under the EU Council Directive on Administrative Co-operation in the Field of Taxation. In this case, Law of November 2014 gives the tax authorities the power to access banking information for EOIR purposes. Article 178 bis of the LGI, however, provides that the ACD cannot request information for domestic tax inspections. Luxembourg now has 85 EOI agreements, of which 74 comply with the standard and 12 others are complemented by the Multilateral Convention.

240. As concerns the six EOI[30] relations predating 2009 which have yet to be brought into line with the standard, access restrictions continue to apply to information held by financial establishments and insurance companies. These restrictions have an impact that extends beyond banking information, in that professionals working in the banking sector, insurance sector, credit institutions, finance companies, undertaking for collective investments or family wealth management companies, together with attorneys, are part of the only professions authorised to act as domiciliation agents and fiduciaries.

241. During the period under review, Luxembourg received 729 requests for banking information under exchange of information agreements for which the EOI team requested the information directly from the bank or other financial institution.

Professional secrecy for attorneys

242. The 2013 and 2015 Reports confirmed that secrecy provisions applicable to attorneys do not prevent the effective exchange of information (including CDD information) by the Luxembourg competent authority. In

30. Morocco, Thailand, Trinidad and Tobago, United States (however the Protocol has been ratified by Luxembourg), Uzbekistan (Protocol signed, but not yet in force) and Viet Nam.

practice, professional secrecy provisions applicable to attorneys were invoked once during the period under review in order to refuse to produce information for EOI purposes. The Luxembourg authorities reported that the secrecy claim was legally valid, because the documents concerned correspondence between an attorney and their client, which related to current legal proceedings. Luxembourg also indicates that requests to lawyers are not frequent in practice. If they are solicited, it is usually in their capacity as liquidator/curator of companies.

243. No issues were raised by peers in regard to the application of professional secrecy in practice during the period under review. In addition, there are no other professional secrecy rules in Luxembourg that would prevent the access to information in accordance with the standard for EOI purposes.

244. On the subject of the refusal to produce information on the grounds of commercial secrecy, Luxembourg has confirmed that it did not refuse any requests on these grounds during the period under review, and this is confirmed by inputs from the EOI partners.

B.2. Notification requirements, rights and safeguards

Rights and safeguards (such as notification or appeal rights) applicable to persons in the requested jurisdiction must be consistent with an effective exchange of information.

245. In the 2013 Report, it was noted that Luxembourg's legislation provided that any person targeted by a injunction decision and any third party concerned have the right to appeal against the decision before the administrative tribunal. Luxembourg subsequently abolished the right to appeal in the Law of 25 November 2014 on the exchange of information.

246. The 2015 Report recommended a follow-up in practice of the new Law on notifications and the abolition of rights of appeal. Throughout the period under review, Luxembourg applied the new legislation under which information holders and persons who are the subject of a request for information have no right to contest the validity of that request.

247. A judgment by the European Court of Justice (ECJ) has important repercussions for the rights and safeguards of information holders in Luxembourg as regards the exchange of information, since it requires that the information holder who has been fined is entitled to appeal against the legality of the injunction decision (and implicitly against the request for information). The Berlioz judgment concluding that Article 6 of the Law of 25 November 2014, prohibiting any appeal against the injunction decision, is not in conformity with European law, this provision is to be rejected with direct effect. Luxembourg has so far not adopted the draft Law determining the specific

modalities of the ECJ's right of appeal. As a consequence, certain holders of information have lodged an ordinary appeal against the injunction decision (action for annulment within a period of three months) or contested the legality of the injunction decision by way of exception in the context of the application for review directed against the decision fixing a fine. Since the Berlioz judgement, at least 37 appeals have been brought before the administrative court to contest the legality of the injunction decision notified to the information holders. As at 19 December 2018, 34 appeals are still pending before the administrative jurisdiction, generating major delays in the exchange of information in the cases concerned. It is recommended, therefore, that Luxembourg adapt its domestic law to take account of the Berlioz judgement while ensuring that information can be effectively exchanged in practice.

248. There are no notification procedures in Luxembourg.

249. The table of determinations and ratings is as follows:

Legal framework		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	Since the ECJ Berlioz judgement, at least 37 appeals have been brought before the administrative court to challenge the legality of the injunction decision notified to the information holders. As at 19 December 2018, 34 appeals are still pending before the administrative court, generating major delays in the exchange of information in the cases concerned. These appeals cast uncertainties over the consequences of the Berlioz judgement for Luxembourg's domestic law.	It is recommended that Luxembourg adapt its domestic law to take account of the Berlioz judgement to ensure that information can be effectively exchanged in practice.
Determination: 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 practice		
Rating: Largely Compliant		

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

Notification

250. Luxembourg legislation does not provide for notifying the person who is the subject of the request prior to or subsequent to sending the information to the requesting jurisdiction. In some cases, however, the person concerned will become aware of the request if the requesting State does not ask for the request to remain confidential. Section D of the circular of 31 December 2013 specifies that when a request is received and the information must be collected, the information will be first requested from the person concerned by the request. If the requesting partner stipulates that the request be kept confidential from the taxpayer, the information will be requested directly from the information holder (in which case, an anti-tipping off provision applies, see below). If the person concerned is a non-resident of Luxembourg, the information is requested from the information holder, without any notification to the person concerned.

251. The injunction decision contains only such information as is necessary to enable the holder of information to identify the requested information (Article 3 (4) of the Law of 25 November 2014).

Right of appeal

252. Luxembourg abolished the right to appeal against the EOI request and the injunction decision in Article 6(1) of the Law of 25 November 2014. Prior to this, Luxembourg law provided that any person who was the subject of an injunction decision and any third party concerned had the right to apply for these decisions to be overturned by an administrative tribunal.

253. However, the Law of 25 November 2014 maintained the right to appeal against the decisions of the director of the ACD concerning the sanctions applied when the holder refuses to provide the information requested in the injunction decision. In these cases, an appeal for reversal may be brought before the administrative tribunal against the decision fixing the fine. This appeal must be lodged within one month of the notification of the decision to the holder of the requested information. Appeals have a suspensive effect on the injunction decision. Notwithstanding the procedures brought before the administrative courts, there can not be more than one statement from each party, including the application to institute proceedings. The statement of defence must be provided within one month of the date of the application to institute proceedings before the tribunal. In the interests of the proceedings, however, the presiding judge called on to hear the case may order the production of additional statements within a period set by the tribunal. The administrative tribunal will rule on the case within one month of the filing of the statement of defence or the expiry of the deadline for filing additional statements.

254. As far as possible, Luxembourg has shortened the process for appealing against decisions taken by the administrative tribunal at the administrative court. Appeals must be filed within fifteen days of the notification of the ruling. Enforcement of the ruling is stayed during the judgement and the appeal process. The rules for filing statements and time limits that apply to the appeal are the same as those referred to in paragraph 252.

255. In the case of an appeal against the level of a fine imposed for the failure to comply with a decision enjoining the information holder to provide information (Article 6, paragraph 2, of the Law of 25 November 2014), the administrative court raised several prejudicial questions for the Court of Justice of the European Union (ECJ).

Berlioz ruling of 16 May 2017 (C-682/15) handed down by the ECJ

256. In its ruling of 16 May 2017 (C-682/15)[31], the ECJ recognised the appellant's right to challenge the legality of an administrative decision enjoining it to provide information (injunction decision) in case a fine has been imposed on it for failure to comply with that decision. The ECJ decided that the "foreseeable relevance" of the information requested constituted a condition for the legality of the injunction decision and that the authority to which an EOI request has been submitted must verify whether the information requested is not devoid of any foreseeable relevance for the investigation conducted by the requesting authority.

257. Following this judgement, Luxembourg tabled a bill in Parliament to bring its law into line with the decision of the ECJ. It would again bring an action for annulment before the administrative court against the injunction decision, open to the information holder. However, this bill has not yet been adopted by Luxembourg and the consequences of Berlioz on Luxembourg law and practice remain uncertain (see below).

Appeal proceedings in practice

258. Requests for information received during the period under review from 1 October 2014 to 30 September 2017 gave rise to 33 appeals to the administrative tribunal. These cases were of two kinds:

- Three appeals based on the procedure applicable before the Law of 25 November 2014, two of which led to the partial or total overturning of the injunction decision. One remaining appeal was found to be groundless or inadmissible.

31. Case C-682/15 – Berlioz Investment Fund SA/Director of Direct Tax Administration.

- 30 appeals[32] introduced either before or after the ECJ Berlioz judgement under the Law of 25 November 2014 but before the end of the peer review period. Out of these 30 appeals introduced during the peer review period, 22 are still pending before the administrative jurisdiction. For the 8 appeals that have been finalised, seven appeals were found to be groundless or inadmissible and one decision fixing a fine was annulled on a technicality.
- 14 appeals were made after the peer review period and before 19 December 2018 (cut-off date of the report). Out of these 14 appeals, 12 are still pending.
- Overall, the total number of pending cases as at 19 December 2018 is 34.

259. Since the Berlioz judgment concludes that Article 6 of the Law of 25 November 2014, prohibiting any appeal against the injunction decision, is not in conformity with European law, this provision is to be rejected with direct effect. Since Luxembourg has so far not approved the draft Law determining the specific modalities of the right of appeal consecrated by the ECJ, certain holders of the information have lodged an ordinary appeal against the injunction decision (action for annulment within a period of 3 months) or contest the legality of the injunction decision by way of exception in the context of the application for review directed against the decision fixing a fine.

260. Since the Berlioz judgment, at least 37 appeals have been lodged with the administrative court challenging the legality of the injunction decision notified to the information holders (whether the requests were received during or after the peer review period). This case law is not final with respect to the types of remedies that are admissible: Direct appeal against the injunction decision (common law)/appeal against the fine with indirect challenge to the injunction decision (appeal by way of exception not provided for in domestic law, but accepted in the Berlioz case).

261. As at 19 December 2018, 34 of these appeals are pending before the administrative jurisdiction, generating delays of the exchange of information in the cases concerned. These appeals cast uncertainties over the consequences of the Berlioz ruling for Luxembourg's domestic law. It is recommended that Luxembourg adapt its domestic law to take account of the Berlioz ruling to ensure that information can be effectively exchanged in practice.

32. Out of these 30 appeals, 7 were made before the decision of the Berlioz case in May 2017 and 23 were introduced between May 2017 and 30 September 2017.

Other rights and safeguards

262. Section D of the circular of 31 December 2013 specifies that when a request is received and the information must be collected, the information will be first requested from the person concerned by the request. If the requesting partner stipulates that the request be kept confidential from the taxpayer, the information will be requested directly from the information holder (in which case, an anti-tipping off provision applies, see below). If the person concerned is a non-resident of Luxembourg, the information is requested from the information holder, without any notification to the person concerned. During the period under review, Luxembourg did not request the information from the taxpayer in 14 cases because the requesting jurisdiction asked that the person concerned not be informed and no third party holder of the information could be identified.

263. An anti-tipping off provision was included in the Law on EOI of 25 November 2014. Article 4(1) provides that if the competent authority of the requesting jurisdiction requires that the request be kept confidential, the Luxembourg tax administration will request the information directly from the information holder and will forbid said information holder (including its management and its employees) to disclose to the person concerned or to any third parties, the existence and contents of the injunction decision requesting the information. Failure to respect this provision is punishable by a fine of between EUR 1 250 and EUR 250 000.

264. The Luxembourg authorities have mentioned that to make it easier to apply, the anti-tipping off provision is inspired by the one that exists for AML/CFT. This Law on EOI came into force on 1 December 2014 and the Luxembourg authorities have confirmed that the anti-tipping off provision has been applied to 4% of the requests for information during the period under review and that no issues have been raised.

Part C: Exchanging information

265. Sections C.1 to C.5 assess the effectiveness of Luxembourg's network of information exchange instruments: if these mechanisms have an adequate scope for the exchange of information, they cover all relevant partners of the jurisdiction, whether there are adequate arrangements to ensure the confidentiality of the information received, whether the Luxembourg EOI network respects the rights and protections of taxpayers, and whether Luxembourg can exchange the requested information within a reasonable period of time.

C.1. Exchange of information mechanisms

Information exchange instruments must allow for the efficient exchange of information.

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

267. Luxembourg has a network of 85 treaties covering 135 jurisdictions, the majority of which are now compliant with the international standard, thanks largely to the Multilateral Convention and the 6 bilateral instruments signed since 2015. These treaties are also interpreted and applied in compliance with the standard in practice.

268. The 2013 and 2015 Reports identified a significant improvement in Luxembourg's network of agreements since 2009, especially after the entry into force of the Multilateral Convention on 1 November 2014. After a renegotiation drive (especially the agreements with Austria and Switzerland that were not compliant with standard) and the application of the Multilateral Convention, Luxembourg now has a network of tax treaties that is compliant

with the standard, with the exception of 6 tax treaties that are not compliant, with jurisdictions that are not covered by the Multilateral Convention.

269. Luxembourg has also moved forward with the interpretation of the criterion of foreseeable relevance. The 2013 Report found its interpretation to be too restrictive; at the time and in some cases, this prevented the exchange of information. It was recommended that Luxembourg review its practice and bring it into line with the international standard. The 2015 Report lifted this recommendation, because Luxembourg had changed its interpretation of the concept of foreseeable relevance. The 2015 Report had noted that the criterion of foreseeable relevance was properly applied and that no problem had been reported by its partners. Luxembourg continued to interpret the notion of foreseeable relevance in line with the standard during the period under review.

270. The 2013 and 2015 Reports found that Luxembourg did not exchange banking information with regard to requests that related to a tax period that was after the effective date of the agreement where the information preceded that date, even in instances where the information was otherwise available. In 2013, it was recommended that Luxembourg exchange this information. At the end of 2013, Luxembourg changed its practice and subsequently exchanged such information. The 2015 Report, however, introduced a monitoring recommendation, on the grounds that at the beginning of the period under review, some requests were not answered based on the old policy. Now that a three-year peer review period has elapsed and in the light of the fact that Luxembourg has continued to apply the new practice concerning this kind of information, the recommendation is lifted.

271. The standard now incorporates a reference to group requests in compliance with paragraph 5.2 of the Commentary on the Model Tax Convention. The foreseeable relevance of a group request should, moreover, be sufficiently shown, and the information requested should allow the compliance of the group's taxpayers to be determined. Luxembourg received 13 group requests during the period under review, and was able to provide the information requested.

272. The table of determinations and ratings is as follows:

Legal framework
Determination: in place

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

Other forms of exchange

273. In addition to exchanges on request, Luxembourg continues to exchange information spontaneously. Luxembourg spontaneously exchanged information over 11 200 tax rulings and advance agreements on transfer pricing in 2016 and 2017 under Directive 2011/16/EU and the BEPS Action 5.

274. Luxembourg exchanges information on an automatic basis under the EU Savings Directive 2003/48/EU of 3 June 2003 and agreements on the taxation of savings income (in the form of interest payments), and EU Directive 2011/16/EU (DAC1, amended) when the following information is available within the tax administration: ownership and revenues from real estate property, professional revenues, directors' fees, pensions and revenues coming from life insurance products (since 2014).

275. Finally, Luxembourg applies the Common Reporting Standard (CRS) in matters of automatic EOI and exchanged the first financial information in September 2017 on the basis of the Multilateral Convention, Directive 2014/107/EU and amended agreements on the taxation of savings. Luxembourg has already activated 79 exchange relationships.

C.1.1. Foreseeably relevant standard

276. EOI instruments should allow for EOI on request where it is foreseeably relevant to the administration or enforcement of the domestic tax laws of the requesting jurisdiction. The 2015 Report concluded that Luxembourg's network of EOI instruments is based on the OECD Model Tax Convention and are implemented in accordance with the Commentary on foreseeable relevance.

277. The EOI instruments signed since 2015 with partners, which relationship is not covered by the Multilateral Convention, are all compliant with the standard. Luxembourg continues to interpret and apply its DTAs in accordance with these principles.

278. In practice, the list of conditions determining admissibility that are checked by the EOI team is as follows: (i) the legal basis of the request and its scope of application (taxes covered, period concerned); (ii) whether the request comes from the competent authority of the requesting authority; (iii) the existence of reciprocity; (iv) whether the requesting party has exhausted all domestic procedures on its own territory to obtain the information; (v) the foreseeable relevance of the request received (see below); and (vi) whether the request is sufficiently detailed to understand and process it. Where an objective requirement is not met, the competent authority contacts the requesting jurisdiction to request the missing information. The request is rejected only if the missing information is not supplied or is not available (for example, lack of legal basis), which occurred three times during the peer review period.

279. The competent tax authority assesses the formal compliance of the request for information exchange. If the request for EOI does not contain the required information, additional information is requested from the competent authority in the requesting jurisdiction. During the period under review, no requests were rejected on the grounds of a lack of foreseeable relevance.

280. During the period under review, 46 requests for clarification were issued to the foreign competent authority (i.e. 2 % of requests submitted). The following reasons were given:

- The banking information requested was for a tax period prior to the entry into force of the legal basis of the application.
- The request for information did not contain enough elements to identify the alleged banking institutions holding the information.
- There were doubts as to whether the requesting party had exhausted all domestic procedures to obtain the information.

281. Response times to the requests for clarification varied widely between jurisdictions. In some cases clarification requests led to delays.

282. Only a few partners indicated having received requests for clarification from Luxembourg, confirming that such requests are rare and concern the issues listed above. No partners have challenged the relevance of these requests for clarification, which appear justified and compliant with the standard. In two cases, the requesting jurisdiction had not exhausted its internal means of collecting the information requested and withdrew its request.[33]

33. In both cases, after receiving an injunction decision, the holder of the information expressed serious doubts as to the exhaustion of internal means by the requesting jurisdiction. Luxembourg then contacted the requesting jurisdiction to consult on these points.

283. Most requests are received in an electronic form (EU e-forms). Predefined forms contain the following information:

- legal basis
- identity of the competent authority
- exhausting of all domestic procedures available to the requesting party on its own territory to obtain the information
- confidentiality
- identity of the person who is the subject of the audit or investigation
- tax purpose of the information requested
- name and address of any person who is likely to be in possession of the information requested
- period considered by the investigation (implementing Regulation (EU) 2015/2378 of the Commission of 15 December 2015).

284. For jurisdictions that do not use e-forms, the competent authority generally requires that the request include the following standard-compliant information:

a. the identity of the person who is the subject of an audit or investigation

b. indications concerning the information being sought, especially their nature and the form in which the requesting party wishes to receive the information from the requested party

c. the tax purpose of the request for information

d. the reasons why it is believed that the information requested is held in the requested party's territory or is in the possession or control of a person within the jurisdiction of the requested party

e. as far as they are known, the name and address of any person who is believed to be in possession or control of the information requested

f. a statement declaring that the request is compliant with legal and regulatory provisions and the administrative practices of the requesting party, that, if the information requested was within the jurisdiction of the requesting party, the competent authority of that party would be able to obtain the information under its national laws or within the normal course of its administrative practices, and that the request is compliant with the Agreement

g. a statement declaring that the requesting party has, for the purposes of obtaining the information, pursued all means available in its own territory, excluding those that would raise disproportionate difficulties.

Berlioz judgement by the ECJ and "manifest foreseeable relevance"

285. As mentioned in section B.2, the ECJ handed down a ruling on 16 May 2017 (C-682/15 Berlioz), in which it considers that the "foreseeable relevance" of requested information constitutes a condition for the legality of the injunction decision and that the authority to which a request has been submitted must verify whether the information requested is not devoid of any foreseeable relevance for the investigation conducted by the requesting authority.

286. On the subject of foreseeable relevance, the ECJ states that:

> "Article 1(1) and Article 5 of Directive 2011/16 must be interpreted as meaning that verification by the requested authority to which a request for information has been submitted by the requesting authority pursuant to that directive is not limited to the procedural regularity of that request but must enable the requested authority to satisfy itself that the information sought is not devoid of any foreseeable relevance having regard to the identity of the taxpayer concerned and that of any third party asked to provide the information, and to the requirements of the tax investigation concerned. … As regards the condition of legality of that information order, which relates to the foreseeable relevance of the requested information, the courts' review is limited to verification that the requested information manifestly has no such relevance."

287. According to the ECJ, "to demonstrate that all or part of the requested information manifestly has no foreseeable relevance in the light of the investigation being carried out, given the identity of the taxpayer concerned and the tax purpose for which the information is sought", "it is not necessary for the relevant person to have access to the whole of the request for information […] It is sufficient that that person has access to the minimum information referred to in Article 20(2) of Directive 2011/16, that is to say, the identity of the taxpayer concerned and the tax purpose for which the information is sought."

288. The ECJ does, however, grant the judge the possibility to provide this additional information to the relevant person, while taking due account of any confidential items contained therein if the said judge considers that said minimum information is not sufficient to demonstrate a manifest lack of foreseeable relevance. The Luxembourg authorities confirmed that the injunction decision only includes indications which are essential to enable the holder of the information to identify the requested information. However, the identity of the taxpayer has to be disclosed in case of an appeal.

289. One of Luxembourg's partners mentioned in its comments that since the Berlioz ruling there has been a constant increase in requests for clarification. Luxembourg states that these "requests for clarification" were mainly

solicited when the holders of information objected to providing the information by reference to the tax legislation of the requesting Jurisdiction. In an interview with the competent authority of the partner concerned, it was held that requests made following an objection by the holder of the information would not be considered as requests for clarification. It was agreed that in such cases, if necessary, Luxembourg would contact the competent authority by telephone to obtain details of the tax legislation. The competent authority of the other Jurisdiction acknowledged the recent improvements and that the problem had been largely solved.

Requests concerning a group of persons

290. None of Luxembourg's international EOI instruments exclude group requests, nor do they specify particular conditions to be applied to such requests.

291. Luxembourg's procedures for processing group applications are very similar to those for an individual application. It is recommended that Luxembourg include in its EOI Manual details of the procedure to follow for group requests in practice.

292. During the period under review, Luxembourg received 13 group requests. In several cases, further information was requested from the competent authority of the requesting jurisdiction before execution of the request. Luxembourg reports that before the recurring use of JITSIC standard standardised forms, group requests were sometimes formulated in a very broad and undefined way for a group. The additional information was intended to clearly delimit the group. To avoid these situations, the competent Luxembourg authority recommended that its partners use the standard form issued by the JITSIC.

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

293. The 2015 Report noted that all EOI instruments allowed for the exchange of information in respect of any person without restriction. The same applies to the new instruments which have been signed since then.

294. This issue did not present any problems in practice or elicit any comments from partners. For example, the Luxembourg authorities exchanged banking information regarding persons who were not residents in Luxembourg for tax purposes or in the requesting jurisdiction.

C.1.3. Obligation to exchange all types of information

295. Jurisdictions cannot engage in effective EOI if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Tax Convention and the Model TIEA, which are the authoritative sources of the standard, stipulate that banking secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest in a person.

296. The exchange of banking information has long been a problem for Luxembourg. The 2013 Report stated that just 43 of the 75 agreements signed by Luxembourg allowed for the exchange of banking information in line with the standard. Major progress was noted in the 2015 Report, especially with the entry into force of the Multilateral Convention on 1 November 2014.

297. Today, just 6 agreements[34] do not allow the exchange of information held by banks and other financial institutions, and the other contracting party is not a signatory to the Multilateral Convention or the Multilateral Convention is not yet in force. A peer requested banking information, but Luxembourg could not accede to their request because the tax treaty did not provide for the exchange of banking information. Luxembourg has already ratified a Protocol to this tax treaty to comply with the standard, and is awaiting ratification by the other jurisdiction. Negotiations are under way with most partners, or have been offered to these partners, as mentioned in section C.2 below. It is nevertheless recommended that Luxembourg pursue its efforts to amend the tax treaties referred to above which are not in line with the standard, and do not allow the exchange of banking information.

C.1.4. Absence of domestic tax interest

298. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. The contracting parties must be in a position to use their powers to collect information even if those powers must be used for the sole purpose of obtaining the information requested by the requesting jurisdiction and providing it to that jurisdiction.

34. These agreements are with Morocco, Thailand, Trinidad and Tobago, the United States (Protocol), Uzbekistan and Viet Nam.

299. All the information exchange instruments concluded since March 2009 contain, without exception, an express provision (equivalent to Article 26(4) of the OECD Model Tax Convention) according to which the requested party will submit the information requested regardless of whether it has a domestic tax interest in obtaining that information. The six agreements that have not been updated since March 2009, and which are not otherwise covered by the Multilateral Convention do not contain any express provision relating to the non-application of the principle of domestic tax interest. However, these treaties are interpreted by Luxembourg as allowing access to all information without reference to that principle. It is recommended that Luxembourg pursue its efforts to bring these EOI relations fully into line with the standard.

C.1.5. Absence of dual criminality principles

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

301. None of the EOI instruments concluded by Luxembourg provide for the application of the dual criminality principle to restrict the exchange of information.

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

302. The 2015 Report noted that the EOI instruments concluded by Luxembourg provide for the exchange of information for both criminal and civil purposes. The same applies to the new instruments which have been signed since then. This issue did not present any problems in practice or elicit any comments from partners with regard to the criminal, civil or administrative nature of ongoing proceedings in the requesting jurisdiction. Luxembourg exchanged information in all three areas.

303. One of Luxembourg's partners stated that it had sent an urgent request for information concerning a criminal tax case. The partner reported being fully satisfied with the timeliness of response given by Luxembourg, and also with the quality of the information given.

C.1.7. Provide information in specific form requested

304. According to the Terms of Reference, EOI mechanisms should allow for the provision of information in the specific form requested to the extent possible under a jurisdiction's domestic laws and practices.

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

306. The Luxembourg authorities have stated that they can exchange information in the forms requested to the extent that the laws and administrative practices in Luxembourg allow it and that they have not received any specific request regarding the form.

C.1.8. Signed agreements should be in force

307. In Luxembourg, all tax agreements, whether double taxation conventions, protocols amending existing conventions, or information exchange agreements, must be ratified by the Parliament. Luxembourg is also covered by the EU Council Directive on Administrative Co-operation (2011/16/EU) and the Multilateral Convention, which entered into force on 1 November 2014. Therefore, Luxembourg's network of bilateral and multilateral agreements covers to date a total of 135 jurisdictions. Of these 135 relationships, 129 are in line with the standard. Of the 129 relationships that are in line with the standard, 119 are currently in force.

Bilateral EOI mechanisms

			Total	Bilateral EOI mechanisms not complemented by the MAC
A	Total number of DTCs/TIEAs	A = B + C	85	9
B	Number of DTCs/TIEAs signed (but pending ratification) i.e. not in force	B = D + E	3	1
C	Number of DTCs/TIEAs signed and in force	C = F + G	82	8
D	Number of DTCs/TIEAs signed (but pending ratification) and compliant with the Standard		1	1
E	Number of DTCs/TIEAs signed (but pending ratification) and not compliant with the Standard		2	0
F	Number of DTCs/TIEAs in force and compliant with the Standard		76	2
G	Number of DTCs/TIEAs in force and not compliant with the Standard		6	6

308. Luxembourg is generally quick to ratify the tax conventions and EOI agreements it signs. Luxembourg states that its ratification process takes around twelve months.

C.1.9. Be given effect through domestic law

309. In order for information exchange to be effective, the contracting parties must take the necessary measures to ensure compliance with their commitments. Once a treaty or an agreement has entered into force, Luxembourg does not need to take any additional measures for it to take effect.

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

The network of information exchange instruments of the courts must cover all relevant partners.

310. The international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. The 2015 Report noted that Luxembourg had a network of 108 EOI agreements, of which 100 were in line with the standard and 95 had entered into force.

311. Since 1 October 2014, Luxembourg has signed 11 bilateral conventions (including amendments and/or exchanges of letters), all of which are in line with the standard (Austria, Brunei, Cyprus[35], Hungary, Kosovo,* Senegal, Serbia, Ukraine, United Arab Emirates, Uruguay, Uzbekistan). In addition, 15 agreements (including amendments and exchanges of letters) that are compliant with the international standard came into force (Andorra, Austria, Brunei, Croatia, Estonia, Hungary, Ireland, Lithuania, Mauritius, Serbia, Singapore, Tunisia, Ukraine, United Arab Emirates, Uruguay).

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

Footnote by all of 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.

* This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.

312. As the Multilateral Convention has been signed and ratified by many jurisdictions in recent years, Luxembourg's standard-compliant EOI network has grown widely. As a result, the Grand-Duchy's EOI network now covers 135 jurisdictions, including all members of the OECD, all EU partners and all members of the G20.

313. The international standard requires jurisdictions to exchange information with all relevant partners, i.e. partners who are interested in an agreement on exchange of information. Luxembourg remains ready to negotiate new instruments with new partners, although it prefers that any jurisdiction that has not yet signed and ratified the multilateral convention does so. The comments received from Luxembourg's EOI partners also show that Luxembourg has concluded agreements with all those jurisdictions that have expressed an interest in negotiating with Luxembourg an agreement that respects the international transparency standard. It is recommended that Luxembourg continue to conclude EOI agreements with any new relevant partner that requests it. Luxembourg has an EOI mechanism network covering all its relevant partners; element C.2 is in place and is rated compliant.

314. The table of determinations and ratings is as follows:

Legal framework
Determination: in place
Practical implementation of the standard
Rating: Compliant

C.3. Confidentiality

The information exchange instruments must include provisions to ensure the confidentiality of the information received.

315. The 2015 Report found that Luxembourg's EOI instruments all contain a confidentiality provision in line with Article 26(2) of the OECD Model Tax Convention. Luxembourg's legal and regulatory provisions support these texts.

316. The 2013 Report recommended that Luxembourg ensure greater protection of the information exchanged because the amount of information that the Luxembourg competent authority disclosed at that time to the holder of the information sought in the injunction letter might have caused concern with respect to ensuring the confidentiality of EOI requests. Luxembourg has removed the right of appeal against the injunction decision. The injunction decision, moreover, no longer contains in practice any information beyond that which is necessary to enable the information holder to respond to the

request for information. The 2015 Report nevertheless introduced a monitoring recommendation for the new practice with regard to injunction decision.

317. Since then, the consequences of the Berlioz judgment by the ECJ in May 2017 (see B.2 above) on Luxembourg law and practice, particularly with regard to the confidentiality of the request, remain uncertain, while the principle of confidentiality remains well-established. Luxembourg states that although the consequences of the Berlioz judgment on confidentiality are not certain, they will certainly not jeopardise the limits established by the international standard (which allows, for example, for the full disclosure of the request letter before a Court, whereas the Berlioz judgment lays down the principle of limited disclosure to specific information.) Although this confidentiality is well established, it is recommended that the Luxembourg authorities ensure that the confidentiality of the information contained in the requests for information is maintained in accordance with the international EOI standard.

318. The 2016 Terms of Reference stated that while the rule is that exchanged information may not be used for any purpose other than tax purposes, an exception can be made if the authority providing the information allows it to be used for non-tax purposes, in accordance with the amendment to the OECD Model Tax Convention, which introduced into Article 26 this possibility which previously appeared in the related commentary. This is the case in Luxembourg.

319. The rating is unchanged; the legal and regulatory framework is in place and implementation is compliant with the standard.

320. The table of determinations and ratings is as follows:

Legal framework		
Determination: in place		
Practical implementation of the standard		
Deficiencies identified in the implementation of the standard in practice		
Rating: Compliant		

C.3.1. Information received: Disclosure, use and safeguards

321. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purpose for which the information can be used. The domestic law applicable in the countries concerned also usually contains strict rules on respect for the confidentiality of the information gathered for tax purposes.

Tax secrecy obligation

322. As indicated in the 2013 and 2015 Reports, all the EOI instruments concluded by Luxembourg contain provisions relating to confidentiality based on the provisions of the OECD Model Convention or TIEA.

323. Luxembourg domestic law also contains provisions guaranteeing the confidential nature of information exchanged, namely an obligation of professional secrecy on the part of officials and experts involved in a tax enforcement procedure, a procedure under criminal tax law, or communication from a tax authority in another procedure (see section 22 of the LGI). The tax administration may, in the case of violation, initiate a disciplinary action and/or criminal proceedings against the person concerned. Violations are punishable by a fine or imprisonment of up to six months (see section 412 of the LGI). Any breach of these duties on the part of the State official, including the duty of discretion, carries a disciplinary sanction, without prejudice to the further application of a criminal sanction.

324. The confidentiality measures are very strict in Luxembourg. As assessed in the 2013 and 2015 Reports, physical confidentiality (of offices, data materials, etc.) is ensured by a policy governing Human Resources, training and IT, which allows a policy of ongoing confidentiality protection to be implemented. Only the agents of the EOI team have access to the database where all EOI requests received are registered. Paper files are stored in a secured area with limited access. In addition, all members of the EOI team are bound by professional secrecy rules, and external audits are performed periodically in order to ensure that these rules are properly observed by the members. Officials working in the tax administration receive regular awareness-raising on this issue. No sanctions for breach of confidentiality have been applied in the Luxembourg administration.

325. Furthermore, no confidentiality issue was raised by the peers in their comments on exchanges with Luxembourg.

Confidentiality of the letter requesting information and content of the injunction decision

326. The 2013 Report recommended that Luxembourg ensure greater protection of the information exchanged because the amount of information that the Luxembourg competent authority disclosed at that time to the holder of the information sought in the injunction letter might have caused concern with respect to ensuring the confidentiality of EOI requests.

327. The Law of 25 November 2014 had then abolished the right to appeal against the injunction decision and the decision was no longer subject to control by the administrative courts on the merits of the case. Consequently, the Luxembourg tax authorities were no longer bound by the administrative courts to file the request for information received from the requesting jurisdiction with the administrative court. Moreover, the injunction decision contains only such information as is necessary to enable the holder of information to identify the requested information.

328. The judgment of the ECJ Berlioz of May 2017 (see B.2 above) indicates that: "it is not necessary for the relevant person to have access to the entire request for information in order for that person to be given a fair hearing regarding the condition of foreseeable relevance. It is sufficient that that person has access to the minimum information referred to in Article 20(2) of Directive 2011/16, that is to say, the identity of the taxpayer concerned and the tax purpose for which the information is sought. However, if the court of the requested Member State considers that that minimum information is not sufficient in that respect, and if it asks the requested authority for additional information […] that court is obliged to provide that additional information to the person concerned, while taking due account of the possible confidentiality of some of that information." The consequences of the Berlioz judgement on Luxembourg law and practice remain uncertain. Luxembourg states that although the consequences of the Berlioz judgment on confidentiality are not certain, they will certainly not jeopardise the limits established by the international standard (which allows, for example, for the full disclosure of the request letter before a Court, whereas the Berlioz judgment lays down the principle of limited disclosure to specific information.) Although this confidentiality is well established, it is recommended that the Luxembourg authorities ensure that the confidentiality of the information contained in the requests for information is maintained in accordance with the international EOI standard.

329. The data protection Regulation of the European Parliament and Council (UE) 2016/679 of 27 April 2016 is applicable to all the Member States of the European Union as from 25 May 2018. The application of the Data Protection regulation is quite limited for EOIR, as under Article 2 it is provided that "This Regulation applies to the processing of personal data

wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system". According to this Regulation (see art. 15), individuals have also the right to access their personal data which are processed by an authority. This should cover also all exchange of information exchanged under the Council directive 2011/16/EU on administrative co-operation in the field of taxation (see article 25 of the directive). The Regulation itself already contains restrictions to the right to access information (see art 23) which EU jurisdictions may include in their legislation for the purpose of safeguarding other general interests (including for taxation purposes). The same restrictions are also contemplated in the Council directive 2011/16/EU (art. 25) which imposes these restrictions for information exchanged under this Directive. However, in line with this general framework, in Luxembourg, Article 3(4) of the Law of 25 November 2014 providing for the procedure applicable to the exchange of information in tax matters states that, among other things, the EOI request letter cannot be disclosed. According to the advice of the Luxembourg Council of State (Conseil d'État), this is a special law (lex specialis) which cannot be superseded by the law on data protection.

Exceptions

330. Exceptions exist under Luxembourg's laws which allow exchanged information to be disclosed. Article 17 of the amended Law of 29 March 2013 on administrative co-operation in the field of taxation which transposes the directive 2011/16/EU authorises Luxembourg to use the information received from another EU Member State to establish and recover other duties and taxes under Article 1 of the Law of 21 July 2012 which transposes the EU Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, or for the establishment and recovery of compulsory social security contributions.

331. Information from another Member State may also be used during legal and administrative proceedings that may give rise to penalties and were initiated following violations of tax law, without prejudice to the general rules and legal provisions applying to the rights of defendants and witnesses in such cases.

332. The Luxembourg competent authority receiving the information may also, with the permission of the competent authority in the Member State, which is providing the information, use the information and documents received for non-tax purposes, in accordance with the OECD's commentaries.

333. In cases where the Luxembourg competent authority considers that the information it has received from the competent authority of another Member State is likely to be useful for tax purposes to the competent authority in a third Member State, it may pass said information on thereto. It informs the competent authority in the Member State at the origin of the information of its intention to share this information with the third-party Member State and requests its authorisation. It communicates them only after receiving formal authorisation.

334. In practice, Luxembourg has not carried out such spontaneous outgoing exchanges during the peer review period. In the opposite direction, in six cases, Luxembourg was at the origin of such information and agreed with the transfer of data for tax purposes.

C.3.2. All other information exchanged

335. The confidentiality provisions in Luxembourg's agreements and Luxembourg's domestic legislation do not draw a distinction between information received in response to requests and information forming part of the requests themselves. These provisions apply equally to all requests, background documents to such requests, and any other communications between the requesting and requested jurisdictions. All information received from the partner is kept confidential.

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

Information exchange instruments must respect the rights and protections of taxpayers and third parties.

336. All the EOI mechanisms concluded by Luxembourg ensure that the parties concerned will not be required to provide information which would disclose any industrial, commercial or professional secret, or information that is the subject of attorney-client privilege or information the disclosure of which would be contrary to public order.

337. According to responses received from peers, there have not been any cases in which Luxembourg failed to respect taxpayers' rights or safeguards. Neither have the Luxembourg authorities identified any requests in respect of which sending certain information to the partner jurisdiction could have had an impact on rights or safeguards applicable in Luxembourg. The professional secrecy of lawyers was invoked only once, in line with the standard.

338. The 2016 Terms of Reference have not changed this key element. The determination and rating remain unchanged.

Legal framework
Determination: in place
Practical implementation of the standard
Rating: Compliant

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

The court must provide the requested information and request information through its conventional network in an effective manner.

339. In order for EOI to be effective, jurisdictions should request and provide information under their 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 providing 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.

340. The 2015 Report concluded that although progress had been made during the period under review, some partners had expressed concerns in relation to response times. It was recommended that Luxembourg monitor its timeframe for answering requests to ensure that it always replies in a timely manner.

341. During the period under review, response times worsened owing to a substantial increase in requests received and an insufficient rise in staffing levels at the EOI team. Although the EOI team is well organised for optimal efficiency, response times suffered because of the lack of staff. It is recommended that Luxembourg continue to improve the timeliness of responses and ensure that adequate resources are allocated to the EOI activities.

342. The EOI manual was not updated to take account of changes in volume, organisation and case law during the period under review. It is recommended that Luxembourg carry out regular updates of its EOI manual and monitor the effective application of the changes introduced.

343. Under the 2016 Terms of Reference, the quality of requests issued by Luxembourg is also assessed. Comments by the peers testify to the

good quality of requests issued and communication with foreign competent authorities.

344. Luxembourg is an important partner in respect of the exchange of information. During the peer review period (from 1 October 2014 to 30 September 2017), Luxembourg received 2 309 requests for information and issued 46 requests for information. Taking into account that the same request may relate to several types of information, the requests received concerned: (i) accounting information; (ii) banking information; (iii) ownership and identity information; and (iv) other types of information (over 1 300, in particular tax data on immovable property ownership and salaries). The Luxembourg authorities do not keep statistics on the type of persons concerned (stock companies, etc.). However, according to peers' contributions, it may be noted that most requests concerned companies.

345. Luxembourg received requests from 44 partners and 92.5% of requests came from EU partners, mainly France, Belgium, Spain, Denmark and Sweden.

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

Legal framework		
This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.		
Practical implementation of the standard		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of the standard in practice	Despite the fact that Luxembourg has increased staff numbers during the peer review period, these resources were not sufficient to cope with the substantial increase in the number of EOI requests received from its partners. The EOI team was organised to provide maximum efficiency, but the timeliness of response was inevitably affected by the lack of staff.	It is recommended that Luxembourg continue to improve the timeliness of responses and ensure that adequate resources are allocated to the EOI activities.
Rating: Largely Compliant		

C.5.1. Timeliness of responses to requests for information

347. The percentages of requests to which Luxembourg responded within 90 days, 180 days, one year or more than one year, were:

Statistics on response time

			01/10/2014-30/09/2015		01/10/2015-30/09/2016		01/10/2016-30/09/2017		Total	
			Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	(A+B+C+D+E+F)		629		832		848		2 309	
Full response (including declined requests):	≤90 days		251	40	170	20	155	18	576	25
	≤ 180 days (cumulative)		534	85	575	69	375	44	1 484	64
	≤ 1 year (cumulative)	(A)	606	96	795	96	533	63	1 934	84
	> 1 year	(B)	15	2	17	3	295	35	327	14
Status update provided within 90 days (for responses taking longer than 90 days)			378	100	651	100	691	100	1 720	100
Response declining to provide information for valid reasons		(C)	3	< 1	0	-	0	-	3	< 1
Failure to obtain and provide information requested		(D)	2	< 1	7	< 1	0	-	9	< 1
Requests withdrawn by requesting jurisdiction		(E)	2	< 1	11	1	4	< 1	17	< 1
Requests still pending as at 30 November 2018		(F)	1	< 1	2	< 1	16	2	19	< 1

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

b. 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.

c. 15 EOI requests (out of the 19) are subject to an appeal before the Administrative Court. As mentioned in para 256 (2nd bullet), the 22 pending appeals are connected to 15 EOI requests received during the period under review.

348. The percentage of responses issued within 90 days deteriorated during the period under review, falling from 40 % to 18 % in the final year. During the previous peer review period, the average percentage of responses issued within 90 days was 47 %. More generally, the final year of the review period saw a marked decline of over 30 % of responses issued in less than one year (from 96 % to 63 %). The Luxembourg authorities explain the decline in performance and longer response times by: (i) an increase in the number of requests considered "complex", i.e. those with various types of information and a large volume; and (ii) the involvement of the EOI team in the project for the spontaneous exchange of tax rulings (over 11 200 information about tax rulings and advance agreements on transfer pricing were exchanged by Luxembourg between December 2016 and December 2017).

349. Requests for information taking more than 90 days to be processed concern cases coming from several steps in the information gathering process because several different parties (tax office, Luxembourg information holder) intervene at different times.

350. Luxembourg introduced two important measures to improve the performance of its EOI team:

- In the short term, to solve the problem of the backlog that had built up at the end of the period under review, a twelve-person task force was deployed in February 2018. These people were temporarily seconded from their respective departments to process requests pending during the period under review. The ACD's management committee was also expanded, which allowed one of the co-directors to take charge of the day-to-day tracking of all the exchange of information challenges and requirements. As a result, while pending requests on 17 December 2017 amounted 234 (and representing 10% of the requests), they were only 19 on 30 November 2018.
- In the long term, Luxembourg is in the process of doubling the workforce of its EOI team. Effective headcount rose from 3.5 in 2014 to 6 in 2017, and 3 new recruits joined the team in 2018. Three other recruitments are in progress.

351. Luxembourg reports that much progress has been made on the timeliness of processing applications after the peer review period. Luxembourg reports that it received 1 206 requests for information during the period from 1 October 2017 to 30 September 2018, of which 1 085 during the first 9 months (thus indicating that the number of requests continues to increase). The number of replies made within 90 days is 455 (41.9%), the cumulative number of replies made within 180 days is 929 (85.6%), and the cumulative number of replies less than one year (in this case within 9 months) amounts to 1 039 (95.7%). Of the pending EOI requests, 121 have been pending for less than 90 days, 21 for less than 180 days, and 23 for more than 180 days. Luxembourg also indicates that this significant progress has been made in parallel with the processing of requests received previously and which had not yet received an answer at the end of the peer review period. Luxembourg's main partner also noted progress in the timeliness of Luxembourg's responses.

352. It should be noted that the EOI team is assisted by an administrative team composed of four people who carry out the following administrative tasks: recording requests for information, sending acknowledgments of receipt, setting up "paper" files, registering replies to injunction decisions, sending replies to the requesting jurisdictions and archiving the files.

353. There were few requests for clarification during the period under review (46, see C.1.1). Luxembourg reports that response times to requests

for clarification were very variable according to the partner. In some cases, these requests did lead to delays.

354. The EOI team reports that partial responses are frequent: if one part of the information is available immediately, it is sent to the partner while the rest of the information is compiled. This good practice is not reflected in the table of statistics which records only the final response sent.

355. During the period under review, 17 requests for information were withdrawn by the partner. One request was withdrawn by the requesting jurisdiction which could no longer wait for the end of the judicial proceedings. All actions filed for the annulment of fines were suspended pending the ECJ's handing down of the Berlioz ruling (see B.2). In two cases, the requesting jurisdiction had not exhausted all domestic procedures on its territory to collect the requested information itself or, the requesting jurisdiction had closed its request for assistance when it finally obtained the information from the taxpayer in its own country. After requests for clarification were issued by Luxembourg, eleven cases were closed by the requesting jurisdiction when the latter was unable to provide any further information to the banking institutions presumed to hold the information requested. In two last cases, the requesting jurisdiction closed the files without giving any reason.

356. During the period under review, Luxembourg rejected three requests (out of 2 309) for valid reasons. In two cases, no legal basis existed for the exchange of banking information because the request concerned tax periods prior to the entry into force of the applicable legal provisions. In one case, there existed no connection between the information holder and Luxembourg.

Progress at 90 days and communication with partners

357. As a general rule, in addition to an acknowledgement of receipt of requests (to be sent within seven days), status reports on requests are sent to partners if a response cannot be provided within 90 days of receipt of the request, indicating the date when information will be sent. At least one partner, however, reported that some status reports were sent late. Luxembourg indicates that until July 2018, the EOI team sent a compiled progress report quarterly and that therefore some might be delayed, even though in the Luxembourg statistics they are counted as being sent in less than 90 days.

358. Since July 2018, Luxembourg has reformed its procedure on progress reports and now sends compiled progress reports every two months. In this way, it is ensured that the 90-day period is always respected. In addition, the status report is completed with details of the status of processing the request if the time exceeds 180 days. As this change is recent, it is recommended that Luxembourg oversee application of the new procedure on status reports to ensure that these reports meet the 90-day target.

359. Status reports are generally sent by email. If there have been telephone conversations or if partial responses have been sent, these will stand in lieu of the status report. Within the EU, communications take place through a shared, secure communication network, and with other partners using secure email whenever possible.

360. The competent authority is in regular contact with the most important partners by telephone and can, on request, hold regular bilateral meetings. Taking part in meetings of the Global Forum and JITSIC facilitates contact with the other authorities.

Inputs by partners on the quality and timeliness of responses

361. A total of 30 Luxembourg partners commented on the quality of their information exchange relationship with Luxembourg.

362. All of Luxembourg's EOI partners reported that these exchanges were generally satisfactory, but to varying degrees. At least three partners, for example, reported that co-operation with Luxembourg was more than satisfactory, and that in several cases the Luxembourg authorities had exceeded their expectations. Just one of Luxembourg's partners (the main partner) mentioned problems with the timeliness of response, and in a handful of cases (five of a total of 1 203 requests) problems with the quality of the information. This partner did, however, report good co-operation and good communication between the two competent authorities. The two authorities meet regularly to discuss cases pending and any current problems.

C.5.2. Organisational processes and resources

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

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

365. A list of members of staff of the competent authority is published in the internal databases of the EU and Global Forum.

Organisation of incoming requests

366. Between the Member States of the European Union, the requests for information and their replies, acknowledgements, requests for additional information, inability or refusal are sent by using a standard form adopted by the European Commission (eForms). The exchange of information itself is provided by electronic means using the CCN network.

For the exchange of information with other countries, Luxembourg relies on registered letters or electronic encrypted mails. All EOI requests are logged in a secure database and a paper file is created at the same time.

367. When the request is logged, it is allocated a case number (national reference). The database records the date on which the letter was received, the type of exchange (on request, spontaneous, notification), the name of the requesting jurisdiction, the competent authority, the conventional and legal bases, the taxpayer(s) concerned in the requesting jurisdiction and requested jurisdiction.

368. Cases that do not only concern banking information rely on several different stages in the collection of information because several different parties (tax office, Luxembourg information holder) intervene at different times.

369. Every incoming request is analysed by the assistant head of division or a delegate to ensure that it is admissible and that the information requested is foreseeably relevant, before fulfilling the request. On average, validity is verified within seven days of the request being logged.

370. As to gathering the information, the EOI team has direct IT access to some ACD internal and external databases. If the information is not available from direct sources, the unit must approach:

- The competent local tax office in order to obtain the information contained in the tax file (tax returns and annexes, balance sheets and annual accounts, copies of the minutes of general assemblies). The Tax Office has 30 days (or 15 days in case of emergency as indicated in the request by the partner) to provide the information. Since June 2018, the time allowed for tax offices to respond has been reduced respectively to 3 weeks and 8 days in case of emergency (see EOIR Manual).
- The AED to obtain information on SPF or heirs.

- The SNCT (Société nationale de contrôle technique) in order to obtain information concerning car registration. Luxembourg states that there is no mandatory deadline but that replies are always provided within thirty days.
- Third-party information holders (banks, tax advisors, etc.) using an injunction decision, with a request that the response be issued within thirty days.

371. After the information has been collected, the EOI team checks that it is of good quality and answers the questions contained in the request from the requesting jurisdiction. Overall, the peers said they were satisfied with the quality of responses. At least three peers stated that the information received was of very high quality and quite relevant to their investigation. Two peers, on the other hand, reported deficiencies, although they appear to be infrequent. One peer reported that out of nine cases, the information was unsatisfactory in two. In one of those cases, the information was incomplete, and in the second, the information that there was no bank account in Luxembourg was incorrect. The other peer stated that in five specific cases (out of 1 203 requests), the quality of the response was not satisfactory and gave the impression that the information collected had not been checked. It is recommended that the EOI team check the quality of the information collected in all cases.

Human resources and training

372. As mentioned in C.5.1, the workforce of the EOI team numbered just 3.5 in 2014. This figure grew steadily, albeit too slowly, up to the end of the period under review, reaching six in 2017.

373. On 1st November 2018, the EOI team went from 6 to 9 employees, and 3 recruitments in the process of being finalised. Luxembourg indicates that its goal of doubling the workforce will be reached in early 2019.

374. At the end of the period under review, over 27 % of requests remained pending. Since then, only 19 requests were pending on 30 November 2018 (15 of which are subject to an appeal before the administrative tribunal). Nevertheless, although they were fully exploited, staff were not allocated to the EOI team in sufficient numbers to process the 2 309 requests for information received during the period under review. The team also had to manage other priorities and projects during the period under review.

375. With respect to the training of EOI officials, a general training course in exchange of information at the ACD has been incorporated into the training programme for trainee civil servants and civil servants enrolled in the promotion examination. Most civil servants in the team responsible for

EOI, moreover, have taken courses offered by the Global Forum. During the period under review, six other people took part in the training courses offered by the Global Forum. Finally, all ACD officials must complete a training course in security policing. Luxembourg indicates that initial training has been given to new recruits and members of the task force dealing with the practical processing of applications (recording of documents in the database, formulating injunction decisions, filling in of electronic forms). Model letters and mementos have been made available to them. Subsequently, training took place on a daily basis, i.e. the work of the task force and of the new recruits was monitored closely by experienced agents. Since mid-September 2018, the EOIR manual, as updated, has also been made available to the agents in charge of EOI.

C.5.2. Quality of outgoing requests

376. Under the 2016 Terms of Reference, the quality of requests issued is also assessed.

377. Luxembourg sent 46 requests between 1 October 2014 and 30 September 2017. The main recipient countries were the Netherlands, France and Belgium. These requests concerned individuals (65%) and companies (35%).

378. The competent tax office or a department of the ACD (generally the audit department) contacts the EOI team to obtain information. The EOI team formulates the request and sends it to the required jurisdiction. The local tax office or the department asking for the information must provide evidence to show that they have exhausted all domestic means available for collecting the information on their territory.

379. During the period under review, the EOI team had no specific provisions for addressing the preparation of EOI requests in the EOI Manual, but it recently introduced such provisions.

380. For requests sent to Member States of the EU, it uses standardised electronic forms. When preparing requests for non-EU jurisdictions, it checks whether the conditions for the Exchange of Letters in the bilateral Conventions are met (see conditions in Article 5(5) of the Model TIEA).

381. In practice, Luxembourg issues few requests, but the high quality of outgoing requests and communication with the foreign competent authorities is reflected in the comments of the peers, which are all very positive on this point. For the 46 requests issued, Luxembourg received just one request for clarification. It may therefore be concluded that the quality of requests issued by Luxembourg is adequate.

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

382. There are no unreasonable, disproportionate or unduly restrictive conditions in the Luxembourg law or EOI instruments that would unduly restrict exchange of information as the pitfalls of the system have been eliminated.

Annex 1: List of in-text recommendations

Issues may have arisen 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. However, in order to ensure that the Global Forum does not lose sight of these "in text" recommendations, they should be listed in an annex to the EOIR report for ease of reference.

- **Element A.1.1**: It is recommended that the Luxembourg authorities clarify the rules concerning the updating of the information "in a timely manner" to ensure the proper application of this standard by the taxable persons.
- **Element A.1.1**: It is recommended that Luxembourg provide guidance to assist AML-obliged persons apply the definition of beneficial owner in practice and include its implementation in practice in its supervision.
- **Element A.1.2**: However, it is recommended that Luxembourg continue its supervision efforts on the immobilisation of existing bearer shares.
- **Element A.3**: As mentioned in A.1.1, the Luxembourg authorities have indicated that an update of the due diligence requirements must be carried out at least every 12 months for "high-risk" clients in the enhanced due diligence category. For the rest, the authorities did not specify a minimum duration for upgrades of normal profile or low-risk clients. As with the implementation of the beneficial ownership definition in practice, it is recommended that the Luxembourg authorities clarify in guidance the rules concerning the updating of the information "in a timely manner" to ensure the proper application of this standard by the taxable persons.

- **Element C.1.3**: It is nevertheless recommended that Luxembourg pursue its efforts to amend the tax treaties referred to above which are not in line with the standard, and do not allow the exchange of banking information.
- **Element C.1.4**: It is recommended that Luxembourg pursue its efforts to bring these EOI relations fully into line with the standard.
- **Element C.2**: It is recommended that Luxembourg continue to conclude EOI agreements with any new relevant partner that requests it.
- **Element C.3**: Although this confidentiality is well established, it is recommended that the Luxembourg authorities ensure that the confidentiality of the information contained in the requests for information is maintained in accordance with the international EOI standard.
- **Element C.5**: It is recommended that Luxembourg carry out regular updates of its EOI manual and monitor the effective application of the changes introduced.
- **Element C.5**: Since July 2018, Luxembourg has reformed its procedure on status updates and now sends compiled status updates every two months. In this way, it is ensured that the 90-day period is always respected. In addition, the status update is completed with details of the status of processing the request if the time exceeds 180 days. As this change is recent, it is recommended that Luxembourg oversee the application of the new procedure on status updates to ensure that they meet the 90-day deadline.
- **Element C.5.2**: Two peers, on the other hand, reported deficiencies, although they appear to be infrequent. It is recommended that the EOI team check the quality of the information collected in all cases.

Annex 2: List of Luxembourg's EOI mechanisms

1. Bilateral international agreements for the exchange of information

EOI Partner	Type of agreement	Date signed	Date entered into force
Albania	DTC	14-01-2009	
Andorra	DTC	02-06-2014	07-03-2016
Armenia	DTC	23-06-2009	09-04-2010
Austria	DTC	18-10-1962	07-02-1964
	DTC Protocol	07-07-2009	01-09-2010
	Exchange of Letters	18-06-2015	27-12-2016
Azerbaijan	DTC	16-06-2006	02-07-2009
Bahrain	DTC	06-05-2009	10-11-2010
Barbados	DTC	01-12-2009	08-08-2011
Belgium	DTC	17-09-1970	30-12-1972
	DTC Protocol	16-07-2009	25-06-2013
Brazil	DTC	08-11-1978	23-07-1980
Brunei Darussalam	DTC	14-07-2015	26-01-2017
Bulgaria	DTC	27-01-1992	15-03-1994
Canada	DTC	10-09-1999	17-10-2000
	DTC Protocol	08-05-2012	10-12-2013
China	DTC	12-03-1994	28-07-1995
Croatia	DTC	20-06-2014	13-01-2016
Cyprus[a]	DTC	08-05-2017	
Czech Republic	DTC	05-03-2013	31-07-2014
Denmark	DTC	17-11-1980	22-03-1982
	DTC Protocol	04-06-2009	09-04-2010

EOI Partner	Type of agreement	Date signed	Date entered into force
Estonia	DTC	07-07-2014	11-12-2015
Finland	DTC	01-03-1982	27-03-1983
	DTC Protocol	01-07-2009	12-04-2010
France	DTC	01-04-1958	09-02-1960
	DTC Protocol	03-06-2009	29-10-2010
Georgia	DTC	15-10-2007	14-12-2009
Germany	DTC	23-04-2012	30-09-2013
Greece	DTC	22-11-1991	26-08-1995
Guernsey	DTC	10-05-2013	05-08-2014
Hong Kong (China)	DTC	02-11-2007	20-01-2009
	DTC Protocol	11-11-2010	17-08-2011
Hungary	DTC	10-03-2015	26-01-2017
Iceland	DTC	04-10-1999	19-09-2001
	DTC Protocol	28-08-2009	28-04-2010
India	DTC	02-06-2008	09-07-2009
Indonesia	DTC	14-01-1993	10-03-1994
Ireland	DTC	14-01-1972	25-02-1975
	DTC Protocol	27-05-2014	11-12-2015
Isle of Man	DTC	08-04-2013	05-08-2014
Israel	DTC	13-12-2004	22-05-2006
Italy	DTC	03-06-1981	04-02-1983
	DTC Protocol	21-06-2012	25-10-2014
Japan	DTC	05-03-1992	27-12-1992
	DTC Protocol	25-01-2010	30-12-2011
Jersey	DTC	17-04-2013	05-08-2014
Kazakhstan	DTC	26-06-2008	11-12-2013
	DTC Protocol	03-05-2012	11-12-2013
Korea	DTC	07-11-1984	26-12-1986
	DTC Protocol	29-05-2012	04-09-2013
Kosovo	DTC	08-12-2017	
Kuwait	DTC	11-12-2007	
Laos	DTC	04-11-2012	21-03-2014
Latvia	DTC	14-06-2004	14-04-2006

EOI Partner	Type of agreement	Date signed	Date entered into force
Liechtenstein	DTC	26-08-2009	17-12-2010
Lithuania	DTC	22-11-2004	14-04-2006
	DTC Protocol	20-06-2014	11-12-2015
Malaysia	DTC	21-11-2002	29-12-2004
Malta	DTC	29-04-1994	14-02-1996
	DTC Protocol	30-11-2011	25-06-2013
Mauritius	DTC	15-02-1995	12-09-1996
	DTC Protocol	28-01-2014	11-12-2015
Mexico	DTC	07-02-2001	27-12-2001
	DTC Protocol	07-10-2009	20-11-2011
Moldova	DTC	11-07-2007	04-12-2009
Monaco	DTC	27-07-2009	03-05-2010
Morocco	DTC	19-12-1980	16-02-1984
North Macedonia[b]	DTC	15-05-2012	23-07-2013
Netherlands	DTC	08-05-1968	20-10-1969
	DTC Protocol	29-05-2009	01-07-2010
Norway	DTC	06-05-1983	27-02-1985
	DTC Protocol	07-07-2009	09-04-2010
Panama	DTC	07-10-2010	01-11-2011
Poland	DTC	14-06-1995	31-07-1996
	DTC Protocol	07-06-2012	25-07-2013
Portugal	DTC	25-05-1999	30-12-2000
	DTC Protocol	07-09-2010	18-05-2012
Qatar	DTC	03-07-2009	09-04-2010
Romania	DTC	14-12-1993	08-12-1995
	DTC Protocol	04-10-2011	11-07-2013
Russia	DTC	28-06-1993	07-05-1997
	DTC Protocol	21-11-2011	30-07-2013
San Marino	DTC	27-03-2006	29-12-2006
	DTC Protocol	18-09-2009	05-08-2011
Saudi Arabia	DTC	07-05-2013	01-09-2014
Senegal	DTC	10-02-2016	
Serbia	DTC	15-12-2015	27-12-2016

EOI Partner	Type of agreement	Date signed	Date entered into force
Seychelles	DTC	04-06-2012	19-08-2013
Singapore	DTC	09-10-2013	28-12-2015
Slovak Republic	DTC	18-03-1991	30-12-1992
Slovenia	DTC	02-04-2001	18-12-2002
South Africa	DTC	23-11-1998	08-09-2000
Spain	DTC	03-06-1986	19-05-1987
	DTC Protocol	10-11-2009	16-07-2010
Sri Lanka	DTC	31-01-2013	11-04-2014
Sweden	DTC	14-10-1996	15-03-1998
	DTC Protocol	07-09-2010	11-09-2011
Switzerland	DTC	21-01-1993	19-02-1994
	DTC Protocol	11-07-2012	11-07-2013
Chinese Taipei	DTC	19-12-2011	25-07-2014
Tajikistan	DTC	09-06-2011	27-07-2013
Thailand	DTC	07-05-1996	12-06-1998
Trinidad and Tobago	DTC	07-05-2001	20-11-2003
Tunisia	DTC	27-03-1996	18-10-1999
	DTC Protocol	08-07-2014	30-11-2016
Turkey	DTC	09-06-2003	18-01-2005
	DTC Protocol	30-09-2009	14-07-2011
Ukraine	DTC	06-09-1997	18-04-2017
	DTC Protocol	30-09-2016	18-04-2017
United Arab Emirates	DTC	20-11-2005	19-06-2009
	DTC Protocol	26-10-2014	11-12-2015
United Kingdom	DTC	24-05-1967	03-07-1968
	DTC Protocol	02-07-2009	28-04-2010
United States	DTC	03-04-1996	20-12-2000
	DTC Protocol	20-05-2009	
Uruguay	DTC	10-03-2015	11-01-2017
Uzbekistan	DTC	02-07-1997	01-09-2000
	DTC Protocol	18-09-2017	
Viet Nam	DTC	04-03-1996	19-05-1998
TOTAL	**85**		

Notes: a. 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.

b. The Republic of North Macedonia, previously known as the Former Yugoslav Republic of Macedonia, has informed the United Nations and the OECD of its new official name. The change is effective as of 14 February 2019.

2. Convention on Mutual Administrative Assistance in Tax Matters (as 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 Multilateral Convention).[36] The Multilateral 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 original 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 Multilateral Convention was opened for signature on 1 June 2011.

The Multilateral Convention was signed by Luxembourg on 29 May 2013 and entered into force on 1 November 2014 in Luxembourg. Luxembourg can exchange information with all other Parties to the Multilateral Convention.

As of 18 July 2018,[37] the Multilateral Convention is in force in respect of the following jurisdictions (as shown in the summary table above): Albania, Andorra, Anguilla (extension by the United Kingdom), Argentina, Aruba

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

37. Since this date, Antigua and Barbuda has signed the Multilateral Convention and Kuwait and Vanuatu have deposited their instruments of ratification, for an entry into force on 1 December 2018. The Multilateral Convention entered into force on 1 September 2018 in Bahrain, Grenada, Hong Kong (China), Macao (China), Peru and the United Arab Emirates.

(extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas Bahrain, 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, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands (extension by the United Kingdom), United Arab Emirates, Uganda, Ukraine, United Kingdom Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by, or extended to the following jurisdictions, where it is not yet in force: Antigua and Barbuda (entry into force on 1 February 2019), Armenia, Brunei Darussalam, Burkina Faso, Dominican Republic, Ecuador, El Salvador, North Macedonia, Gabon, Jamaica (entry into force on 1 March 2019), Kenya, Liberia, Morocco, Paraguay, Philippines, Qatar (entry into force on 1 January 2019), United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

3. EU Directive on Mutual Administrative Assistance in Tax Matters

Luxembourg 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 entered into force on 1 January 2013. All EU members were required to transpose it into their domestic legislation by 1 January 2013, i.e. Luxembourg, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

Annex 3: Methodology for the review

- The reviews are based on the 2016 Terms of Reference, conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2016 and the 2016-21 Schedule of Reviews.
- The present assessment is based on information made available to the assessment team, including, in particular information exchange agreements, legislation and regulations in force or entering into force at 19 December 2018, the implementation of Luxembourg's exchange of information on request based on the requests sent and received during the three-year review period from 1 October 2014 to 31 September 2017, Luxembourg's responses to the EOIR questionnaire, the comments provided by the jurisdiction partners in response to the peers' questionnaire as well as information supplied by Luxembourg's authorities during the on-site visit which took place from 2 to 4 May 2018 in Luxembourg.

List of laws, regulations and other materials received

AML/CTF legal and regulatory framework

- Loi du 10 août 2018 modifiant : 1° le Code de procédure pénale ; 2° la loi modifiée du 7 mars 1980 sur l'organisation judiciaire ; 3° la loi modifiée du 12 novembre 2004 relative à la lutte contre le blanchiment et contre le financement du terrorisme ; 4° la loi modifiée du 25 mars 2015 fixant le régime des traitements et les conditions et modalités d'avancement des fonctionnaires de l'État afin de porter organisation de la Cellule de renseignement financier (CRF).
- Loi du 10 août 2018 relative aux informations à obtenir et à conserver par les fiduciaires et portant transposition de l'article 31 de la directive (UE) 2015/849 du Parlement européen et du Conseil du 20 mai 2015 relative à la prévention de l'utilisation du système financier aux

fins du blanchiment de capitaux ou du financement du terrorisme, modifiant le règlement (UE) n° 648/2012 du Parlement européen et du Conseil et abrogeant la directive 2005/60/CE du Parlement européen et du Conseil et la directive 2006/70/CE de la Commission.

- Loi du 27 octobre 2010 portant renforcement du cadre légal en matière de lutte contre le blanchiment et contre le financement du terrorisme
  - portant organisation des contrôles du transport physique de l'argent liquide entrant au, transitant par ou sortant du Grand-Duché de Luxembourg
  - relative à la mise en œuvre de résolutions du Conseil de Sécurité des Nations Unies et d'actes adoptés par l'Union européenne comportant des interdictions et mesures restrictives en matière financière à l'encontre de certaines personnes, entités et groupes dans le cadre de la lutte contre le financement du terrorisme
- Loi du 12 novembre 2004 relative à la lutte contre le blanchiment et contre le financement du terrorisme.
- Le Règlement grand-ducal modifié du 1er février 2010 portant précision de certaines dispositions de la loi modifiée du 12 novembre 2004 relative à la lutte contre le blanchiment et contre le financement du terrorisme (une version coordonnée de ce texte peut être trouvée sous le lien suivant: www.cssf.lu/fileadmin/files/Lois_reglements/Legislation/RG_NAT/rgd_lbc_ft_01022010_upd050815.pdf.
- Le Règlement grand-ducal du 29 octobre 2010 portant exécution de la loi du 27 octobre 2010 relative à la mise en œuvre de résolutions du Conseil de Sécurité des Nations Unies et d'actes adoptés par l'Union européenne comportant des interdictions et mesures restrictives en matière financière à l'encontre de certaines personnes, entités et groupes dans le cadre de la lutte contre le financement du terrorisme, qui attribue compétence au Ministre des Finances pour traiter de toutes questions et contestations relatives à l'exécution des interdictions et mesures restrictives, et instaure un comité de suivi, composé d'un représentant du ministre des Finances, d'un représentant de la CSSF, un représentant du CAA, un représentant de la CRF, un représentant du Ministère des Affaires étrangères et européennes et un représentant du Ministère de la Justice. Ce comité de suivi se réunit régulièrement et est à même d'inviter des représentants d'autres autorités publiques, judiciaires ou administratives, des experts externes ou autres personnes physiques ou morales intéressées (voir http://legilux.public.lu/eli/etat/leg/rgd/2010/10/29/n1/jo).

- La loi du 26 décembre 2012 portant approbation de la Convention du Conseil de l'Europe sur la prévention du terrorisme, signée à Varsovie, le 16 mai 2005, et modifiant – le Code pénal; – le Code d'instruction criminelle; – la loi modifiée du 31 janvier 1948 relative à la réglementation de la navigation aérienne; – la loi modifiée du 11 avril 1985 portant approbation de la Convention sur la protection physique des matières nucléaires, ouverte à la signature à Vienne et à New York en date du 3 mars 1980; et – la loi modifiée du 14 avril 1992 instituant un code disciplinaire et pénal pour la marine. Cette loi approuve formellement la Convention du 16 mai 2005, mettant en œuvre la décision-cadre 2008/919/JAI modifiant la décision-cadre 2002/475/JAI en apportant au Code pénal et au Code d'instruction criminelle les modifications qui en découlent. Accessoirement, cette loi du 26 décembre 2012 met le droit pénal matériel luxembourgeois en conformité avec la décision-cadre 2008/841/JAI du Conseil du 24 octobre 2008 relative à la lutte contre la criminalité organisée en élevant le seuil de peine prévue à l'article 324ter du Code pénal à une peine d'emprisonnement comprise entre deux et cinq ans (voir http://legilux.public.lu/eli/etat/leg/loi/2012/12/26/n10/jo).
- Le Règlement délégué (UE) 2016/1675 de la Commission du 14 juillet 2016 complétant la directive (UE) 2015/849 du Parlement européen et du Conseil par le recensement des pays tiers à haut risque présentant des carences stratégiques, qui est régulièrement mis en œuvre par la Commission européenne et dont le dernier Règlement délégué (UE) 2018/212 date du 13 décembre 2017.

Circulars issued by the CSSF

- Circulaire CSSF 18/698 du 23.08.2018 : Agrément et organisation des gestionnaires de fonds d'investissement de droit luxembourgeois – Dispositions spécifiques en matière de lutte contre le blanchiment de capitaux et le financement du terrorisme applicable aux gestionnaires de fonds d'investissement et aux entités exerçant la fonction d'agent teneur de registre.
- Circulaire CSSF 18/684 du 13.03.2018 : Entrée en vigueur de la loi du 13 février 2018 portant notamment modification de la loi du 12 novembre 2004 relative à la lutte contre le blanchiment et contre le financement du terrorisme.
- Circulaire CSSF 18/694 du 05.07.2018 : Déclarations du GAFI (qui sont régulièrement remplacées par de nouvelles circulaires suite aux déclarations du GAFI) concernant :

1. les juridictions dont le régime de lutte contre le blanchiment et le financement du terrorisme présente des déficiences substantielles et stratégiques
2. les juridictions dont le régime de lutte contre le blanchiment et le financement du terrorisme requiert l'application de mesures de vigilance renforcées proportionnelles aux risques émanant de ces juridictions
3. les juridictions dont le régime de lutte contre le blanchiment et le financement du terrorisme n'est pas satisfaisant.

- Circulaire CSSF 18/680 du 23.01.2018 : Orientations communes des trois autorités européennes de surveillance relatives aux mesures que les prestataires de services de paiement doivent prendre en rapport avec des transferts de fonds pour lesquels des informations sur le donneur d'ordre ou le bénéficiaire sont manquantes ou incomplètes
- Circulaire CSSF 17/661 du 24.07.2017 : Adoption des orientations conjointes émises par les trois autorités européennes de surveillance (EBA/ESMA/EIOPA) sur les facteurs de risque de blanchiment de capitaux et de financement du terrorisme
- Circulaire CSSF 17/660 du 05.07.2017 : Règlement (UE) 2015/847 du Parlement européen et du Conseil du 20 mai 2015 sur les informations accompagnant les transferts de fonds et abrogeant le règlement (CE) n° 1781/2006
- Circulaire CSSF/CRF 17/650 du 17.02.2017 : Application de la loi modifiée du 12 novembre 2004 relative à la lutte contre le blanchiment et contre le financement du terrorisme et du règlement grand-ducal du 1er février 2010 portant précision de certaines dispositions de la loi LBC/FT aux infractions primaires fiscales
- Circulaire CSSF 15/609 du 27.03.2015 : Développements en matière d'échange automatique d'informations fiscales et de répression du blanchiment en matière fiscale.

Cadre législatif et réglementaire spécifique à l'OEC :

- Loi modifiée du 10 juin 1999 portant organisation de la profession d'expert-comptable (ci-après la « Loi organique de l'OEC »)
- Norme professionnelle relative à la lutte contre le blanchiment et contre le financement du terrorisme – adoptée lors de l'assemblée générale du 17 juin 2015
- Règlement sur le contrôle confraternel – tel que modifié – approuvé par l'assemblée générale du 28 juin 2017.

Cadre législatif et réglementaire spécifique à l'IRE :

- Loi du 23 juillet 2016 relative à la profession de l'audit (ci-après la « Loi organique de l'IRE »)
- La norme professionnelle NP2013-02 du 20 juin 2013 relative à la prévention du blanchiment et du financement du terrorisme (en cours de révision)
- La norme professionnelle NP2012-01 du 21 juin 2012 relative au contrôle du respect des obligations professionnelles découlant de la législation et de la norme en matière de lutte contre le blanchiment et le financement du terrorisme (en cours de révision).

Règlement CSSF N° 16-12 du 21 novembre 2016 relatif :

- à l'adoption des normes d'audit dans le domaine du contrôle légal des comptes dans le cadre de la loi du 23 juillet 2016 relative à la profession de l'audit
- à l'adoption des normes relatives à la déontologie et au contrôle interne de qualité dans le cadre de la loi du 23 juillet 2016 relative à la profession de l'audit et notamment la norme internationale d'audit ISA 315 – Identification et évaluation des risques d'anomalies significatives au travers de la connaissance de l'entité et de son environnement.

Authorities interviewed during on-site visit

- Representatives of the Ministry of Finance
  - Representative of the unit in charge of the negotiation of international tax agreements
- Representatives of the Tax Administration
  - ACD
  - AED
  - ADA
  - EOI team
- Representatives of the CSSF
- Representatives of the Ministry of Justice
- Representatives of the bank association (ABBL), the notaries, the Luxembourg bar association, OEC and IRE.

Current and previous reviews

This report is the fourth review of Luxembourg conducted by the Global Forum. Luxembourg previously underwent a review of its legal and regulatory framework (Phase 1) originally in 2011 and a review of the implementation of that framework in practice (Phase 2) in 2013. In 2015, Luxembourg underwent a supplementary review where the new provisions of the legal framework together with practice were reviewed. All of the previous Reviews were 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.

Reviews	Assessment team	Peer Review period	Date of approval by the Global Forum
Round 1 Report, Phase 1	Ms Shauna Pittman, advisor to the Canadian Tax administration	N/A	2011
Round 1 Report, Phase 2	Ms Silvia Allegrucci, civil service within the Italian Ministry of Finance Mr Rémi Verneau and Ms Mélanie Robert from the Global Forum Secretariat	From 1 January 2009 until 31 December 2011	Approved in June 2013. Approval of the Phase 2 rating in November 2013
Round 1 Report, Supplementary Phase 2	Ms Heather Hemphill, Senior Advisor within the Legal Department of the Canadian Tax Administration Ms Lorraine Welch, Deputy to the Head of the Parliamentary Council within the Legal Department of Bermuda Ms Mélanie Robert from the Global Forum Secretariat	From 1 January 2012 until 30 June 2014	October 2015
Round 2 report (Combined)	Ms Laura Greenwood and Mr Pierre-Jean Douvier, Technical Advisor Ministry of Finance of Monaco, Ms Tamar Gabruashvili, Chief Specialist, Ministry of Finance of Georgia and Ms Séverine Baranger from the Global Forum Secretariat	From 1 October 2014 until 30 September 2017	15 March 2019

Annex 4: Luxembourg's response to the review report[38]

Luxembourg agrees with the findings established in this report. It is satisfied that the report adequately reflects its legal framework and practical implementation of EOIR under the new enhanced 2016 Terms of reference. Luxembourg will endeavor to address the recommendations expressed in this report in due course.

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

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request LUXEMBOURG 2019 (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 150 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.

This report contains the 2019 Peer Review Report on the Exchange of Information on Request of Luxembourg.

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