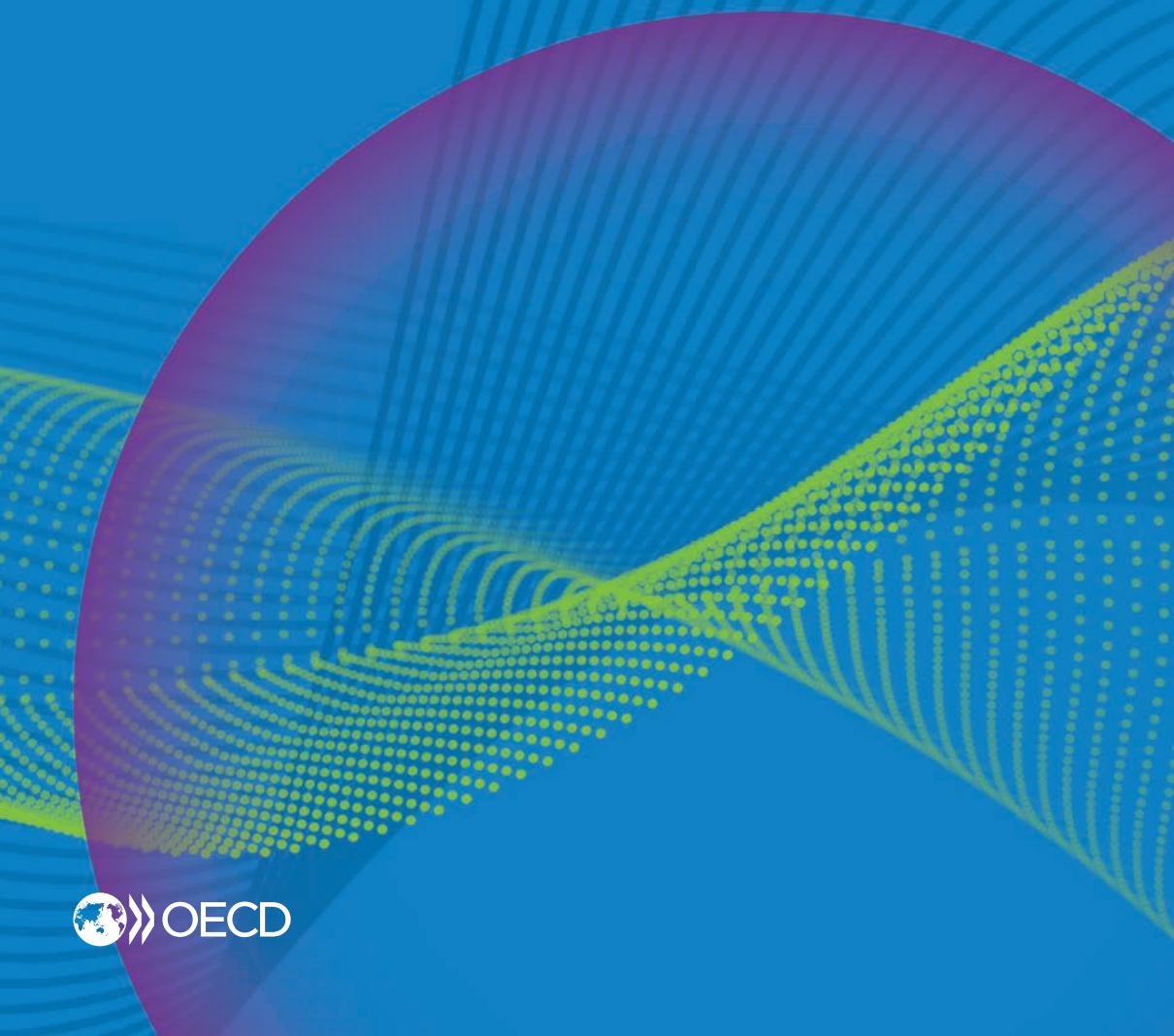
GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

10 YEARS

Peer Review Report on the Exchange of Information on Request

SWITZERLAND

2020 (Second Round)



OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Switzerland 2020 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

BETTER POLICIES FOR BETTER LIVES

Please cite this publication as:
OECD (2020), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Switzerland 2020 (Second Round): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, *https://doi.org/10.1787/fcfce6d7-en*.

ISBN 978-92-64-90390-6 (print)
ISBN 978-92-64-31409-2 (pdf)

Global Forum on Transparency and Exchange of Information for Tax Purposes
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

Photo credits: OECD with cover illustration by Renaud Madignier.

Corrigenda to publications may be found on line at: *www.oecd.org/about/publishing/corrigenda.htm*.

Table of contents

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 160 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

2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2010.
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.
AFC	Federal Tax Administration (*Administration Fédérale des Contributions*)
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
ASB	Swiss Banker Association (*Association Suisse des Banquiers*)
ASG	Association Suisse des Gérants de Fortune – Swiss Association of Assets Manager
ASR	Federal Audit Oversight Authority (*Autorité fédérale de surveillance en matière de révision*)
CDB 16	2016 Swiss banks' code of conduct with regard to the exercise of due diligence (*Convention relative à l'obligation de diligence des banques de 2016*)
CDD	Customer Due Diligence
CIV	Collective investment vehicle
CO	Code of Obligations (*Code des obligations*)
DTC	Double Tax Convention

EOIR	Exchange Of Information on Request
FATF	Financial Action Task Force
FINMA	Swiss Financial Market Supervisory Authority (*Autorité fédérale de surveillance des marchés financiers*)
FSA/FSN	Fédération Suisse des Avocats et Fédération Suisse des Notaires
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IFDS	Directly subordinated financial intermediaries (*intermédiaires financiers directement soumis à la FINMA*)
LAAF	Tax Administrative Assistance Act (*Loi fédérale du 28 septembre 2012 sur l'assistance administrative internationale en matière fiscale*)
LBA	Federal Act on Combating Money Laundering and Terrorist Financing (*Loi fédérale du 10 octobre 2017 sur le blanchiment d'argent*)
LFINMA	Federal Act on the Swiss Financial Market Supervisory Authority (*Loi du 22 juin 2007 sur l'Autorité fédérale de surveillance des marchés financiers*)
LFM	Law on the implementation of the recommendations of the Global Forum (*Loi fédérale du 21 juin 2019 sur la mise en œuvre des recommandations du Forum mondial sur la transparence et l'échange de renseignements à des fins fiscales*)
LTI	Federal Act on Intermediated Securities (*Loi fédérale du 3 octobre 2008 sur les titres intermédiés*)
LPCC	Federal Act on Collective Capital Investments (*Loi fédérale du 23 juin 2006 sur les placements collectifs de capitaux*)
Multilateral Convention (MAC)	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
OAR	Self-Regulated Organisations (*Organismes d'autorégulation*)
OBA	Ordinance on Combating Money Laundering and Terrorist Financing (*Ordonnance du 11 novembre 2015 sur le blanchiment d'argent*)

OBA-FINMA	Ordinance of FINMA on the Fight against Money Laundering and Terrorist Financing in the Financial Sector (*Ordonnance de la FINMA du 3 juin 2015 sur le blanchiment d'argent*)
OFRC	Federal Office of the Commercial Registry (*Office fédéral du Registre du Commerce*)
PA	Administrative Procedure Act (*Loi fédérale du 20 décembre 1968 sur la procédure administrative*)
SA	Company limited by shares (*Société anonyme*)
SARL	Limited liability company (*Société à responsabilité limitée*)
SC	Limited partnership (*Société en commandite*)
SCA	Partnership limited by shares (*Société en commandite par actions*)
SCPC	Limited partnership for collective investments (*Société en commandite de placements collectifs*)
SNC	General partnership (*Société en nom collectif*)
SEI	Exchange of Information Unit (*Service d'Échange d'Informations*)
SICAF	Closed-ended investment company (*Société d'investissement à capital fixe*)
SICAV	Open-ended collective investment company (*Société d'investissement à capital variable*)
SS	Ordinary company (*Société simple*)
TAF	Federal Administrative Tribunal (*Tribunal administratif fédéral*)
TIEA	Tax Information Exchange Agreement
TF	Federal Tribunal (*Tribunal fédéral*)
VAT	Value Added Tax
VQF	Financial Services Standards Association (*Verein zur Qualitätssicherung von Finanzdienstleistungen*)

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request in Switzerland on the second round of reviews conducted by the Global Forum against the 2016 Terms of Reference. It assesses both the legal and regulatory framework as at 20 December 2019 and the practical implementation of this framework, in particular in respect of EOI requests received and sent during the review period from 1 July 2015 to 30 June 2018. This report concludes that Switzerland continues to be rated overall **Largely Compliant** with the international standard. In 2016, the Global Forum evaluated Switzerland in a combined review against the 2010 Terms of Reference for both the legal implementation of the EOIR standard as well as its operation in practice. The report of that evaluation (the 2016 Report) concluded that Switzerland was rated Largely Compliant overall (see Annex 3 below).

Comparison of ratings for First Round Report and Second Round Report

Element		First Round EOIR Report (2016)	Second Round EOIR Report (2020)
A.1	Availability of ownership and identity information	PC	PC
A.2	Availability of accounting information	C	C
A.3	Availability of banking information	C	LC
B.1	Access to information	LC	C
B.2	Rights and Safeguards	LC	LC
C.1	EOIR Mechanisms	LC	LC
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	LC	PC
C.4	Rights and safeguards	PC	LC
C.5	Quality and timeliness of responses	LC	LC
	OVERALL RATING	LC	**LC**

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

Progress made since previous review

2. Switzerland adopted a federal Law on the implementation of the recommendations of the Global Forum (*Loi fédérale du 21 juin 2019 sur la mise en œuvre des recommandations du Forum mondial sur la transparence et l'échange de renseignements à des fins fiscales – LFM*) which entered into force on 1 November 2019, addressing several recommendations made in the 2016 Report. This legislation improves the Swiss legal framework with respect to several aspects and in particular:

- Bearer shares can only be issued by listed companies or in the form of intermediated securities. Pre-existing bearer shares must be converted into registered shares and the remaining bearer shares will be automatically converted into registered shares in May 2021. Until 31 October 2024, a person can be reinstated only by means of a legal action as the owner of the registered shares. Exceptionally and by 31 October 2034, any person who can demonstrate ownership and absence of fault on their part will be able to obtain a compensation for the cancellation of their shares as of 1 November 2024.
- Companies incorporated outside of Switzerland but tax resident there are required to maintain an up-to-date list of shareholders.
- Administrative assistance can be provided for deceased persons in all cases.

3. In addition, in September 2019, Switzerland has set up a supervision system of the obligation for companies to maintain a register of their shareholders and introduced new enforcement provisions, including penalties.

4. Following a ruling from the Federal Tribunal in July 2018 on the interpretation of the good faith principle, Switzerland now provides information to requests based on stolen data, providing that the requesting jurisdiction did not commit not to use the data or did not actively seek it out outside an administrative assistance procedure.

5. Finally, Switzerland has restructured and improved the internal processes of the EOI Unit with a new computing system to handle the large amount of requests received and large volume of data processed, and to continuously monitor deadlines and co-ordination to ensure smooth workflow. The number of employees working in the EOI Unit has increased from 43 to 87.5 full time equivalent and is expected to increase further.

Key recommendation(s)

6. The LFM entered into force recently and its implementation could not be assessed. Switzerland is therefore recommended to monitor its implementation in practice, in particular with respect to the new provisions concerning bearer shares and the effective exchange of information concerning deceased persons.

7. Although relevant foreign companies are now required to maintain an up-to-date list of their owners, the Federal tax administration (*Administration Fédérale des Contributions – AFC*), which monitors compliance with this new obligation, is not granted with any enforcement measures in case of failure. Therefore, Switzerland is recommended to introduce appropriate enforcement measures to ensure that up-to-date ownership information is maintained by foreign companies in all cases.

8. The standard of transparency was strengthened in 2016 with the introduction of a requirement to maintain information on beneficial ownership of relevant entities and arrangements. In Switzerland, companies are required to maintain a register of their beneficial owners, but the mechanism does not ensure their proper identification as required by the standard in all cases. Some deficiencies are also identified in the Swiss anti-money laundering (AML) legislation, in particular regarding the identification, verification and update of beneficial ownership information of legal entities and arrangements by AML obliged professionals. In addition, it cannot be ascertained that beneficial ownership information will be available in all cases in the absence of a legal obligation to maintain a business relationship with AML obliged professionals. Switzerland is recommended to ensure that accurate and up-to-date beneficial ownership information for all relevant entities and arrangements is available in line with the standard in all cases.

9. Switzerland's legal framework includes an obligation to notify the persons concerned and entitled to appeal prior to exchanging EOI information, with appropriate exceptions. Switzerland's interpretation of the exception to prior notification is generally in line with the standard for individual requests. There is uncertainty regarding its interpretation of this exception for group[1] and bulk[2] requests. In addition, the length of the procedure was not necessarily shorter for requests where an exception to prior notification applied. During the current review period, the notification and

1. Group requests are requests relating to the investigation or examination of a group of taxpayers not individually identified that have in common to be non-compliant with specific tax laws of the requesting jurisdiction.
2. Bulk requests are requests relating to several taxpayers, identified either by their names, or by other means than their names (e.g. bank account numbers).

appeal rights generated delays which are not always compatible with effective exchange of information and Switzerland should ensure it meets the standard.

10. The 2016 Report noted that the persons entitled to notification have a right to see the EOI file, including the request letter, subject to exceptions. The legal framework has not changed and the recommendation to ensure that it does not exceed the confidentiality requirements as provided for under the international standard remains. Switzerland contacted its partners every time it received a request to inspect the file to enquire whether they wish to apply for the exception to the right to see the file. However, Switzerland always had to provide the persons with some elements of the background of the requests, so that they understood why the administrative assistance was granted. This practice is a restriction on the extent of the file inspected rather than an exception. Switzerland should ensure that the application of an exception to the right to see the file is in line with the confidentiality requirements as provided under the international standard. In addition, the publication of the notification in the federal gazette specifically relates to administrative assistance, and in the case of group requests, provides information about the requesting authority, the date of the letter and the legal basis. Switzerland is recommended to ensure that it only discloses the minimum information necessary for the notification.

11. Although improving, Switzerland's interpretation of the foreseeable relevance criteria raised concerns with peers in some cases. Switzerland is therefore recommended to monitor that all foreseeably relevant information is provided to its EOI partners as required under the standard in all cases.

12. Finally, the timeliness of responses to EOI requests does not fully correspond with effective exchange of information although it is acknowledged that the provision of the requested information may take a long time in some cases due to valid reasons. Switzerland is therefore recommended to continue in its efforts to ensure timeliness in the provision of the requested information. During the period under review, Switzerland suspended the processing of 12 bulk requests received from 12 jurisdictions while waiting for a Federal Tribunal decision. This practice has been used to avoid unnecessary appeals and subsequent costs, but it has generated so far delays of more than two years in processing these bulk requests in most of the cases. Switzerland is recommended to monitor its practice to ensure that EOI is not subject to restrictive conditions.

Overall rating

13. Switzerland has made significant improvements in the areas of availability of legal ownership information, exchange of information on deceased persons and requests based on stolen data. Challenges remain, in particular

regarding the availability of beneficial ownership information and the proper implementation of rights and safeguards to ensure effective exchange of information and confidentiality requirements. Switzerland is overall rated Largely Compliant with the standard.

14. During the current review period, Switzerland received 3 252 individual requests. Switzerland also received eight group requests among which one has been withdrawn. The seven remaining requests amount to 5 289 cases. Finally, 16 bulk requests amounting to 94 604 cases were received. This represents an increase compared to the previous review period. It sent 65 requests.

15. This report was approved at the Peer Review Group of the Global Forum on 27 February 2020 and was adopted by the Global Forum on 27 March 2020. A follow-up report on the steps undertaken by Switzerland to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2021 and thereafter in accordance with the procedure set out under 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)*		
	Since 1 November 2019, companies incorporated outside of Switzerland but having their effective management in Switzerland which gives rise to a permanent establishment have been required to maintain an up-to-date list of their owners. However, the Federal Tax Administration, which monitors compliance with this obligation, is not granted with any enforcement measures in case of failure.	Switzerland is recommended to introduce appropriate enforcement measures to ensure that up-to-date ownership information is maintained by foreign companies in all cases.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The legal and regulatory framework is in place but needs improvement.	The availability of beneficial ownership information for legal entities and arrangements is essentially ensured through the AML legislation. While it is likely that legal entities and arrangements engage with AML obliged professionals, in particular banks, they do not have the legal obligation to maintain a business relationship with these professionals, except in the case of domiciliary companies whose managing body is always an AML obliged professional. In addition, the AML legal framework contains some deficiencies with respect to the identification, verification or updating of the beneficial owners of legal entities and arrangements that may result in the AML obliged professionals not always maintaining beneficial ownership information in line with the standard. Similarly, the obligations for companies and their shareholders to identify some beneficial owners do not allow the full identification of all beneficial owners according to the standard.	Switzerland is recommended to ensure that, in all cases, accurate and up-to-date beneficial ownership information for all relevant entities and arrangements is available in line with the standard.
Rating: Partially compliant.	Switzerland has recently introduced a supervision by the Federal Tax Administration of the obligation for domestic companies to maintain a register of shareholders as well as new enforcement measures, including penalties. The Federal Tax Administration also monitors compliance of foreign companies with their obligation to maintain an up-to-date list of their owners.	Switzerland is recommended to monitor the effectiveness in practice of its supervision and enforcement mechanisms to ensure that in all cases up-to-date registers of shareholders and lists of owners are kept by domestic and foreign companies respectively.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Rating: Partially compliant. *(continued)*	Since 1 November 2019, bearer shares can only be issued by listed companies or in the form of intermediated securities. Transitional provisions are provided for bearer shares holders and companies to comply with the new legal framework. In particular, as from 1 May 2021 any remaining bearer shares will be cancelled and converted into registered shares under their number and without attribution to their unknown owners. These latter can be reinstated as shareholders if they can prove ownership before the judge by 31 October 2024. Past this deadline, the shares are cancelled and replaced with new shares in the name of the company. Exceptionally and by 31 October 2034, a compensation for the cancellation of their shares can be requested before the judge by any person who can demonstrate ownership and absence of fault on their part.	Switzerland is recommended to monitor the practical implementation and enforcement of the recently introduced requirement regarding bearer shares, including the transitional provisions and the right to compensation, to ensure that full ownership information is available for all companies.
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.		
Rating: 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 but needs improvement.	Banks are required to identify the beneficial owners of all account holders, including all legal entities and arrangements. However, the AML legal framework contains some deficiencies with respect to the identification, verification and updating of the beneficial ownership information that may result in banks not always maintaining it in line with the standard.	Switzerland is recommended to ensure that, in all cases, banks maintain accurate and up-to-date beneficial ownership information for all account holders in line with the standard.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Rating: Largely compliant.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place.		
Rating: Compliant.		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place.		
Rating: Largely compliant.	Switzerland introduced a new law which entered into force on 1 November 2019 and provides for the exchange of information on deceased persons.	Switzerland should monitor the implementation of the recently introduced legislation to ensure that information in relation to deceased persons can be exchanged in all cases.
	During the review period, delays have been experienced in replying to some requests due to the notification and appeal procedures. Although improvements can be acknowledged towards the end of the review period, the length of procedures in Switzerland may unduly delay the effective exchange of information.	Switzerland should monitor the implementation of the notification and appeal procedures to ensure that it does not unduly prevent or delay the effective exchange of information.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Rating: Largely compliant. *(continued)*	Switzerland granted the exception to notification for individual requests in most of the cases (23 out of 32 cases). There is uncertainty regarding Switzerland's approach to notification exceptions for group and bulk requests without identification of taxpayers. In addition, the response time was not necessarily shorter when the exception applied, with improvements towards the end of the review period.	Switzerland is recommended to monitor the practical implementation of the exception to prior notification (including for group and bulk requests) to ensure that it is in line with the standard and that responses are always provided in a timely manner.
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place.		
Rating: Largely compliant.	Switzerland had a restrictive approach to the concept of foreseeable relevance in some cases. While assessing the relevance of the information obtained from information holders, Switzerland has applied a restrictive interpretation of its relevance to requests during the review period. This practice has changed towards the end of the review period.	Switzerland should monitor the application of the foreseeable relevance standard to ensure that all foreseeably relevant information is provided as required under the standard in all cases.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place.		
Rating: 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 but needs improvement.	Any person concerned by the request or with a right to appeal can exercise his/her right to see the file, including the request letter, subject to exceptions. This is not in accordance with the principle that the request letter should be kept confidential as required by the standard.	Switzerland is recommended to ensure that it does not exceed the confidentiality requirements as provided for under the international standard.
Rating: Partially compliant.	The application in practice of the exception to the right to see the file (including the request letter) is rather a restriction on the extent of the file inspected by the person concerned or entitled to appeal, and allows the disclosure of background information of the request in all cases, going beyond what is permitted under the standard.	Switzerland should ensure that the application of the exception to the right to see the file (including the request letter) is in line with the confidentiality requirements as provided under the standard.
	The notification in the federal gazette is published as a communication from the Federal Tax Administration (AFC), and it specifically states that it concerns administrative assistance. Peers have raised concerns regarding the publication of the full name of taxpayers in relation to administrative assistance. In addition, the publication of the notification for group requests in the federal gazette mentions the requesting authority, the date of the request letter as well as the legal basis.	Switzerland is recommended to ensure that it only discloses the minimum information necessary for the notification.
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.		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Rating: Largely compliant.	Following a ruling from the Federal Tribunal in July 2018 on the interpretation of the good faith principle, Switzerland modified its practice and now provides information to requests based on stolen data, provided that the requesting jurisdiction had not committed not to use the data or did not actively seek it out, outside an administrative assistance procedure.	Switzerland is recommended to monitor the application of the concept of good faith to ensure that it is in line with the standard.
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
Rating: Largely compliant.	Although it is acknowledged that the provision of the requested information may be delayed in some cases due to valid reasons, the proportion of requests responded within 90 days and within 180 days does not fully correspond with effective exchange of information.	Switzerland should continue its efforts to ensure timeliness in the provision of requested information.
	During the period under review, Switzerland put on hold 12 bulk requests received from 12 jurisdictions, while awaiting a Federal Tribunal decision on one of them. Although this practice has been used to avoid unnecessary appeals and subsequent costs, it has generated so far delays of more than two years in processing these bulk requests in the majority of cases. In addition, following the publication of the judgement, Switzerland required additional commitments regarding the confidentiality requirements from a partner before transmitting the requested information.	Switzerland is recommended to monitor its practice to ensure that EOI is not subject to unduly restrictive conditions.

Overview of Switzerland

16. This overview provides some basic information about Switzerland that serves as context for understanding the analysis in the main body of the report.

Political and legal system

17. The Swiss Confederation consists of 26 cantons, which are sovereign in so far as their sovereignty is not limited by the Federal Constitution. They exercise all of the rights which have not been delegated to the Swiss Confederation (Federal Constitution, Art. 3). The cantons are in turn subdivided into political "communes". The Federal Constitution gives the people the right to participate in decision-making through "initiatives" instigated through the support of a specified number of voters or cantons or through referendums on motions proposed by the Parliament (Federal Constitution, Art. 138-141).

18. Switzerland recognises a separation of powers between the different branches of government. Legislative power is exercised by Parliament constituted by the National Council (consisting of deputies) and the Council of States (formed by deputies representing the cantons). Executive power belongs to the government, the Federal Council composed of seven federal Councillors elected by Parliament for four years.

19. The Swiss legal system is founded on civil law. The hierarchy of Swiss laws must be considered in two contexts: for one part, the hierarchy of federal, to cantonal, to communal laws; and on the other part, from the Constitution, to laws and in turn regulations.[3] Federal law will always prevail over cantonal or communal laws, regardless of whether it is a federal

3. The Federal Constitution of the Swiss Confederation of 18 April 2009 represents in Switzerland the "fundamental law". Laws are acts adopted by Parliament. Ordinances (the civil law parallel of regulations) are established by the executive branch of government (the Federal Council, cantonal governments) and administrative departments under a more simplified process.

law or regulation (principle of "primacy of federal law"). However, the Confederation has only the rights vested in it by the Federal Constitution. The Confederation is responsible for those tasks which exceed the areas of responsibility of the cantons or which require a uniform regulation across the Confederation (principle of subsidiarity).

20. The civil and commercial law (Civil Code and Code of Obligations), financial law and criminal law (including anti-money laundering legislation) are part of the federal law, but their application can be arranged at the cantonal level. It is possible for certain subjects to be regulated in parallel by the Confederation and the cantons, for example, both the Confederation and the cantons may make laws in respect of taxation (although taxes are predominantly imposed under cantonal law).

21. In respect of international obligations, Swiss law provides as a principle that the norms of international law prevail over domestic law (Articles 193(4) and 194(2) of the Federal Constitution contains explicit rules regarding the primacy of mandatory international law). Moreover, Swiss law explicitly obliges the Confederation and the cantons to respect international law (Federal Constitution, Art. 5(4)).

22. Treaties signed by the Federal Council must be approved by the Federal Assembly before they are ratified by the Federal Council (Federal Constitution, Art. 54 and 184). Treaties may be subject to referendum before ratification.

23. After the signature of a Double Tax Convention (DTC) or another type of Exchange of Information agreement (EOI agreement), the Federal Council adopts a message which is sent to the Parliament. Thereupon, the Parliament approves the EOI agreement and agrees that the Federal Council ratify the treaty. The practice has been to subject EOI agreements to optional referendums. None of the EOI agreements signed by Switzerland has ever been subject to a referendum so far.

24. The judiciary is headed by the Federal Tribunal in Lausanne. Matters relating to violations of international law are dealt with by this Court as a last-instance tribunal. Two first-instance tribunals exist at the federal level: the Federal Criminal Tribunal and the Federal Administrative Tribunal (which deals with matters concerning public law). Matters of international exchange of information are subject to appeal in first instance to the Federal Administrative Tribunal. However, the Federal Tribunal may rule on matters of international exchange of information when the case involves fundamental legal principles or when it is particularly important.

Tax system

25. As a result of the federal structure, the cantons have the right to levy all taxes except those explicitly attributed exclusively to the Confederation under the Federal Constitution (i.e. customs duties and value added tax (VAT); Federal Constitution, Art. 128 and 133). Swiss law recognises parallel jurisdiction for the Confederation and cantons in matters of income tax on natural persons, and of taxation on profits and capital of legal persons, subject to the principles of the federal Act on the Harmonisation of the Direct Taxes of Cantons and Communes (*Loi fédérale sur l'harmonisation des impôts directs des cantons et des communes*, LHID).

26. Corporations that are incorporated in Switzerland or have their place of effective management there are considered to be resident for tax purposes in Switzerland. Resident corporations are taxed on their worldwide income although income from foreign permanent establishments and foreign real property is exempt. Non-resident companies are liable to tax on Swiss source income. In 2018, effective combined federal, cantonal and communal income taxes on corporations varied from 11.5% to 24.2% depending on the canton. Particular types of companies such as holding, domiciliary and auxiliary companies benefit from more favourable tax regimes and rates. These regimes, which are not aligned with international standards, particularly with those elaborated under the OECD Base Erosion and Profit Shifting (BEPS) project, were abolished on 1 January 2020. In addition to taxes on income, corporations are subject to tax on their net equity at rates ranging from 0.001% to 0.53% depending on the canton. All corporations have to file a tax return and are included in the tax audit regime, irrespective of their possible cantonal tax status.

27. Individuals are subject to taxes on income and net wealth. A Swiss resident is a person who resides in Switzerland with the intention of settling (Civil Code, Art. 23(1); Federal Direct Tax Law, Art. 3(1)). Resident individuals are taxable on their worldwide income; non-residents on Swiss source income. Federal and cantonal tax rates applicable to individuals are progressive. The maximum federal rate is 11.5%; the applicable cantonal and communal rates depend on the commune of residence. In 21 out of the 25 cantons and at the federal level, a special lump sum tax regime is available to resident aliens who are not carrying out a lucrative activity in Switzerland. Under this regime, a deemed taxable income is calculated, which at minimum is equivalent to five times the rental expense for the person's principal residence at the canton level. Since 2016, the deemed taxable income at the federal level is at minimum equivalent to seven times the rental expense or CHF 400 000 (EUR 365 176) (depending on the higher of these two amounts). The deemed tax base is subject to tax at ordinary rates.

28. A 35% withholding tax (anticipatory tax) applies to payments of dividends by Swiss companies, payments of interest from Swiss sources such as bonds or deposits at Swiss banks and distributions of income from Swiss funds. A refund procedure operates which allows Swiss residents or residents of countries with which Switzerland has a DTC to obtain credit or a refund of the tax withheld. Intercompany interest is generally not subject to withholding tax.

Financial services sector

29. The financial services industry is a key pillar of Switzerland's economy both in terms of employment (5.2% in 2018) and wealth creation (9% of GDP as of 2017), and according to conservative estimates, is responsible for generating about 7.5% of tax collected in Switzerland (taxes on income and company profits). At the end of June 2019, the total securities holdings in client accounts in the banking sector was CHF 6 386 billion (EUR 5 830 billion), making it one of the most important international financial centres in the world.

30. Although based on 2018 figures, the banking sector consisted of 259 banks, 80 of which were in foreign control, two banks in particular dominate the market: UBS and Credit Suisse. They both have strong roots in Switzerland and extensive foreign activities. Together, they account for 48% of Swiss banking sector deposits and 18% of capital.

31. Other sectors of the financial services industry also target predominantly the international market. Switzerland is one of the top wealth management centres in the world. Its 25% share of the offshore private banking sector makes it the world leader. In addition to the two main global banks, private wealth management includes many private and foreign banks along with a few thousand of independent asset managers. The two global banks rank amongst the world's top ten by assets under management.

32. In the insurance sector, Switzerland also holds an important global role due to the leading position of Swiss Reinsurance Company Ltd (Swiss Re). Switzerland is a significant player in commodity trading.

33. Viewed overall, their prominent positions in financial and internationally traded service activities have made Zurich and Geneva key global financial centres.

Anti-money laundering framework

34. The Swiss anti-money laundering (AML) framework is based on the Federal Act on Combating Money Laundering and Terrorist Financing of 10 October 1997 (*Loi sur le blanchiment d'argent*, LBA) which contains the

main principles and requirements applying to all AML obliged professionals (i.e. the financial intermediaries and security dealers). These are then set out in more detail in other legal instruments:

- The Ordinance on Combating Money Laundering and Terrorist Financing of 11 November 2015 (*Ordonnance sur le blanchiment d'argent*, OBA) governs the professional activity of financial intermediaries and specifies the due diligence and reporting obligations of security dealers.
- The Ordinance of the Swiss Financial Market Supervisory Authority (*Autorité fédérale de surveillance des marchés financiers* – FINMA) on the Fight against Money Laundering and Terrorist Financing in the Financial Sector of 3 June 2015 (*Ordonnance de la FINMA sur le blanchiment d'argent*, OBA-FINMA) specifies the AML obligations of the financial intermediaries. It also provides that banks and security dealers must follow the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 16) issued by the Swiss Bankers Association (*Association Suisse des Banquiers* – ASB) (OBA-FINMA, Art. 35).[4]
- The regulations of the 11 Self-Regulated Organisations (*Organismes d'autorégulation*, OARs) regarding the implementation of due diligence supplement the above-mentioned legislation. In this report, reference will be made to the regulations issued by the main OARs regulating the para-banking sector: the OAR of the Financial Services Standards Association (*Verein zur Qualitätssicherung von Finanzdienstleistungen* – VQF), the one of the Swiss Bar Association and Swiss Federation of Notaries (*Fédération Suisse des Avocats et Fédération Suisse des Notaires* – FSA/FSN) and the one of the Swiss Association of Assets Manager (*Association Suisse des Gérants de Fortune* – ASG).

35. The Financial Action Task Force (FATF)[5] last published a Mutual Evaluation Report for Switzerland in December 2016. Switzerland received a partially compliant rating on Recommendation 10 regarding customer due diligence (CDD) of financial institutions for the following reasons: (i) a too high threshold to trigger due diligence for occasional transactions,

4. The insurance sector is subject to the *Règlement de l'OAR de l'Association Suisse d'Assurances pour la lutte contre le blanchiment d'argent* (OBA-FINMA, Art. 37).
5. The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating the financing of terrorism (AML/CFT) standards. Its reviews are based on a country's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

(ii) financial intermediaries were not required to verify the written declaration concerning the beneficial owners or to update, during the business relationship the information obtained as part of due diligence, including the beneficial owners, unless there is a risk of money-laundering or a doubt on the veracity of the information provided, (iii) some deficiencies were also identified in certain OARs' regulations as well as in matters such as the management of the risk of money-laundering. A partially compliant rating was also given with respect to Recommendation 22 on designated non-financial businesses and professions because a number of them were not subject to the AML legislation, and because of the weaknesses in the general framework for customer due diligence requirements. A largely compliant rating was given with respect to Recommendation 17 on reliance on third parties, Recommendation 24 on transparency and beneficial ownership of legal persons and Recommendation 25 on transparency and beneficial ownership of legal arrangements. Switzerland was rated compliant with Recommendation 11 on record-keeping.

Recent developments

36. On 26 June 2019, the Federal Council adopted a message on the amendment of the LBA and transmitted the draft law to the Parliament. The draft law should come into force in the course of 2021. Among the various amendments, the Federal Council is proposing to submit specific non-financial intermediary activities in particular in relation with the creation, operation or management of domiciliary companies or trusts to AML and CDD obligations. An obligation for AML obliged professionals to verify the identity of the beneficial owners would be introduced. Furthermore, AML obliged professionals would have the obligation to periodically verify that CDD documentation is up to date. These proposals, if adopted, would address some of the issues identified in this report.

Part A: Availability of information

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

A.1. Legal and beneficial ownership and identity information

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

38. The 2016 Report concluded that the Swiss legal and regulatory framework requiring the availability of legal ownership information in respect of relevant legal entities and arrangements was in place but improvements were needed in two areas:

- Switzerland was recommended that appropriate reporting mechanisms be in place to effectively ensure the identification of the owners of bearer shares in all cases – Switzerland introduced in 2015 a mechanism to ensure the identification of the holders of bearer shares that are not in the form of intermediated securities or issued by listed companies. This mechanism was based on the obligation for the acquirers of bearer shares to report their acquisition to the company and for the company to maintain a register of the owners of such shares. However, the supervision and enforcement framework accompanying this mechanism was considered insufficient to ensure compliance. Companies' compliance was only checked by their external auditors without the involvement of any public authority. In addition, the bearer shares holder who had not announced the acquisition of the shares was only prevented from exercising the shareholders' rights until the announcement is made.
- Switzerland was recommended to ensure the availability of the information on the identity of owners of foreign companies with a sufficient nexus to Switzerland. The availability of ownership information was dependent on the law of the jurisdiction of incorporation and therefore up-to-date legal ownership information was not available in all cases.

39. Regarding the implementation in practice, the 2016 Report found that the obligation for companies to maintain an up-to-date register of holders of registered shares was only checked by the companies' external auditors (where applicable) and, in some cases, during tax audits by the cantonal tax authorities. In case of a failure, the only sanction was the risk of a private litigation for damages caused to the shareholders or the company. Therefore, Switzerland was recommended to ensure an effective supervision of this obligation.

40. In the light of these deficiencies, Switzerland was rated "Partially compliant" with the standard.

41. Since then, Switzerland has improved its legal framework and practice to respond to the recommendations made in the 2016 Report:

- Since 1 November 2019, bearer shares can only be issued by listed companies or in the form of intermediated securities to ensure the identification of their holders and beneficial owners. A transitional period ending on 30 April 2021 is available for bearer shares issued prior to November 2019 to ensure their conversion into registered shares or intermediated securities or for the listing of the company. After 30 April 2021, the bearer shares not issued by companies listed or opting for intermediated securities will be cancelled and automatically converted into registered shares. An entry in the company's shareholders register will be made under the identity of the owners who have complied with their obligation to disclose their identity or, for non-compliant owners, under the reference number of the bearer shares (i.e. without attribution) and with mention of their non-compliance. Between 1 May 2021 and 31 October 2024, non-compliant owners, whose rights in the companies are suspended, may be reinstated by the court as the owners of the shares in circumstances where they disclose their identity. They will have to establish by means of written evidence an uninterrupted chain of share transfers going back to the foundation of the company or to the last shareholder known to the company. Past 31 October 2024, the registered shares without attribution will be cancelled and new shares in the name of the company will be issued. However, in exceptional circumstances and by 31 October 2034, the owners of the cancelled shares will have the possibility to claim a compensation from the company if they can prove ownership and the absence of fault on their part. As the new requirements regarding bearer shares have been recently introduced, Switzerland is recommended to monitor their practical implementation and enforcement, including the transitional provisions and the right to compensation, to ensure that full ownership information is available for all companies (see para. 152).

- Foreign companies have been required to maintain in Switzerland an up-to-date list of their holders since 1 November 2019. The AFC, which monitors compliance with this obligation, is however not granted with any enforcement measures in case of failure. Although the members of the managing body can be held responsible for the damages caused to the company or to a third party, this private litigation is not sufficient to ensure a proper enforcement. Therefore, Switzerland is recommended to introduce appropriate enforcement measures to ensure compliance of foreign companies with this obligation and to monitor its implementation in practice (see para. 126).
- Switzerland has introduced a supervision system of the obligation for companies to maintain a register of their shareholders as well as new enforcement provisions as recommended in the 2016 Report. Compliance with this obligation has been controlled by the AFC since 1 September 2019 and, in case of failure, the company is liable to penalties and administrative procedures that can lead to its dissolution. As these measures were introduced recently and have not been sufficiently tested in practice, Switzerland is recommended to monitor their effective implementation and take enforcement actions, where necessary (see para. 65-67).

42. The EOIR standard now requires that beneficial ownership information on relevant entities and arrangements be available. In Switzerland, although companies are required to maintain a register of their beneficial owners, the mechanism leading to their identification and the entry in the companies' register do not ensure that, in all cases, the persons identified are in fact the beneficial owners as required by the standard (see para. 74). Since 1 November 2019, the maintenance of these registers has been supervised by the AFC. They are a supplementary source of information to the one held by AML obliged professionals.

43. The Swiss AML legislation provides a definition of beneficial ownership and a methodology to be used to identify the beneficial owners of entities and legal arrangements, which are in substance in line with the standard (see para. 82 *et seq.*). Some deficiencies are nevertheless identified:

- The identification mechanism of beneficial owners of legal entities deviates from the standard. When there is a doubt that the natural persons identified as having a controlling ownership interest in a legal entity are in fact the beneficial owners, there is no explicit requirement for the AML obliged professionals to also identify any natural person who may exercise a control by other means and to consider all identified natural persons as the beneficial owners as required by the standard in that case (refer to para. 89).
- Although the identification of the beneficial owners of trusts (i.e. beneficial owner of the assets) is in substance in line with the

standard, in some instances, AML obliged professionals are not required to identify the beneficial owners of corporate trustees using the cascading approach (see para. 170).

- In addition, although it is likely that most legal entities hold at least one bank account in Switzerland to conduct their economic activities, it cannot be ascertained that beneficial ownership information will be available in all cases with an AML obliged professional in the absence of a legal obligation to maintain a business relationship with such professionals during the lifetime of the company (see para. 94-96).
- The verification and/or update of the beneficial ownership information relating to legal entities and arrangements is only required where a money laundering risk is identified or doubt arises on the veracity of the information previously provided. Therefore, without an obligation to always verify the beneficial ownership information provided by customers by using reliable sources and regularly update it, the information held by AML obliged professionals may not be accurate in all cases (see para. 98-99).

44. Taking into account these deficiencies, Switzerland is recommended to ensure that, in all cases, accurate and up-to-date beneficial ownership information for all relevant entities and arrangements is available in line with the standard.

45. During the review period, the supervision of AML obliged professionals, in particular banks, with respect to their CDD and record-keeping obligations was effective and enforcement measures were applied where breaches of these obligations have been identified.

46. During the review period, Switzerland received 128 requests related to ownership and identity information and 100 related to beneficial ownership. Peers were generally satisfied with the information received.

47. The table of recommendations, determinations and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	Since 1 November 2019, companies incorporated outside of Switzerland but having their effective management in Switzerland which gives rise to a permanent establishment have been required to maintain an up-to-date list of their owners. However, the Federal Tax Administration, which monitors compliance with this obligation, is not granted with any enforcement measures in case of failure.	Switzerland is recommended to introduce appropriate enforcement measures to ensure that up-to-date ownership information is maintained by foreign companies in all cases.

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
	The availability of beneficial ownership information for legal entities and arrangements is essentially ensured through the AML legislation. While it is likely that legal entities and arrangements engage with AML obliged professionals, in particular banks, they do not have the legal obligation to maintain a business relationship with these professionals, except in the case of domiciliary companies whose managing body is always an AML obliged professional. In addition, the AML legal framework contains some deficiencies with respect to the identification, verification or updating of the beneficial owners of legal entities and arrangements that may result in the AML obliged professionals not always maintaining beneficial ownership information in line with the standard. Similarly, the obligations for companies and their shareholders to identify some beneficial owners do not allow the full identification of all beneficial owners according to the standard.	Switzerland is recommended to ensure that, in all cases, accurate and up-to-date beneficial ownership information for all relevant entities and arrangements is available in line with the standard.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	Switzerland has recently introduced a supervision by the Federal Tax Administration of the obligation for companies to maintain a register of shareholders as well as new enforcement measures, including penalties. The Federal Tax Administration also monitors compliance of foreign companies with their obligation to maintain an up-to-date list of their owners.	Switzerland is recommended to monitor the effectiveness in practice of its supervision and enforcement mechanisms to ensure that up-to-date registers of shareholders are kept by companies in all cases.

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
	Since 1 November 2019, bearer shares can only be issued by listed companies or in the form of intermediated securities. Transitional provisions are provided for bearer shares holders and companies to comply with the new legal framework. In particular, as from 1 May 2021 any remaining bearer shares will be cancelled and converted into registered shares under their number and without attribution to their unknown owners. These latter can be reinstated as shareholders if they can prove ownership before the judge by 31 October 2024. Past this deadline, the shares are cancelled and replace by new shares in the name of the company. Exceptionally and by 31 October 2034, a compensation for the cancellation of their shares can be requested before the judge by any person who can demonstrate ownership and absence of fault on their part.	Switzerland is recommended to monitor the practical implementation and enforcement of the recently introduced requirement regarding bearer shares, including the transitional provisions and the right to compensation, to ensure that full ownership information is available for all companies.
Rating: Partially Compliant		

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

48. The following types of companies can be created in Switzerland:

- *Société anonyme* (SA) is a company limited by shares (CO, Art. 620). It is a separate legal entity from its members, with its capital (minimum CHF 100 000 or EUR 91 294) subdivided into shares and the liability of each owner limited to their contribution. At least one person authorised to represent the company (a board member or manager) must be domiciled in Switzerland.
- *Société à responsabilité limitée* (SARL) is a limited liability company (CO, Art. 772). It is a separate legal entity, which can be created by one or more individuals or legal persons. Members are referred to as partners (*associés*). The minimum share capital of an SARL is CHF 20 000 (EUR 18 259). The liability of each owner is limited to its contribution. At least one person employed in a governing body of the SARL (e.g. a manager) must be domiciled in Switzerland.

- *Société en commandite par actions* (SCA) is a partnership limited by shares (CO, Art. 764). It combines the characteristics of the SA and the limited partnership (*société en commandite* – see para 156). The provisions relating to SAs apply in general to SCAs to the extent that there are no specific provisions. An SCA has a separate legal personality from its members, however, one or more of them must have unlimited liability for the company's debts.

49. As of 1 January 2019, 218 026 SAs, 197 858 SARLs and 10 SCAs were registered in Switzerland compared to 209 228 SAs, 169 249 SARLs and 9 SCAs in 2016.

50. In addition, collective investment vehicles (CIVs) may take the form of an SA or of one of the investment companies provided for in the Federal Act on Collective Capital Investments (*Loi fédérale du 23 juin 2006 sur les placements collectifs de capitaux* – LPCC):

- *Société d'investissement à capital variable* (SICAV) is an open-ended collective investment company (i.e. share capital and number of shares are not fixed; LPCC, Art. 36). It may issue new shares at any time and shareholders may redeem their shares. Its liabilities are limited to its assets. Shareholders may be either "entrepreneurial shareholders", who contribute capital to establish the SICAV, or "investor shareholders". The SICAV can be self-managed or externally managed.
- *Société d'investissement à capital fixe* (SICAF) is a closed-ended investment company (i.e. share capital and number of shares are fixed; LPCC, Art. 110). Its main purpose must be to generate returns and/or capital gains and not to engage in business activities as such.

51. The rules applicable in the Code of Obligations to SAs apply to SICAVs and SICAFs (LPCC, Art. 37, 110 and 112). As of 1 January 2019, 16 SICAVs and no SICAF were registered in Switzerland. In 2016, there were 12 SICAVs and no SICAF.

Availability of legal ownership and identity information

52. Up-to-date legal ownership information is available in Switzerland. Information on the founders of Swiss companies is always available with the Swiss notaries and the Commercial Registry. Information on changes of shareholders is updated with the Commercial Registry only for SARLs and SCAs (for shareholders with unlimited liabilities only). There is no requirement to advise the Commercial Registry of changes to the shareholders of an SA, SICAV or SICAF and to the shareholders with limited liabilities of an SCA. However, all companies must maintain up-to-date legal ownership

information. In addition, this information is also available with AML obliged professionals and, in certain cases, with the tax authorities.[6]

Legal ownership information available with the Commercial Registry and notaries

53. Every Swiss company, irrespective of its form, is created through the execution of a public deed authorised by a Swiss notary. The notary has the obligation to verify that all the legal requirements are fulfilled: the articles of association as well as the documents to be provided, including the identity of the founding shareholders, must be checked. The articles of association are appended to the deed of incorporation. The notary must maintain these documents for ten years. The deed of incorporation includes information on the founding shareholders: (i) their identity and the identification of their representatives; (ii) their contributions, the number and nominal value of their shares and, for SAs and SCAs, their types (registered or bearer shares). The administrators of the company as well as the notary are also identified. The deed of incorporation must then be registered with the Commercial Registry for the company to acquire legal personality.[7]

54. Any transfer of shares of an SARL and any change of administrator (i.e. shareholder with unlimited liabilities) of an SCA must be registered with the Commercial Registry (CO, Art. 765; ORC, Art. 69 and 82).

55. In practice, the legal ownership information maintained by the Commercial Registry is of good quality and the supervision done at the cantonal and federal levels is adequate, although some deficiencies, mainly relating to sole proprietorships, and room for improvements were identified in the audit carried out in 2018 by the Swiss Federal Audit Office (*Contrôle des finances*).

56. Registration with the Commercial Registry is subject to a two-level verification process. First, the cantonal Commercial Registry, where the registered office is located or the relevant business is carried out, receives the application to register. It verifies the veracity of the registered facts and checks the public deed and the supporting documents. It also verifies the identity of the applicant who must be an authorised person. The level of rejection of registration requests vary from 10 to 80% depending on the canton.

---

6. See para. 103 of the 2016 Report. The tax return filed by companies includes information concerning transactions with or compensation paid to a shareholder, or the names of the shareholders of companies that primarily hold real estate; however, companies have no general obligation to include their comprehensive ownership information on their tax return.
7. CO, Art. 629-631, 643, 764, 777b and 779; LPCC, Art. 37 and 110.

These rejections mainly concern improper filling of forms, the vast majority of the requests being in paper, or deficiencies in the supporting documents.

57. The second level of verification is ensured by the federal Commercial Registry. It receives the registration files from the cantonal Registries and controls their quality. The 2018 audit report found that only 1% of the data submitted by the cantons contained legal errors. The registration is subject to the approval of the federal Registry, which proceeds to its publication in the Swiss Official Gazette of Commerce. Where a potential issue is identified, the federal Commercial Registry requests a copy of the supporting documents and asks questions to the cantonal Commercial Registry.

58. The federal Registry ensures an effective supervision of the 28 cantonal Registries. In addition, guidance is provided through regular meetings held with the cantonal Registries. It also performs regular inspections of each of them (at least two to three registers a year) to verify their procedures and practice, and ensure that all the documents are maintained in accordance with the law. These inspections are risk-based. Once an inspection is completed, a report containing findings and recommendations is provided. The cantonal Registries must then report on the remediation measures taken.

59. The successive registrations made in the register are permanently available at the cantonal level as long as the company exists. The registration requests and the supporting documentation are kept for at least ten years after the company is struck off.

60. Compliance with the obligation to register is monitored by the cantonal Registries. In particular, they receive from third parties or other administrations (including the tax authorities) information regarding unregistered companies or change of status (ORC, Art. 157). Public authorities inform them if a company or its status could be subject to registration, modification or strike off. Finally, the cantonal Registries take follow-up actions when they identify failures to register required information. For instance, the Registry of Geneva has initiated 2 890 proceedings during the review period (6.4% of the registered companies), which can lead to company liquidation.

61. The Swiss legislation provides for sufficient administrative and criminal sanctions against companies and their administrators failing to meet their registration and updating obligations (see the 2016 Report, para. 199 and 203). The company and its administrators may be liable for any damage which results from such a failure and may be fined up to CHF 500 (EUR 456) (CO, Art. 942 and 943). The administrators have unlimited liability for any damages caused to the owners of the entity or its creditors (CO, Art. 754) and can be prosecuted for mismanagement of the entity and sanctioned with monetary

penalty or imprisonment of up to five years (CP, Art. 158).[8] This provision has been applied in 293 cases in 2015, in 355 cases in 2016, in 260 cases in 2017 and in 314 instances in 2018.

Legal ownership information available with the companies

62. The availability of legal ownership information is also ensured through the obligation for all companies, including foreign companies (see para. 124), to maintain a list of their registered shareholders and to keep it up to date.[9] This obligation ensures that up-to-date information is available for companies which have no obligation to update their ownership information with the Commercial Registry (except for bearer shares, see Section A.1.2 below).

63. The updating of this register of shareholders entails the following:

- New shareholders must disclose their identity to the company and provide documentary evidence of the shares' acquisition for entry in the register. Only the persons entered in the register are considered shareholders and can exercise shareholders' rights (e.g. voting right, right to dividends).[10]
- A shareholder in a company whose shares are listed on the stock exchange must declare to the company and stock exchange changes in shareholding when reaching several thresholds.[11] This information must be published by the company, and if the company suspects that the shareholder has not complied with this obligation, it must inform FINMA (LIMF, Art. 120, 122 and 124).

64. The register of shareholders must be accessible at all times in Switzerland. In case of cessation of the company, the register must be kept in a safe place by the liquidators or, in the absence of agreement, by the Commercial Registry. Where the Commercial Registry removes a company from the Registry without prior liquidation (see para. 139), the obligation to

8. In addition, a number of other sanctions are applicable. For instance, any person who causes the Commercial Registry to make a false entry in the Register or withholds from it information to be entered in the Register is liable to a custodial sentence not exceeding three years or a monetary penalty (CP, Art. 153). The use of falsified documents when registering with the Registry is punished with monetary penalty or imprisonment of up to five years (CP, Art. 34 and 251).
9. This register must contain the name, address and, for SARLs, the ownership interest of the registered shareholders (CO, Art. 686, 764, 790; LPCC, Art. 46, 110 and 112).
10. CO, Art. 686, 697i, 697m, 764 and 788; LPCC, Art. 46a, 110 and 112.
11. Where the holding exceeds or is reduced below 3, 5, 10, 15, 20, 25, 33⅓, 50 or 66⅔%.

maintain the register of shareholders is incumbent on the company's managers. The register must be maintained in Switzerland for ten years following the removal of the company from the Commercial Registry (CO, Art. 590 and 747).

65. In case of failure to maintain and update the register, the members of the managing body can be held responsible for the damages caused to the company or to a third party (CO, Art. 717 and 754). The 2016 Report found this private litigation for damages insufficient to enforce the obligation to keep the register up to date. This deficiency has been addressed by the LFM. Since 1 November 2019, the administrators of the company who wilfully fail to maintain and update the register are liable to a fine up to CHF 10 000 (EUR 9 129) (CP, Art. 106 and 327a). The failure can be reported to the enforcement authorities by anyone (e.g. shareholders, AFC). In addition, any shareholder, creditor or the Commercial Registry has now the right to initiate proceedings against a company not maintaining the shareholders register. In such a case, the court may set a deadline to comply with the requirements of the law or, ultimately, order the dissolution of the company (CO, Art 731b).

66. With respect to supervision, the 2016 Report found that the shareholders register was verified in some instances only: (i) during tax audits carried out by the cantonal tax authorities wherever considered necessary and (ii) during the annual audit exercise performed by the external auditors for those companies with the obligation to file audited financial statements (see para. 196). Therefore, it concluded that there was no system in place to verify the compliance of companies with the obligation to keep a register of shareholders. Since 1 September 2019, the AFC has been monitoring the compliance of companies with their obligation to keep a register of shareholders when conducting on-site or desk-based controls relating to the Swiss anticipatory tax.[12] The 40 tax inspectors, who are dedicated at the AFC to these controls, perform every year around 5 000 desk-based audits and 1 000 on-site audits.

67. The supervision mechanism and enforcement measures regarding companies' obligation to maintain a register of shareholders have been recently introduced and have not been sufficiently tested in practice. Switzerland is therefore recommended to monitor their effective implementation and to take enforcement measures where necessary.

12. Administrative instruction (*Directive administrative*) no. 3 relating to the control of the register of shareholders and beneficial owners – 4 September 2019.

Availability of beneficial ownership information

68. In Switzerland, companies and AML obliged professionals are respectively required by the Code of Obligations and the AML legislation to maintain beneficial ownership information.

69. The Code of Obligations does not contain a definition of beneficial ownership. It provides for an identification process of the beneficial owners of Swiss companies that is not fully aligned with the approach laid down in the standard. Consequently, the beneficial owners identified by the shareholders of Swiss companies and entered into the beneficial ownership register maintained by the companies are not in all cases identified as required by the standard. Therefore, the register of beneficial owners maintained by companies is only a supplementary source of beneficial ownership information.

70. On the other hand, the AML legislation ensures that beneficial owners are in most cases identified as required by the standard. However, some deficiencies were noted. First, the methodology to be followed to identify the beneficial owners is not fully aligned with the standard (see para 89). Second, unless a money laundering risk is identified or a doubt arises on the veracity of the information collected, the beneficial ownership information provided by the customers is not systematically verified using a reliable source and is not regularly updated (see para. 98-99). Finally, the scope of AML obliged professionals is limited to financial intermediaries (including banks) and securities dealers in Switzerland while there is no legal obligation for companies to maintain a business relationship with one of these professionals (see para. 94-96). Considering these deficiencies, it cannot be ascertained that up-to-date beneficial ownership information is available in Switzerland in all cases. Therefore, Switzerland is recommended to ensure that accurate and up-to-date beneficial ownership information for all relevant entities and arrangements is available in line with the standard in all cases.

Beneficial ownership information available with the companies

71. The Code of Obligations requires shareholders to identify and declare their beneficial owners (*ayants droit économiques*) to Swiss companies, which must maintain a register of beneficial owners. A methodology to identify these beneficial owners is described but it is not fully aligned with the standard. Therefore, the provisions of the Code of Obligations may not lead to the identification of the beneficial owners of companies in all cases as defined in the standard.

Identification and reporting obligations for companies' shareholders

72. Pursuant to the Code of Obligations, a shareholder of a Swiss company that acquires or holds, directly or in concert with a third person, 25% or more of the capital or the voting rights of the company must provide the company with the name, surname and address of the natural person for whom it is ultimately acting within one month. This obligation applies to the acquirers or holders of registered and/or bearer shares.[13] From 1 November 2019, any changes in the beneficial ownership information must also be reported to the company within three months.

73. The LFM has clarified that where the shareholder is a legal entity, all natural persons who control it must be reported as beneficial owners (CO, Art. 697j). The term "control" must be interpreted in accordance with Article 963(2) of the Code of Obligations. Therefore, a natural person is deemed to control a corporate shareholder where such person (i) directly or indirectly holds a majority of votes in the assembly of shareholders, (ii) has directly or indirectly the right to appoint or remove a majority of the members of the management or administrative body or (iii) is able to exercise a controlling influence based on the articles of association, the foundation deed, a contract or comparable instruments. If no beneficial owner is identified, the shareholder must inform the company of this fact.

74. Consequently, only the shareholders owning at least 25% of the shares of a Swiss company must identify and report to the company the natural persons for whom they are ultimately acting. The outcome of this identification process does not lead in all cases to the identification of the beneficial owners as required by the standard. For instance, in case the company's shareholding is so fragmented that no shareholder holds an ownership interest of at least 25%, no beneficial owner will be identified (even where two or more shareholders have the same beneficial owner who could reach the 25% indirect ownership in the Swiss company). In addition, the notion of control is narrower than in the standard, which does not require that control be supported by a legal instrument. Switzerland should consider aligning the identification process of beneficial owners of Swiss companies provided for in the Code of Obligations with the approach laid down in the standard (see Annex 1 below).

75. These reporting obligations do not apply in the following situations:

- In case of the acquisition of intermediated securities deposited or registered with a Swiss custodian designated by the company (see

13. CO, Art. 697j, 764 and 790a; LPCC, Art. 46a and 112; Communication from the Federal Office of the Commercial Registry (Office fédéral du registre du commerce – OFRC), 1/15, 24 June 2015.

para. 138): in that case, the Swiss custodian is subject to AML obligations and must provide at the request of the company the identity and address of the beneficial owners (LTI, Art. 23a).

- Where the shareholder is a company listed on the stock exchange, or if the shareholder controls or is controlled by such a company, the shareholder must report this fact to the company and provide the corporate name and the head office of the listed company. This exception is explained by the obligation for any beneficial owner whose participation reaches, exceeds or falls below a particular threshold to provide his/her identity to the company and the stock exchange.[14]

76. In case of failure to comply with their reporting obligation, the shareholders are deprived from their rights until the required information is provided (CO, Art. 697m). This suspension of their rights must be enforced by the company's management. In addition, since 1 November 2019, the shareholder who intentionally fails to provide the required beneficial ownership information is liable to a fine up to CHF 10 000 (EUR 9 129) (CP, Art. 106 and 327). Non-compliance can be reported to the enforcement authorities by anyone (e.g. the company, shareholders and tax authorities). Switzerland should monitor the enforcement of the newly introduced fine (see Annex 1 below).

77. When there is a shareholding chain, the immediate corporate shareholders must obtain the identity of the controlling persons from their own shareholders and so on until the ultimate controlling persons are identified. While the co-operation of the shareholders in the chain is a condition for the identification of the ultimate controlling persons, there are no specific sanctions in case any of them refuses to provide the information needed to identify the ultimate controlling persons. In that case, only the immediate corporate shareholder will be sanctioned. Finally, there does not seem to be any clear obligation to verify the information provided based on documentary evidence. Switzerland should introduce effective incentives for the shareholders in the shareholding chain to provide the information needed to identify the ultimate controlling person (see Annex 1 below).

14. See para. 63; LIMF, Art. 120; OIMF-FINMA, Art. 2, 5 and 10; OIMF, Art. 37; OBVM, Art. 31. This obligation is monitored by the Disclosure Office of the stock exchange, which notifies FINMA of potential reporting violations. FINMA carries out investigations and, in case of suspicion, must file a report to the Swiss Federal Department of Finance, which is the authority responsible for prosecution. A fine up to CHF 10 million (EUR 9.129 million) is applicable on any person who wilfully violates the notification obligation or up to CHF 100 000 (EUR 91 294) in case of negligence (LIMF, Art. 151). Switzerland has reported that fines had been imposed for negligent breach of notification duties in the last years.

Obligation for companies to maintain a register of beneficial owners

78. Based on the notifications made by their shareholders, companies must keep a register of their beneficial owners (CO, Art. 697l, 764 and 790a; LPCC, Art. 46 and 112).[15] The register must indicate the name, surname and address of the beneficial owners. There might be no person identified by the shareholders who would meet the conditions in the law (or no shareholder having an obligation to report its beneficial ownership as none meets the 25% threshold), and in those cases, the companies are not required to identify a senior manager as a default option.

79. The companies are required to keep the documents supporting the registration of a beneficial owner (e.g. correspondence from the shareholders, documents proving the purchase of shares, copies of identification documents) for ten years after the removal of this person from the register. In case of cessation of the company, the record-keeping obligations are transferred to the liquidator or the Registry (see para. 64).

80. Since 1 September 2019, compliance with these obligations has been controlled by the AFC in the context of the Swiss anticipatory tax in the same way as the obligation to keep the register of shareholder (see para. 66). In case of failure to keep and update the register of beneficial owners, the company is liable to the sanctions described in paragraph 65. Switzerland should monitor the implementation of these newly introduced supervision and enforcement measures (see Annex 1 below).

Beneficial ownership information held by AML obliged professionals

81. The Swiss AML legal framework is based on several ordonnances (OBA, OBA-FINMA) and industry-specific regulations issued by OARs, which must be consistent with the LBA, as described in paragraph 34.

82. In Switzerland, a distinction is made between the beneficial owners of assets (*ayants droit économiques des actifs patrimoniaux*) and the beneficial owners of operating legal entities (*ayants droit économiques, bénéficiaires effectifs ou détenteurs du contrôle*). These two notions may be relevant to the identification of the beneficial owners of companies.

83. The concept of beneficial owner of assets is not defined in the Swiss AML legislation but in some OARs documents and forms[16] used by AML obliged professionals. It is understood as the natural person who has

15. SICAVs must only keep a register of the beneficial owners of their "entrepreneurial shareholders" (see para. 50).

16. For instance, the interpretative note of 15 June 2018 of the *Association Romande des Intermédiaires Financiers;* Form A for banks.

the power to use or dispose of the assets that are the object of the contract with the AML obliged professional. This understanding was confirmed during the on-site visit by the FINMA, ASB and OARs representatives. This concept allows the identification of the beneficial owners of non-operating entities (e.g. domiciliary companies (para. 127 *et seq*.), trusts (para. 169 *et seq*.) and certain foundations (para. 183). In certain cases, it may also apply to operating entities, including companies (para 97). The identification of the beneficial owners of assets (i.e. all natural persons controlling the assets irrespective of any threshold) is in substance in line with the standard for the identification of the beneficial owners of legal arrangements although some deficiencies are noted (see para 169 *et seq*. on legal arrangements).

84. The concept of beneficial owners of operating legal entities, which is further detailed below, allows the identification of the beneficial owners of companies, partnerships, foundations with the exceptions of domiciliary companies. The beneficial owners are identified based on an approach consistent with the standard, although some deficiencies have been identified which may affect the accuracy of the beneficial ownership information maintained by AML obliged professionals (see para. 89, 96, 97 and 99). Therefore, a recommendation is made to Switzerland (see para. 70).

85. The compliance of AML obliged professionals, including with their record-keeping obligation, is effectively supervised either by FINMA or by OARs, which are in turn subject to FINMA's supervision. Banks are subject to direct supervision by FINMA and the vast majority of them are also supervised by the ASB regarding their compliance with the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 16). Enforcement measures are effectively taken when appropriate.

Definition and identification of beneficial owners of operating legal entities

86. Beneficial owners of operating legal entities[17] (*ayants droit économiques*) are defined in general terms as "the natural persons who ultimately control the legal entity in that they directly or indirectly, alone or in concert with third parties, hold at least 25% of the capital or voting rights in the legal person or otherwise control it. If the beneficial owners cannot be identified, the most senior member of the legal person's executive body must be identified" (LBA, Art 2a(3)). This definition is further specified in the OBA-FINMA which refers to the control holders (*détenteurs du contrôle*) who are "natural persons who control an operating legal person or a partnership, by holding directly or indirectly, alone or in concert with third parties, a

17. "Operating legal person" refers to entities that operates a trading, production or service business, in contrast to domiciliary companies (see para. 129 *et seq*.).

participation of at least 25% of the capital or votes, or in some other way, and who are considered as the beneficial owners of such operating legal person or partnership controlled by them, or, in the absence of such person, those who are considered as the most senior member of the management body" (OBA-FINMA, Art. 2f). These definitions of beneficial owners of legal persons are in substance in line with the standard.

87. In accordance with the standard, beneficial owners of operating legal entities are always natural persons pursuant to the LBA. However, the CDB 16 provides that "a controlling person must *generally* be a natural person" (CDB 16, Art. 20(2), emphasis added). This provision is nevertheless clarified without ambiguity in the commentary on CDB 16 and in the case studies included therein. The CDB 16 does not require the identification of a natural person being the controlling person when the customer or the controlling person is (i) a company quoted on the stock exchange, (ii) a public authority, (iii) a bank or financial intermediary,[18] (iv) companies or associations with non-commercial purpose and no relationship with high-risk jurisdictions[19] or (v) a condominium ownership[20] (CDB 16, Art. 22 to 26 and 29 to 36). These exceptions are compatible with the standard.[21]

18. This exception applies to banks or financial intermediaries to the extent that (i) they are a contracting partner and (ii) they are established in Switzerland or in a foreign country with appropriate AML supervision and regulation (CDB 16, Art. 24 and 33).

19. These entities must meet the following criteria: (i) they must pursue charitable purposes; (ii) the assets belong exclusively to the charitable entity and can only be used for such charitable purposes; (iii) they usually benefit from tax exemption, the entitlement to which is checked by the cantonal tax authorities; (iv) they do not have relationship with AML high risk jurisdictions.

20. A condominium ownership involves the co-ownership of immovable property that gives the co-owners the exclusive right to make sole use of specific parts of a building and design the interior of such parts (CC, Art. 712a(1)). The function of the condominium owners association lies in the provision, use and administration of the shared property, as well as the maintenance of its economic value. It thus serves a specific purpose with very specific rules. The members of the condominium association deposit financial contributions in proportion to their co-ownership share in a depository account with a financial institution that has a banking license. The amounts of the contributions and the use of the money are decided by agreement of the co-owners in accordance with the condominium association's constituting documents and regulations, and withdrawals are by law only allowed for the expenses of the condominium association.

21. The CDB also provides that "generally, the beneficial owner of the assets are natural persons" (CDB 16, Art. 27(2)). The same explanation as the one provided for the beneficial owner of operating legal entities applies.

88. Regarding beneficial owners of operating legal entities, the definitions referred to in paragraph 86 also include some indications regarding the identification criteria (e.g. ownership interest, control by other means) of these beneficial owners, which are further specified in the provisions of the OBA, OBA-FINMA and the OARs regulations. Although the text varies, the identification process of the beneficial owners is based on the following cascading tests: (i) the beneficial owners are the natural persons who hold an ownership interest in the legal person of at least 25%; (ii) in case no one is identified in the first test, then the natural persons who exert a control of the legal person by other means are the beneficial owners; (iii) if no beneficial owner is identified in the second test, then the senior managers of the legal person are deemed beneficial owners.[22]

89. This methodology is not fully aligned with the standard. Contrary to the standard, when there is a doubt that the natural persons identified as having a controlling ownership interest in the legal person are the beneficial owners, the AML obliged professionals are not required to (i) identify if there is any other natural persons controlling the legal person by other means and (ii) report the natural persons having a controlling ownership interest in the legal person and the natural person controlling it by other means (if any). A recommendation is made in that respect (see para. 70).

90. Finally, there is a lack of guidance regarding the definition of "control by other means". The AML legislation does not contain comprehensive explanations or examples illustrating what could be such a control. There are nonetheless two illustrations in the commentary on CDB 16 (a shareholder pooling agreement and a loan that ensures a controlling influence). Although the Swiss authorities have indicated that guidance on the concept of "control by other means" is always part of the compliance officers' training of financial intermediaries, Switzerland should ensure that sufficient written guidance is provided to the AML obliged professionals, in particular banks, regarding the concept of "control by other means" (see Annex 1 below).

Scope of the AML obliged professionals in Switzerland

91. In Switzerland, AML obliged professionals are (i) natural or legal persons who are deemed to be financial intermediaries and (ii) those who deal in movable or immovable property on a professional basis and receive cash in payment in excess of CHF 100 000 (EUR 91 294) (dealers) (LBA, Art. 2(1)).

22. See OBA, Art. 18; OBA-FINMA, Art. 56; CDB 16, Art. 20; VQF Regulations, Art. 30.

92. The category of financial intermediaries[23] includes (i) banks, (ii) fund managers, SICAVs, SICAFs, SCPCs and private wealth managers to the extent that they manage shares accounts and offer or distribute shares in CIVs, (iii) insurance companies that pursue life insurance activities or engage in the marketing of CIVs and (iv) securities dealers (LBA, Art. 2(2)). In addition, any person who, in a professional capacity, accepts, keeps on deposit or assists in the investment or transfer of assets belonging to a third party is considered a financial intermediary (LBA, Art. 2(3)). Finally, some activities fall into this category if they are exercised on behalf of third parties: management of securities and financial instruments; execution of investment mandates; safekeeping of securities; activity of domiciliary company (OBA, Art. 6).

93. Legal and accounting professionals as well as trust or company service providers as such are not subject to the AML legislation, unless they carry out any of the above-mentioned activities.

94. Beneficial ownership information on companies is available with AML obliged professionals engaged by them. However, there is no obligation for companies to interact with those professionals during their lifetime. This conclusion applies also to the banking relationship, although there are situations where the Swiss legislation requires a bank account in Switzerland.[24]

95. The representatives of the ASB, the legal professions, the Commercial Registry and the tax authorities met during the on-site visit have nonetheless indicated that companies have in most of the cases at least one bank account in Switzerland, as it would be difficult in practice to carry out an economic activity in Switzerland otherwise. An analysis of the AFC's database has been carried out which was based on a sample of 157 869 taxpayers which are not natural persons. This represents 34.5% of the total of Swiss and foreign companies and partnerships as well as foundations registered with the Commercial Registry (458 055). The outcome was that 99.1% of these taxpayers have provided the AFC with a Swiss bank account number. With respect to companies, the sample represented 41.8% of the SAs, 26.8% of the

23. A financial intermediary acts in a professional capacity if, during the calendar year, that person (i) generates gross profits of more than CHF 50 000 (EUR 45 647), (ii) establishes or maintains business relationships with more than 20 clients, (iii) has indefinite power of attorney over third-party assets worth more than CHF 5 million (EUR 4.56 million, or (iv) engages in transactions with a total value in excess of CHF 2 million (EUR 1.82 million) (OBA, Art. 7).

24. The capital contributions for the creation of a company and any subsequent capital increase require the opening of a bank account in Switzerland which will then issue a proof of capital (evidence of which must be provided to the Commercial Registry). However, there is no legal obligation for companies to maintain a bank account in Switzerland after these operations.

SARLs and 40% of the SCAs in Switzerland. The result was that 99.1% of the SAs, 99.2% of the SARLs and all the SCAs in the sample have a bank account in Switzerland.[25]

96. Although these statistics indicate that most of the companies had a relationship with a bank in Switzerland, it cannot be ascertained that up-to-date beneficial ownership information will be available in all cases with a bank or any other AML obliged professional in the absence of a legal obligation to maintain a business relationship with an AML obliged professional during the lifetime of the company. Therefore, a recommendation is made in that respect (see para. 70).

Customer due diligence and record keeping obligations

97. AML obliged professionals must conduct CDD when establishing a business relationship or carrying out a cash transaction of a significant amount[26] (LAB, Art. 3 and 8a). First, they must identify and verify the identity of their customer. Second, they are required to identify the beneficial owners of the operating legal entities, as defined in paragraphs 86 *et seq.*, with the due diligence required in the circumstances (LBA, Art. 4(1)). To that end, a written declaration must be obtained from the customer as to the identity of the individuals who are its beneficial owners (LBA, Art. 4(2)).[27] This general obligation to identify the beneficial owners is further detailed for the different categories of AML obliged professionals.[28] Third, the beneficial owner of the assets must be identified when the customer is an operating legal entity or a partnership not listed on the stock exchange and declares that it holds the assets in its possession for a third party.[29] To that end, a written

25. The Swiss authorities have also provided a study made by the Universities of Lucerne in 2017. This study, which was based on a sample of 1 922 small and medium-sized enterprises, showed that less than 1% of them had a bank account with a foreign bank, which can also include a foreign bank based in Switzerland. *Étude sur le financement des PME en Suisse en 2016*, Lucerne University of Applied Sciences and Arts and the Institut pour les études financiers de Zoug, *Économie*, June 2017.
26. The threshold of a "significant amount" is CHF 25 000 (EUR 22 823) in most cases.
27. The identification information to be gathered is at least the name and address of the beneficial owners (OBA-FINMA, Art. 57; VQF Regulations, Art. 31; CDB 16, Art. 21). For some AML obliged professionals, the date of birth and nationality are also required (e.g. OBA, Art. 18; FSA/FSN Regulations, Art. 32).
28. E.g. OBA, Art. 18; OBA-FINMA, Art. 56; VQF Regulations, Art. 30.
29. OBA-FINMA, Art. 59; CDB 16, Art. 27, 30 and 39; VQF Regulations, Art. 37 and 38; FSA/FSN Regulations, Art. 30.

declaration must also be obtained from the customer as to the identity of the individual who is the beneficial owner of the assets.[30]

98. AML obliged professionals rely mainly on the beneficial ownership information provided by their customers, who have to identify and report the identity of their beneficial owners in a signed document. If false information is deliberately provided on this document, the customer is liable to an imprisonment up to five years or a fine (CP, Art. 251). However, AML obliged professionals are not required to systematically verify this information with a reliable source. This verification is only required where risks are identified (for instance, the controlling persons reported are the managers) (OBA-FINMA, Art. 15 and 16) or when a doubt arises at the beginning of the business relationship as to whether the information is correct (e.g. commentary on CDB 16, p. 31). The Swiss authorities explained that the obligation to verify was implicit in the other cases. Moreover, companies make available to AML obliged professionals their beneficial owners as identified pursuant to the Code of Obligations, who are not in all cases the beneficial owners as defined by the standard nor the Swiss AML legislation (see para. 71 *et seq.*). Without an obligation to always verify the correctness of beneficial ownership information provided by customers using a reliable source, the information held by AML obliged professionals may not be accurate in all cases. A recommendation is made in that respect (see para. 70).

99. The Swiss AML legislation does not provide an obligation for AML obliged professionals to regularly update beneficial ownership information. They have only the obligation to reiterate the verification of the customer identification and the establishment of the identity of the beneficial owners if a doubt on the veracity of the information previously provided arises in the course of the business relationship.[31] In addition, the customers have no obligation under the AML legislation to inform the AML obliged professionals of any change in beneficial ownership. This obligation as well as the criminal sanction in case of failure (see para. 98) is however mentioned in the forms and documents the AML obliged professionals request the customers to sign (i.e. contractual obligation). Nevertheless, in the absence of a legal obligation to regularly update the beneficial ownership information held by the AML obliged professionals, this information might not be up to date in all cases as required by the standard. A recommendation is made in that respect (see para. 70).

30. The information to be collected is the name, date of birth, address and nationality of the beneficial owner. Banks can use the Form A for this purpose (OBA-FINMA, Art. 57; VQF Regulations, Art. 35; CDB 16, Art. 28; FSA/FSN Regulations, Art. 32).

31. LAB, Art. 5; OBA-FINMA, Art. 69; CDB 16, Art. 46; FSA/FSN Regulations, Art. 38.

100. Financial intermediaries are allowed to rely on third parties to perform CDD measures (including identification of the beneficial owners) provided certain conditions are met (OBA-FINMA, Art. 28 and 29; CDB 16, Art. 43):

- They may, by written agreement, delegate to a third party the verification of the identity of the contracting partner, the identification of the beneficial owner of the legal entity or the beneficial owner of the assets, provided that: (i) they carefully select the third party, including by ensuring that it is subject to an equivalent AML supervision and regulation and has taken measures to meet its CDD obligation in an equivalent manner; (ii) they give instructions on the tasks to be performed; and (iii) they are able to control whether the third party complies with the CDD obligations.
- In addition, financial intermediaries may also entrust, without written agreement, the performance of the CDD obligations to (i) an entity within the group, if the applicable CDD requirements are equivalent or (ii) to another financial intermediary, if it is subject to equivalent AML supervision and regulations and has taken measures to fulfil its CDD obligations in an equivalent manner.

101. In any case, the third party is not allowed to sub-delegate the performance of the CDD. The financial intermediary remains responsible, in all cases, for the proper performance of the CDD and must have on file a copy of the documents used to fulfil these obligations, which must be certified by the third party to be identical to the original.

102. AML obliged professionals are required to maintain records, including identity and beneficial ownership information of their customers, for at least ten years after the end of the business relationship or the date of the occasional transaction.[32]

Supervision, oversight and sanctions

103. AML obliged professionals must implement the necessary organisational measures to prevent money laundering and terrorism financing, including issuing internal directives, training staff and performing inspections (LAB, art. 8). The extent of these obligations varies according to the financial intermediaries concerned. In principle, an AML unit must be established to (i) support and advise on the implementation of the AML requirements (e.g. preparation of AML internal guidelines, planning and monitoring of internal trainings) and to ensure AML compliance (e.g. supervision of the implementation of the internal guidelines, along with the

32. LBA, Art 4; OBA, Art. 21; OBA-FINMA, Art. 22, 39 and 74; CDB 16, Art. 44 and 45; FSA/FSN Regulations, Art. 49 to 51; VQF Regulations, Art. 61 to 63.

internal auditors, the external auditors and the management; conduct of a risk analysis in the light of the activities and customers of the financial intermediary) (OBA-FINMA, Art. 24 to 27). These obligations can be alleviated for some financial intermediaries "directly subordinated" to FINMA (*intermédiaires financiers directement soumis à la FINMA* – IFDS) taking into account their size (OBA-FINMA, Art. 75 to 76).

104. FINMA is the principal AML supervisor of financial intermediaries. Certain financial intermediaries are supervised directly by FINMA (e.g. banks and insurances). Others have an option: (i) they can opt for a direct supervision by FINMA as IFDS and, in that case, they are not affiliated to an OAR and their activities must be authorised by FINMA; (ii) they can choose to be affiliated and supervised by an OAR recognised by FINMA and subject to its supervision.[33]

105. AML supervision is mainly carried out through audits on the compliance of the AML obliged professionals with their AML obligations (LBA, Art. 15 and 19a; CB 16, Art. 57). These audits were carried out on an annual basis until 2019. Since 2019, the frequency, level and nature of the supervision have depended on the risk classification of the financial intermediaries. The frequency of audits can be annual for the financial intermediaries presenting higher risks or every two or three years for others.

106. While FINMA and the OARs perform specific audits with their own staff or with auditors selected by them, most of the general audits are performed by audit firms selected by the AML obliged professionals. The auditors must be approved to exercise AML audit by the Federal Audit Oversight Authority (*Autorité fédérale de surveillance en matière de révision* – ASR). The auditors must fulfil the independence requirements.[34] The audit must be conducted in line with FINMA's controls specifications and audit programme, which include CDD obligations. There are currently 29 external auditors approved by ASR. The 2016 Report (para. 100 and 179) found that the commercial relationship between AML obliged professionals and the external auditors may affect the auditors' objectivity, especially considering the risk of sanctions by the AML supervisory authorities based on the auditors' report. Switzerland was recommended to monitor supervision of AML obliged professionals' compliance with their AML obligations, especially

33. Refer to para. 123 to 137 of the 2016 Report. LBA, Art. 12, 14, 18, 24 and 25; OBA, Art. 22.

34. For instance, the same audit company is not allowed to provide prudential such as AML advisory services when it provides AML audit services. In addition, FINMA can require on a case-by-case basis that the AML audit company used by the financial intermediary is not the same as the one reviewing the financial accounts (FINMA Circular 2013/13).

for trustees and nominees considering the strong reliance on their AML obligations. Since then, Switzerland has sufficiently addressed the concerns raised in the 2016 Report with its new supervisory concept under which it increases the supervision for high-risk activities or professions, including trustees and nominees, through audits carried out directly by the supervisory authorities (FINMA or OARs). For instance, the number of audits increased by about 44% between 2014 and 2017. In addition, the breach of the duty of an external auditor shall be reported to the ASR and may lead to professional disqualifications and employment bans.

Direct supervision of financial intermediaries by FINMA

107. FINMA raises awareness through the publication of case studies in its annual enforcement report and its annual report.

108. On a risk-based basis, FINMA's supervision is carried out through a series of instruments, including the following:

- Regulatory audits (*audits prudentiels*) to assess the compliance of the financial intermediaries with the supervisory requirements, including AML obligations (LFINMA, Art. 24): these audits are based on documents provided by the financial intermediaries and samples checked during on-site visits. The audit must be conducted in line with FINMA's controls specifications and audit programme, which include CDD obligations. For the period 2016-18, 871 banks and 496 IFDS were subject to regulatory audits.
- Targeted audits (*audit ponctuels*) are carried out by mandataries to assess compliance with respect to a specific element. FINMA uses selected mandataries (*Chargés d'audit*) when a specialist expertise is needed or an independent opinion is required (LFINMA, Art. 24a). For the period 2016-18, 117 targeted audits were performed.
- On-site inspections (*contrôles sur place*) are carried out directly by FINMA at the premises of a supervised institution (LFINMA, Art. 24). These are topic-related and in-depth controls. From 2016 to 2018, FINMA carried out 235 inspections of banks and 12 for others IFDS, of which 63 were on AML compliance. Findings were not necessary related to CDD obligations.

109. The regulatory and targeted audit reports prepared by audit firms and mandataries are submitted to FINMA, which reviews them. Through these supervision instruments, FINMA has identified deficiencies relating to AML. Reservations or recommendations were made to 534 banks. However, Switzerland was not able to provide statistics on the number of cases concerning compliance with CDD obligations and no statistics were available for IFDS.

110. In case minor deficiencies are identified, which are in general formal violations of the AML legislation (e.g. missing date of birth), FINMA can impose corrective measures on the financial intermediaries through interviews or injunctions to comply with the law within a set timeline. The implementation of the corrective measures is monitored by FINMA.

111. Where serious deficiencies are identified, such as failure to comply with the CDD obligations (e.g. absence of CDD, no verification in case of doubt on the identity of the beneficial owner), or if denunciations are received from the public or the law enforcement or market authorities, FINMA launches enforcement investigations. These investigations on the institution and/or its senior management can be desk-based or on-site. They can lead to enforcement measures[35] such as precautionary measures (e.g. ban on the on-boarding of new clients) or measures to restore compliance with the law, withdrawing authorisation, liquidation, issuing industry/activity bans and ordering the confiscation of profits generated illegally. It can also publish final rulings naming those involved. For instance, 16 industry bans, 40 liquidation decisions and 53 ruling publications were issued in the period 2016-18. There were on average 32 investigations on due diligence requirements under LBA and on average 8 formal enforcement proceedings concluded per year on the topic of AML. FINMA has no power to apply financial sanctions, but it can refer the case to the Federal Department of Finance, which has this power. For the years 2016-18, 25 cases have led to financial sanctions amounting to CHF 489 790 (EUR 447 149). Finally, in case any criminal activity is detected, FINMA has to inform the general prosecutor. For the period 2016-18, 58 denunciations to the general prosecutor were made.

112. Finally, where serious deficiencies are identified by FINMA with respect to the identification of the beneficial owner, the concerned financial intermediary is liable to a custodial sentence not exceeding one year or to a monetary penalty (CP, Art. 305ter). The Swiss authorities indicated that sanctions were applied in four cases in 2015, seven cases in 2016, 37 cases in 2017 and one case in 2018.

113. In addition to FINMA supervision, out of the 259 Swiss and foreign banks, 234 are members of ASB. ASB provides training seminars each time the CDB is amended. Four events were organised during the review period. It also regularly issues circulars to all its members and heads an AML working group, in which all members are directly or indirectly represented. Finally, ASB has a separate and independent Supervisory Board (*Commission de Surveillance*), which is in charge of ensuring compliance with the CDB 16 through investigations and disciplinary actions. It informs FINMA of its decisions. In the event of a violation of the CDB 16, a monetary penalty up to

35. LFINMA, Art. 24 to 37.

CHF 10 million (EUR 9 129 million) is applicable (CDB 16, Art. 64). During the period 2015-18, the Supervisory Board has imposed total penalties of CHF 6 360 000 (EUR 6 328 658), i.e. around CHF 2 120 000 (EUR 2 109 553) per year. An average of 10 sanctions per year were applied to banks for non-compliance with the CDB 16, and this includes breaches of the CDD obligations. Non-members must also comply with the CDB 16 but are supervised and sanctioned only by FINMA as described in the previous paragraphs.

114. The supervision carried out by FINMA (and ASB for banks) during the review period was effective and corrective and enforcement measures were applied where deficiencies were identified.

Indirect supervision of financial intermediaries by FINMA

115. Financial intermediaries affiliated to an OAR are subject to FINMA supervision. OARs offer training seminars for their affiliates on AML obligations.

116. OARs' supervision is based on risks and is usually carried out through audit firms accredited by ASR which are contracted by the affiliates, while some perform the audit themselves (e.g. VQF). The independence of the auditors is monitored by the OARs (OBA-FINMA, Art. 24). Each OAR has its own approach in terms of frequency of the audit, which vary from an annual audit to a three-year audit depending on the risks. Compliance with AML obligations is part of the scope of the standard audits. The audit reports are provided to the OAR, which analyses them and their conclusions. The OAR can order a new audit by an auditor of its choice or by one of its internal auditors. In addition to these standard audits, *ad hoc* audits can be carried out when required. VQF has reported that every year between 45% and 50% of its members are subject to on-site inspections. Deficiencies were identified in around 15% of the cases. During the review period, FSA/FSN has carried out 822 on-site audits (around 205 per year, representing 25% of its members). OARs have reported that deficiencies relating to CDD were identified in some instances (e.g. improper documentation of clients' background or deficient identification of a contractual party). The concerned financial intermediaries were at a minimum fined and required to address these deficiencies by a certain date (e.g. re-document client-information).

117. Failures to comply with the AML obligations that are identified in the audit reports are subject to monitoring and/or sanctions. In practice, where minor deficiencies are identified (e.g. lack of trainings for AML officers), OARs usually order corrective measures to be taken within a certain timeline or warn the concerned affiliates. Then, they monitor whether the concerned affiliates have responded appropriately. Where failures that are more serious are found (e.g. missing identification documents regarding beneficial owners), OARs sanction the concerned affiliates by imposing

monetary penalties[36] and/or exclusion from the OAR.[37] FINMA is informed of any sanction or exclusion applied by OARs. Between 2016 and 2018, there were 604 sanctions applied to members of OARs, including 168 warnings or reprimands, 287 monetary penalties and 116 exclusions. Where serious deficiencies are identified by OARs with respect to the identification of the beneficial owner, the sanctions mentioned in paragraph 112 apply. Finally, any criminal cases will be reported directly to FINMA, which may decide to start an investigation and will report the matter to the prosecutor.

118. OARs are subject to FINMA's supervision. Once a year, FINMA carries out a risk analysis and categorisation for each OAR taking into account their membership structure, their risk and supervision policies, and their organisation. The risk category determines the intensity and frequency of the supervisory measures used by FINMA, which are periodic on-site supervisory reviews, annual bilateral supervisory interviews and analysis of OARs annual reports. Every year or two years, depending on their risk category, all OARs are sent assessment letters detailing any weak points and indicating where action is required. In addition, FINMA organises meetings with OARs to discuss general challenges in the operational implementation of the LBA. FINMA requires all OARs to report their key statistics (i.e. new affiliations/withdrawal of members, complaints by third parties, supervision activities, number of sanctions, etc.). The controls are carried out by FINMA itself with the exception of the control of the FSA/FSN which is carried out by selected lawyers/notaries. While FINMA cannot act directly with OARs' affiliates nor act in the place of the OARs with regard to the affiliates, it communicates information received from a customer, law enforcement authorities or a third party to the OARs, which are asked to take the necessary measures. For the period 2016-18, FINMA conducted 29 on-site inspections. The main focus was placed on the OARs' supervision of financial intermediaries.

119. In case deficiencies are identified during supervision of the OARs, FINMA can use its enforcement powers (para. 110). Ultimately, FINMA can withdraw the recognition of the OAR and thus prohibit it from exercising this activity (LAB, Art. 28). There was no case during the review period.

120. Based on the above, the supervision carried out by OARs during the review period was effective and corrective and enforcement measures were applied where deficiencies were identified. OARs were in turn subject to effective supervision by FINMA.

---

36. The maximum amount varies according to the OARs. For example, it is CHF 100 000 (EUR 91 294) for FSA/FSN and CHF 250 000 (EUR 228 235) for VQF.

37. The exclusion from an OAR prevents the financial intermediary from joining another OAR.

Availability of legal and beneficial ownership information in EOI practice

121. Switzerland indicated that it did not keep specific statistics regarding the nature of the information requested for each category of legal entities and arrangements. However, it has provided aggregate statistics on the requests for legal or beneficial ownership information received.

122. During the period under review, Switzerland received 128 requests for information on ownership and identity information relating to legal entities and arrangements, of which 109 were answered, 11 were declined, six were withdrawn by the EOI partners and two are still pending. Switzerland has also received 100 EOI requests about information on beneficial owners of legal entities and arrangements, of which 84 were answered, one was declined, two were withdrawn by the EOI partners and 13 are still pending.

123. Peers indicated to be generally satisfied with the legal and beneficial ownership information provided by Switzerland. Where legal or beneficial ownership information was not provided, the issue was not about the availability of this information. None of the peers raised concerns about the availability of ownership information.

Specific issues relating to availability of legal and beneficial ownership information

Foreign-incorporated entities (including foreign companies)

124. Paragraphs 87-89 of the 2016 Report found that, although foreign incorporated companies having a permanent establishment in Switzerland must be registered with the Commercial Registry, legal ownership information may not be available in all cases. Indeed, to register their permanent establishment in Switzerland, foreign companies have to provide an official excerpt from the Commercial Registry of the jurisdiction in which they are registered as well as an official copy of their articles of incorporation. Therefore, the availability of ownership information was dependent on the law of the jurisdiction in which the foreign company is incorporated. In addition, there was no obligation to update the legal ownership information. Switzerland was therefore recommended to ensure that ownership information relating to foreign companies is available in all cases.

125. Since 1 November 2019, any legal entity, whose main office is located outside Switzerland but has its effective administration in Switzerland, must keep a list of its holders at the place of its effective administration. This list must contain the first and last names or the company name, and the address (LAF, Art. 22i bis). This list must be up to date and maintained for 10 years after the end of the year to which it relates (CO, Art. 958f).

126. The AFC, which monitors compliance with this new obligation, is however not granted with any enforcement measures in case of failure (see para. 66). Although the members of the managing body can be held responsible for the damages caused to the company or to a third party (CO, Art. 717 and 754), this private litigation is not sufficient to ensure a proper enforcement. Therefore, Switzerland is recommended to introduce appropriate enforcement measures to ensure compliance of foreign companies with their obligation to maintain an up-to-date list of their owners and to monitor its implementation in practice.

127. With respect to the availability of beneficial ownership information, AML obliged professionals must carry out their CDD on foreign companies in the same manner as for Swiss companies (refer to para. 98 *et seq.*). Therefore, the recommendation made in paragraph 70 is also valid for foreign companies.

128. There were 3 482 branches of foreign companies registered in Switzerland on 1 January 2019. Switzerland did not maintain specific statistics on the number of requests received relating to legal or beneficial owners of foreign companies (see para 121). It indicated that this kind of request was rare in practice. No peers have raised issues regarding the availability of ownership information for foreign companies.

Domiciliary companies

129. Domiciliary companies (*sociétés de domicile*) refers to entities which do not have operating activities (OBA-FINMA, Art. 2a). Entities considered as domiciliary companies include: legal persons, companies, foundations, trusts, fiduciary enterprises and similar arrangements that are not exercising a trade or manufacturing activity (OBA, Art. 6). Domiciliary companies are subject to ownership and identity requirements applicable to their legal form under Swiss law as described in this report. They also have to file a tax return. With effect from 1 January 2020, the preferential tax regime applicable to domiciliary companies has been abolished.

130. Legal and beneficial ownership information is mainly made available through the AML legislation. First, the managing body of a domiciliary company is considered a financial intermediary (i.e. AML obliged professional) and it must perform CDD and identify the legal and beneficial owners of the domiciliary company. The managing body, of which at least one director or managing person is domiciled in Switzerland, must identify all the natural persons irrespective of any ownership interest threshold (i.e. the beneficial owners of the assets).[38] Compliance of the managing body of the domiciliary

38. See para. 90 *et seq.* and Section A.1.4 and A.1.5 below.

company with its AML obligations is supervised by the OAR to which it is affiliated or by FINMA, which authorises its activity (see para. 104).

131. Second, other AML obliged professionals, which interact with a domiciliary company, must perform their CDD and identify the beneficial owners of the domiciliary company as described in the previous paragraph. As domiciliary companies are considered entities with a higher risk (OBA-FINMA, Art. 13), additional due diligence such as a duty to verify the information provided, including the identification of the beneficial owners, and to monitor closely the business relation is performed (OBA-FINMA, Art. 15 and 20).

132. Consequently, legal and beneficial ownership information is available for domiciliary companies as for any other entity or legal arrangement sharing the same legal form. For domiciliary companies incorporated as companies, legal ownership information is available with the Commercial Registry, the company itself, AML obliged professionals and to a certain extent with the tax authorities. Beneficial ownership information is available with their management body and the AML obliged professionals with which they may interact.

133. Switzerland did not maintain specific statistics on the number of requests received relating to legal or beneficial owners of domiciliary companies. It indicated that this kind of request was rare in practice. No concerns were raised by peers.

Nominees

134. The concept of "nominee" does not exist in Swiss law. Shareholders have to be registered in the company's register of shareholders or on the list of holders of bearer shares. Representatives or agents cannot be listed in the register, and only persons registered with the company can exercise the rights associated to the shares.

135. Two concepts exist in Switzerland. The agency relationship (*contrat de mandat*) is a contract under which an agent (*mandataire*) must manage the affairs of the principal (*mandant*) in accordance with the terms of the contract (CO, Art. 394 *et seq.*). The *treuhand* is a relationship based on contract law under which one person agrees to hold the legal title to assets for the economic benefit of another person.

136. Whilst agents and *treuhand per se* are not subject to the Swiss AML legislation, they become financial intermediaries when, on a professional basis, they (i) accept or hold on deposit assets belonging to others, (ii) assist in the investment or transfer of such assets or (iii) carry out other regulated financial services (AMLA, Art. 2). Switzerland has advised that most professional agents are carrying out additional financial activities for their clients.

As an AML obliged professional, the agent must therefore comply with the CDD obligations (see para. 97 *et seq*.).

137. According to the Swiss authorities, non-professional agents or treuhänder that do not perform any activities as financial intermediaries under the LBA would be rare and the potential gap is therefore very limited in practice. Nevertheless, Switzerland should ensure that legal and beneficial ownership information is always available where the agent or *treuhänder* is not subject to the Swiss AML legislation (Annex 1 below). No peers have raised concerns regarding nominee, agent or *treuhand* relationships in Switzerland.

Intermediated securities

138. SAs and SCAs can issue "intermediated securities", which are governed by the Federal Act on Intermediated Securities (*Loi fédérale du 3 octobre 2008 sur les titres intermédiés* – LTI) (CO, Art. 622). Intermediated securities, which may be either registered or to bearer, are deposited by the titleholder to the credit of an account managed in the name of the titleholder by certain custodians only (in particular banks, securities traders and investment fund managers) (LTI, Art. 3 and 4). The custodian is designated by the company. The identity of the legal and beneficial owners is therefore available with the custodian, which is subject to the CDD obligation (as described in paragraphs 97 *et seq*.).[39]

Inactive companies[40]

139. In Switzerland, companies no longer engaged in economic activity remain bound by their obligation to register certain information with the Commercial Registry. In case of failure to update the information in the Commercial Register, they face administrative procedures, which can ultimately lead to their liquidation. It applies in particular to companies that have an address that is no longer valid or flaws in their organisation (e.g. no administrator resident in Switzerland, no external auditor when it is required). In addition, the Commercial Registry may, after summons,

39. The standard does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties (OECD Model Agreement on Exchange of Information on Tax Matters, Art. 5(4)).

40. An inactive company is a company that legally exists but has no business activity or is considered inactive under the conditions set out in the domestic law of the assessed jurisdiction (for example due to non-compliance with filing requirements).

automatically remove a company from the Commercial Register without prior liquidation where the company no longer carries on business activity and has no realisable assets (ORC, Art. 153-155).

140. Some cantonal Registries, like the Commercial Registry of Zurich, request once a year that all companies not having submitted any updates during five years to either confirm or correct the registered data. During the review period, the Registry of Zurich has contacted 15 548 companies (14% of the registered companies). If a company does not respond, the commercial registry takes the appropriate measures provided for in the ORC. The Commercial Registry of the Canton of Zurich opens about 2 500 official proceedings each year which lead to a compulsory registration and a fine in case of the violation of the obligation to register (Art. 152), to a liquidation of the company in case of lack of legal domicile or organisation (Art. 153 and 154) and to a deletion of the company from the register without liquidation in presence of a company with no business activity and no assets (Art. 155).

141. In its 2018 audit report, the Swiss Federal Audit Office identified indicia, such as the absence of new inscriptions for 15 years in very few cases, suggesting that some inactive companies may be still registered with the Commercial Registry. These are essentially sole proprietorships for which no liquidation was requested following the death of their owner.

142. Therefore, although there may be some cases where an inactive company remains registered with the Commercial Registry, this issue is not substantial in Switzerland due to the active monitoring carried out by the cantonal Commercial Registries. No concerns were raised by peers in relation to inactive companies.

A.1.2. Bearer shares

143. Until 31 October 2019, SAs and SCAs had the right to issue bearer shares (see para. 138-150 of the 2016 Report). Founding members holding bearer shares are identified at the time of the registration of the company with the Commercial Registry. There are also legal provisions ensuring or incentivising in some instances the identification of the holders of bearer shares in case of transfer. The main mechanism which was put in place in 2015 to identify the holders of bearer shares was still applicable during the current review period. The acquirer of bearer shares was required to report to the company the acquisition of such shares and provide identification information and supporting documents within a time lapse of one month. The company was also required to maintain a register of its bearer shares holders (CO, Art. 697j). This register must be maintained in Switzerland for ten years following the cessation of the company (see para. 200). The documents supporting the registration of the holder must be kept for ten years after the holder is deleted from the register (CO, Art. 697l).

144. This mechanism was insufficient to ensure the identification of the holder of bearer shares in all cases, especially because the controls on compliance with the provisions were insufficient and the civil sanctions were not dissuasive enough. Switzerland was therefore recommended to ensure the identification of the holders of bearer shares in all circumstances.

145. To address this recommendation, a new legal framework has been introduced with the LFM. From 1 November 2019, SAs and SCAs are authorised to issue bearer shares only if these companies are listed on the stock exchange, with adequate disclosure requirements,[41] or if the bearer shares are issued in the form of intermediated securities (see para. 138).[42] This exception must be registered with the Commercial Registry. Third parties and the Commercial Registry can therefore verify if a company issuing bearer shares is allowed to do so.

146. In case of failure to comply with the new law, any shareholder, creditor or the Commercial Registry has the right to initiate proceedings against the company. In such a case, the court may set a deadline to take the required measures or, ultimately, dissolve the company (CO, Art. 731b). In addition, the management of the company may be held responsible for the damages caused to the company or to a third party (CO, Art. 717 and 754). Finally, any bearer shares unlawfully issued will be invalid.

147. Regarding pre-existing bearer shares (i.e. those issued before 1 November 2019), a transitional period of 18 months (until end of April 2021) is provided for:

- SAs and SCAs listed or opting for intermediated securities to comply with their obligation to register this exception with the Commercial Registry (see para. 145).
- The holders of bearer shares, who have not complied with their disclosure obligation (see para. 143), to disclose their identity to the company. Upon disclosure, the company will enter the identity of their holders into the register of bearer share holders.

148. After 30 April 2021, the bearer shares not issued by companies listed or opting for intermediated securities will not be valid anymore and will be automatically converted in registered shares:

41. The identification of the bearer shares holder is ensured by the LIMF (see para. 63).

42. In case an SCA or SA is no more listed on the stock exchange, it must within six months (i) register this information with the Commercial Registry and (ii) convert the existing bearer shares into registered shares or intermediated securities (CO, Art. 622).

- The registers of bearer shares will be abolished: the compliant holders will be entered into the shareholders register. The shareholders must return their bearer shares to the company in order to receive registered shares.
- The bearer shares held by non-compliant holders will also be automatically converted into registered shares. In practice, the bearer shares will be registered in the company's register of shareholders under their identification numbers with a mention on the non-compliance of their owner. This registration will be without attribution, the identity of the non-compliant shareholder being unknown.
- The Commercial Registry will make ex officio the modifications resulting from the conversion for companies not authorised to maintain bearer shares: an entry will be made in the register to note that (i) the shares of the company have been automatically converted, (ii) the articles of association differ from the entry and (iii) the company must adapt them. The concerned SCAs and SAs will be prevented from making any other modifications of the articles of association until the deficiency is corrected.

149. The conversion leads to the cancellation of the bearer shares and has effect against all, notwithstanding any provision of the articles of association or entry in the Commercial Registry to the contrary. Therefore, the non-compliant shareholders will have their rights in the company suspended. This suspension must be enforced by the management of the company. The sanctions described in paragraph 146 are applicable if the management fails to enforce this suspension or if the company does not modify the shareholders register.

150. This suspension of the non-compliant shareholders' rights will only become definitive on 1 November 2024. Between 1 May 2021 and 31 October 2024, non-compliant shareholders will be able to be reinstated as owners of the converted shares by following a two-step procedure: First, they need to obtain prior approval of the company to initiate the procedure. If the company does not grant its authorisation and thus refuses to recognise their quality of shareholders, they will have to take legal action against the company. Then, they can apply to the court to be registered by the company in the shareholders register as the owners of the converted shares. They must establish by means of written evidence (e.g. a contract of sale of shares, a share purchase warrant) an uninterrupted chain of share transfers going back to the foundation of the company or to the last shareholder known to the company. The presentation of the bearer shares is therefore not sufficient to prove the status of shareholder. The court cannot refuse to authorise the attribution of the converted shares if proof of ownership is provided.

151. The prior agreement of the company as well as the judicial proceedings entail legal and administrative costs and the risk that the judge will not authorise the reinstatement (e.g. lack of proof). Therefore, it should incite holders of bearer shares to comply with their obligation before end of April 2021. In addition, the possibility for non-compliant shareholders to be reinstated in their rights is accompanied by sufficient safeguards and incentives: (i) the bearer shares being cancelled, any transfer after end of April 2021 will not produce any legal effects, (ii) the judge will not rule in favour of the reinstatement if the transfer of the bearer shares was after April 2021 and (iii) non-compliant shareholders are deprived of their shareholders' rights during the period of suspension.

152. Non-compliant holders of bearer shares cannot retrieve their rights after 1 November 2024. The converted shares are cancelled and replaced by shares in the name of the company. However, in exceptional circumstances, a person whose shares have been cancelled may claim compensation from the company within ten years of their cancellation (i.e. by 31 October 2034) if they can prove their ownership at that time and the absence of fault on their part. This provision strikes a balance between sanctioning non-compliance and protecting the property right enshrined in Article 26 of the Federal Constitution in exceptional and legitimate circumstances. According to the Swiss authorities, the absence of fault will be interpreted according to the general principles of Swiss law. They consider that the absence of fault would be demonstrated in a case where the holders did not objectively have the opportunity to take note of the entry into force of the new law and could therefore not react in time, for example because they inherited the shares but discovered them in the estate only after 31 October 2024. They anticipate that very few holders will be able to avail themselves of this provision. The value of the compensation is the value of the shares at the time of their conversion or the claim, whichever is the lowest.

153. In the light of the above, Switzerland is recommended to monitor the practical implementation and enforcement of the recently introduced requirement regarding bearer shares, including the transitional provisions and the right to compensation, to ensure that full ownership information is available for all companies.

154. As of 31 December 2018, there were about 54 900 companies which had outstanding bearer shares. The number of companies whose share capital is solely composed of nominative shares has increased from 73% in 2014 to 89.8% in 2018. The trend during the review period was a preference for a share capital exclusively in registered form (19 612 companies) than in bearer or mixed form (2 568 companies). In addition, 1 759 companies have converted their share capital in registered form while only 176 companies have converted totally or partly their share capital into bearer shares.

155. In practice, Switzerland received 49 EOI requests in relation to the identity of the holders of bearer shares during the period under review, of which 43 were answered, 2 were withdrawn by the EOI partner and one is still pending. For three linked requests, Switzerland failed to provide the requested information because the holders of the bearer shares were not known by the company. Where the information was provided, peers were generally satisfied.

A.1.3. Partnerships

156. Five types of partnerships are allowed by the Swiss legislation. With the exception of the ordinary company, they are legal entities:

- *Société en nom collectif* (SNC) is a general partnership (CO, Art. 552 *et seq*.) formed by two or more natural persons entering into a contract of association in order to operate a commercial enterprise. Partners are jointly and severally liable for all the debts of the partnership.
- *Société en commandite* (SC) is a limited partnership for collective investments (CO, Art. 594 et seq.) with (i) one or more general partners (*commanditées*), who are personally liable for the debts and obligations of the partnership, and (ii) limited partners (*commanditaires*) who have limited liability for the debts and obligations of the SC. Only individuals may be partners with unlimited liability whereas other partners may also be legal entities, for example corporations.
- *Société en commandite de placements collectifs* (SCPC) is a legal form used predominantly for providing risk capital (LPCC, Art. 98(3)). There must be at least one partner of the SCPC with unlimited liability, and all partners with unlimited liability must be Swiss SAs. The rules in the Commercial Code applicable to SCs apply to SCPCs, unless there is an express provision to the contrary in the LPCC (LPCC, Art. 99).
- *Société cooperative* (co-operative) is a corporate entity formed by any number of persons to further the economic interests of its members (CO, Art. 828) and is similar to a joint venture.
- *Société Simple* (SS or ordinary company) is a contractual association between at least two persons uniting their efforts or resources for a common purpose. It is not a separate legal entity and is not required to register with the Commercial Registry. An SS is used for activities of a short duration or for specific projects. It cannot carry on business or have any income, credits or deductions for tax purposes. The liability of the partners is not limited (CO, Art. 530 *et seq*.). Paragraph 252 of the 2016 Report concluded that an SS "does not

fall within the partnership relevant to the ToR". The present assessment shares the same conclusion and therefore SSs are not analysed further.

157. As of 1 January 2019, there were 11 395 SNCs, 1 548 SCs, 18 SCPCs and 8 559 co-operatives registered in Switzerland.

158. Paragraphs 151-160 of the 2016 Report found that the identity of the partners is available with the Commercial Registry, the partnerships and the cantonal tax authorities. As there were no changes to the legal provisions applicable to partnerships, this conclusion remains valid.

159. The commercial legislation ensures that partners are identified, including in case there is a change of partners. First, partnerships are required to register with the Commercial Registry and provide the identity of their partners (only the partners with unlimited liabilities for SCPCs), and the persons designated to represent the partnership. Second, there are some specific requirements for each category of partnerships: SNCs and SCs must update the list of their partners registered in the Commercial Registry; SCPCs must keep a register of all their partners, whether they have limited or unlimited liabilities; co-operatives must also maintain a list of all their members and they must file with the Commercial Registry a list of their members responsible for the debts of the co-operative or subject to additional payments to the co-operative. The registration procedure with the Commercial Registry and the related supervision and enforcement measures described for companies in Section A.1.1 above apply to partnerships.

160. The identity of the partners is also available with the tax authorities. Although Swiss partnerships are transparent entities and therefore are taxed directly in the hands of the partners, each partnership must file to the cantonal tax authorities a form including the name of all partners and their share of the profit. Then the partners must include their share of profits in their tax return filed with the tax authorities. Paragraphs 104-110 of the 2016 Report described the supervision of the obligation to file tax returns. Each tax return is systematically verified by the cantonal tax administration. In addition, audits are possible, based on the review of the returns, a risk analysis, information received from third parties or from the AFC.

161. Foreign partnerships having a sufficient nexus (i.e. those having a permanent establishment in Switzerland) must comply with the same tax obligations.

162. Beneficial ownership information regarding partnerships is also available with the AML obliged professionals with which they interact in the same manner as for companies (see Section A.1.1 above). Therefore, the same conclusions and recommendations apply.

163. In practice, Switzerland did not received any requests regarding the identity of partners or beneficial owners of partnerships during the review period. No concerns were raised by peers in relation to partnerships.

A.1.4. Trusts

164. While the creation of trusts is not allowed by the Swiss legislation, Switzerland has ratified on 1 July 2007 the Hague Convention on the international recognition of trusts. Consequently, there are 321 trust companies, lawyers and asset managers in Switzerland who regularly act as trustees of foreign trusts. The identification of the settlor, trustee(s), and all beneficiaries of foreign trusts managed in Switzerland is ensured through the tax and AML legislations.

165. Since the strengthening of the standard in 2016, beneficial ownership information on trusts is required to be available. This information would be available with the AML obliged professionals, including professional trustees. The identification of the beneficial owners of a trust and the record-keeping obligations are in substance in line with the standard. However, the same deficiencies in terms of verification and update as those mentioned for companies in paragraphs 98 and 99 are identified. In addition, in some instances, AML obliged professionals are not required to identify the beneficial owners of corporate trustees. Therefore, Switzerland is recommended to ensure that accurate and up-to-date beneficial ownership information for all relevant entities and arrangements is available in line with the standard in all cases. The supervision and enforcement measures are effectively implemented.

Identification of the persons related to a trust

166. Paragraphs 163-180 of the 2016 Report determined that information on the settlor, trustee(s), and all beneficiaries of relevant trusts would be available in Switzerland. There have been no changes to the legal framework since that report.

167. Pursuant to Circular CI 30 relating to the Taxation of Trusts, profits are considered derived only when the taxpayer receives a right to income or acquires the right of disposition. Therefore, the trustee, who has no right to the assets or income of the trust, is not taxable. The settlor of a revocable trust and the beneficiaries of an irrevocable trust, who have their tax residence in Switzerland, are liable to tax on the income of the trust (settlor) or distributions made (beneficiaries). To avoid the attribution of the trust assets to the Swiss trustee for tax purposes and to ensure that the settlor and/or beneficiaries are rightly taxed where they are tax residents in Switzerland, these persons must provide all necessary information and submit documents to prove the existence of a trust, the distributions and the expenses. They must

also disclose all documents relating to the trust in the case of a field tax audit. Therefore, the tax legislation ensures that the trustee (whether professional or not) keeps relevant information on the persons involved in the trust, the incomes generated and the distributions made.

168. The AML legislation also ensures that all the parties to a foreign trust professionally managed in Switzerland are identified in line with the standard. Professional trustees are AML obliged professionals (LAB, Art. 3). Therefore, they must comply with the CDD obligations. The identity of their customer (settlor) must be verified and the supporting documentation relating to the trust (including the trust deed) must be maintained for ten years after the termination of the business relationship or after completion of the transaction. In addition, they must identify the beneficial owners of the trust, which implies the prior identification of all the parties of the trust they manage. Finally, when trustees interact with other AML obliged professionals they must disclose in which capacity they act[43] and the trust will be subject to CDD, including the identification of the beneficial owners.

Identification of the beneficial owners of a trust

169. AML obliged professionals, including professional trustees, must identify the beneficial owners of the assets of a trust, i.e. the natural person who has the power to use or dispose of the assets that are the object of the contract with the AML obliged professional. In the case of a trust or any other legal arrangement, the beneficial owners of the assets are: (i) the settlor; (ii) the trustees or administrators; (iii) any curators, protectors or other persons involved; (iv) the designated beneficiaries; (v) in the event that no beneficiary has yet been named, the class of persons, by category, who may be considered as beneficiaries; (vi) the persons authorised to give instructions to the contractor (i.e. trustee) or its organs; and (vii) for revocable arrangements, the persons authorised to perform the revocation. The beneficial owners of the assets are always natural persons.[44]

170. Therefore, the approach taken by Switzerland is in substance in line with the standard and requires the identification of the natural person(s) at the end of the chain where the above-mentioned persons related to the trust are legal entities or arrangements. The only exception is where the trust is managed by a corporate trustee. In that case, AML obliged professionals are not required to identify the beneficial owners (i.e. controlling holders) of the

43. OBA-FINMA, Art. 64; CDB 16, Art. 16; ASG Regulations, Art. 9; VQF Regulations, Art. 25.

44. The explanations provided in paragraph 87 regarding the possibility to consider certain legal entities as beneficial owners of operating legal entities apply also to the beneficial owners of the assets.

corporate trustee using the cascading approach (Commentary to CDB 16, Art. 20). Switzerland explained that corporate trustees are AML obliged entities that do not present a specific risk. In addition, in cases where the natural persons controlling the corporate trustee have direct powers over the trust (e.g. right to revoke the trustee), they will be declared as beneficial owners of the assets. Although this gap seems limited, Switzerland is recommended to ensure that accurate and up-to-date beneficial ownership information for all relevant entities and arrangements is available in line with the standard in all cases.

171. The beneficial owners of the assets must be identified by the professional trustee, who manages the trust, and by the other AML obliged professionals with whom the trustee will interact.[45] The identification of the beneficial owners by AML obliged professional (other than the trustees) is based on a signed declaration of the trustees who declare "to the best of their knowledge" the identity of all the beneficial owners. This information is not subject to systematic verifications and/or regular updates, unless risks are identified or doubt arises about the veracity of the information provided (see para. 98 *et seq.*). The obligation of the trustee to inform the AML obliged professionals about any changes to the information provided is based on the provision included in the signed Form. However, the same deficiencies in terms of verification and update as those mentioned in paragraphs 98 and 99 are identified are identified. Consequently, a recommendation is made (see para. 170).

172. The supervision of the AML obligations, including the record-keeping obligations, which are in line with the standard, is effective and enforcement measures are applied where appropriate as described in paragraphs 102 *et seq.*

173. Non-professionals or professionals not acting as financial intermediaries may possibly act as trustees of a foreign trust. In that case, the trustee is not an AML obliged professional and is not required to identify the beneficial owners of the trust. According to the Swiss authorities, in general the business is handled mainly by professional trustees and non-professional trustees are extremely rare. In any case, such a trustee is required to disclose the identity of the parties related to the trust and the beneficial owners of the trust to the AML obliged professionals with whom the trustee will interact. Switzerland should ensure that non-professionals trustees and trustees not acting as financial intermediaries that do not have a bank account nor engage an AML obliged professional maintain information that identifies the beneficial owners of the trusts (Annex 1 below).

45. The information to be collected is the name, address, date of birth and nationality.

Availability of trust information in EOI practice

174. Switzerland received four EOI requests in relation to the identity information related to trusts during the review period, of which two were answered, one was withdrawn by the EOI partner and one is still pending. The pending request concerns also the beneficial owners of a trust. Peers were generally satisfied with the information provided.

A.1.5. Foundations

175. Both public and private foundations can be created under Swiss law (CC, Art. 80). Foundations are legal persons in Switzerland. Public law foundations are established and constituted by federal, cantonal or municipal legislation or administrative acts and pursue exclusively public objectives. Public law foundations are not analysed further in this assessment.

176. Private foundations are created by a founder for allocating assets to a specific purpose, which is usually (but not necessarily) a charitable purpose. Once transferred to the foundation, assets cannot be returned to the founder. The purpose of the foundation cannot be changed by the founder or by the foundation council, unless the founder has reserved the right to make such modifications and these modifications are approved by the relevant oversight authority. The beneficiaries of a foundation can be named in the deed, or be referred to as a class of persons relating to the purpose of the foundation. A beneficiary has no rights against the foundation assets unless the deed stipulates specific benefits and the particular beneficiary is clearly identified. There were 17 143 foundations (including religious and family foundations registered with the Commercial Register) in Switzerland on 1 January 2019 (see para. 180).

177. Paragraphs 181-193 of the 2016 Report concluded that the availability of information on the founders, members of the foundation council and beneficiaries of private foundations is mainly ensured through the procedure leading to their creation. This source of information is supplemented by the tax and AML legislations. There have been no changes to the legal framework since that report.

178. Since the strengthening of the standard in 2016, beneficial ownership information on foundations is required to be available. This information would be available with the AML obliged professionals, including the foundation council members in some cases. However, the same deficiencies in terms of verification and update as those mentioned in paragraphs 98 and 99 are identified. Consequently, a recommendation is made (see para. 70). The supervision and enforcement measures are effectively implemented.

Identification of the relevant parties related to a foundation

179. Private foundations (including religious and family foundations) are established by notarial deed or by will and inheritance (CC, Art. 81). The foundation deed must stipulate the purposes, the organisation and the management of the foundation (CC, Art. 83). The identity of the founder(s), the foundation council members and the beneficiaries are included in the foundation deed, which must be authorised by a Swiss notary. The notary must verify the identity of the parties to the foundation deed and the beneficiaries or class of beneficiaries. Then, the foundation must be registered with the Commercial Registry to acquire legal personality (CC, Art. 52). This obligation was introduced on 1 January 2016 and pre-existing foundations must comply with it by end of 2020. In addition to the foundation deed, the following information must be provided to the Commercial Registry: the identity of the members of the foundation council and the persons with the power to represent the foundations. This information must be updated in case of change (ORC, Art. 27 and 94).

180. Foundations are supervised by a federal, cantonal or municipal oversight authority[46] (CC, Art. 84) with the exception of religious or family foundations (see para. 185-187 of the 2016 Report).[47] The oversight authorities ensure that the legal conditions are met before the creation of the foundation. The identity of the parties to the foundation is subject to verification. Each oversight authority maintains a register of the foundations they supervise. These registers contain only the identity of the council members. However, the foundation deed is available with the oversight authorities. The verification of the founders and the origin and availability of the capital devoted to the foundation is done at the outset. The oversight authority ensures that the assets of the foundation are used in accordance with its purpose (CC, Art. 84). To that end, it reviews each year the report of the auditor of the foundation and the financial statements, which must include the identification of the beneficiaries and the council members. It can also send its own investigators to audit the foundation.

46. Whether a foundation's oversight authority is federal, cantonal or municipal depends on the location of the foundation council and the jurisdiction within which it will carry out its purpose.

47. Religious foundations are supervised by a church or a religious community. Family foundations, which may only be established for the purposes of education fees, the establishment and support of family members, or similar purposes (CC, Art. 335), are not supervised. A family foundation cannot acquire legal personality and is therefore null and void if it does not meet these requirements. Nullity can be requested by anyone and must be pronounced by a court in formal proceedings. In this case, the assets are transferred to a public body (CC, Art. 57(3)).

181. There are sufficient enforcement measures in place to ensure compliance of foundations with their reporting obligations. In case of failure to provide the audit report, the supervisory authority can report the matter to the general prosecutor so that fines may be applied to the foundation (CP, Art. 292). If deficiencies are identified, the supervisory authority can appoint a commissionaire to manage the foundation (CC, Art. 83). It also has the power to request the dissolution of the foundation. The Swiss authorities reported that all foundations have complied with their obligation to provide audit reports during the review period.

182. In addition, foundations (other than charitable and religious foundations, but including family foundations) are required to file tax returns and provide the tax administration with the identity of the beneficiaries of distributions (LFID, Art. 129). Finally, the AML legislation ensures that the relevant parties and beneficial owners of foundations are also identified.

Identity of the beneficial owners of foundations

183. The Swiss AML legislation allows the identification of the relevant parties and beneficial owners of foundations in line with the standard.

184. First, the foundation itself can be an AML obliged professional when it is a domiciliary company. In that case, the rules described in paragraphs 129 *et seq*. apply and the information regarding its relevant parties and beneficial owners will be available with its managing body. Second, any member of the foundation council who carries out a fiduciary activity in a professional capacity is considered an AML obliged professional (OBA, Art. 6) and therefore must comply with the CDD obligations. Lastly, AML obliged professionals with which the foundation will interact must also comply with their AML obligations. They must identify the foundation, perform verification and collect supporting documents, in particular the foundation deed and/or the copy of the registration with the Commercial Registry. This information must be maintained for at least ten years after the termination of the business relationship or after completion of the transaction. In addition, they must identify the beneficial owners, and this implies the prior identification of all the parties to the foundation.

185. Regarding the identification of the beneficial owners of a foundation, a distinction must be made between operating foundations (i.e. those operating a trading, production or service business) and non-operating foundations (e.g. CDB 16, art. 40).

- In case of an operating foundation, the AML obliged professionals must identify the beneficial owners of the foundation (i.e. the controlling persons) in the same manner as for any operating legal entity (para. 97).

- Non-operating foundations are considered as domiciliary companies (OBA, Art. 6) and therefore the beneficial owners of the assets must be identified as described in paragraphs 129-132.

186. The same deficiencies in terms of verification and update as those mentioned paragraphs 98 and 99 are identified. Consequently, a recommendation is made (see para. 70).

187. The supervision of the AML obligations, including the record-keeping obligations, which are in line with the standard, is effective and enforcement measures are applied where appropriate as described in paragraphs 102 *et seq*.

Availability of foundation information in EOI Practice

188. Switzerland has responded to the two EOI requests received in relation to the identity of the relevant parties related to foundations during the period under review. No request relating to beneficial owners of foundations has been received. Peers indicated to be generally satisfied with the information provided by Switzerland.

A.2. Accounting records

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

189. The 2016 Report concluded that the Swiss legal and regulatory framework on the availability of accounting records was in place and rated Switzerland as "Compliant" with the international standard.

190. The accounting and record-keeping obligations remained unchanged during the review period. In addition, availability of accounting information is ensured in case of cessation of a legal entity or arrangement. The accounting and record-keeping obligations are effectively supervised and enforcement measures are applied when required.

191. During the review period, Switzerland received 316 EOI requests relating to accounting information, of which 269 were answered. Where accounting information was not provided, the issue was not about the availability of this information. Peers were generally satisfied with the accounting information provided by Switzerland, and did not raise any concerns regarding the availability of this information.

192. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

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

193. The availability of accounting records and the underlying documentation is mainly ensured by the provisions of the Code of Obligations and the supervision of the tax authorities. These obligations are supplemented by the AML obligations where applicable.

194. As described in the 2016 Report (para. 208-209 and 218-221), all persons (including foreign entities) carrying out a commercial activity in Switzerland are required to hold and keep accounting records and prepare annual financial statements that meet recognised accounting principles and reflect the financial situation of the business (CO, Art. 957 and 958).[48] Accounting books and records, which register all transactions, and underlying documents (invoices, correspondences, contract, etc.) must be kept in written, electronic or other suitable and readable form. Accounting records include an inventory, a full balance sheet as well as a profit and loss statement.

195. These accounting obligations apply in principle to all legal entities as well as partnerships, individual entrepreneurs and Swiss trustees of foreign trusts, except for small ones.[49]

196. Unlike partnerships, the financial statements of companies and foundations must be audited annually by external auditors. The auditors have the responsibility to ensure compliance with the accounting and reporting standards by the audited entities. The scope of the audit is less broad for non-listed companies that do not exceed two of the three following criteria in two successive years: (i) balance sheet total of CHF 20 million (EUR 18.258 million); (ii) turnover of CHF 40 million (EUR 36 517 million); and (iii) 250 employees. A company may also partially or totally waive the audit if its owners

48. Additional requirements are imposed on companies listed on the stock exchange, and accounts for those companies must comply with IFRS, US GAAP or SWISS GAAP RPC standards.

49. Partnerships, individual entrepreneurs and trustees that have an annual turnover of less than CHF 500 000 (EUR 456 000) and foundations that are exempted from external audit must only keep details in respect of income, expenses and assets (CO, Art. 957(2)).

unanimously agree and if the company has no more than ten employees. Foundations may also be exempted by their oversight authorities from producing audited financial statements if the following criteria are met: (i) the balance sheet total is less than CHF 200 000 (EUR 182 588) for two consecutive financial years; (ii) the foundation does not collect funds from the public or solicit donations; and (iii) the audit is not necessary to accurately assess the foundation's assets and results.

197. The financial statements are not systematically provided to a public authority or published. However, financial statements of listed companies are available online via the Swiss Official Gazette of Commerce (*Feuille officielle du commerce*) (CO, Art. 958e). In addition, foundations are required to provide on an annual basis their oversight authorities with their financial statements and the auditors' report (if applicable).

198. The supervision of the accounting obligations is mainly performed by the tax authorities. Every year, taxpayers must submit a tax return containing the annual accounts. Each tax return is systematically verified by the cantonal tax administration. In addition, audits are possible, based on the review of the returns, a risk analysis, information received from third parties or from the AFC. For the purpose of direct and indirect taxation, Swiss taxpayers (including foundations[50]) must provide at the request of the federal and cantonal tax administrations their accounting records and underlying documentation. These documents must be maintained in accordance with the above-mentioned accounting obligation (LIFD, Art. 126; LHID, Art. 42; VAT Law, Art. 70).

199. Whether or not a trust is carrying out commercial activities, trustees are required to maintain information relating to the trust and its assets to avoid being taxed as the owner of the assets and income of the trust (see para 167). They must maintain a balance sheet that clearly indicates the assets held for third parties. These books must be kept separately from the accounting books of the trustee, in such a way that the tax authorities may at any time be informed on the composition of assets. However, there is no systematic monitoring of this accounting obligation (see para. 203). In addition, third parties must provide their counterparts with certain accounting records, which on request may be produced directly to the tax authorities. This includes information on the assets and income of taxpayers that is held by fiduciaries, private wealth managers, secured creditors, trustees and guardians, and other people with possession or administration of a taxpayer's assets (LIFD, Art 127; LHID, Art. 43; VAT Law, Art. 73).

50. In all cantons, foundations, which are exempt from tax, must nonetheless submit the accounting records required by the regulator to the tax authorities.

200. Accounting records and underlying documents must be kept for at least ten years from the end of the financial year to which they relate (CO, Art. 958(f)). In case of the cessation of a partnership or a company, these records and documents must be kept for ten years commencing on the date of the deletion of the company or partnership from the Commercial Registry at a location in Switzerland designated by the partners (for a partnership) or the liquidators (for a company), or if they cannot reach agreement, by the Commercial Registry. Where the Commercial Registry removes a company from the Registry without prior liquidation (see para. 139), the record-keeping obligation is incumbent on the company's managers (CO, Art. 590, 619, 747, 770 and 826). The same applies for co-operatives and foundations (CO, Art. 913; CC, Art. 83a).

201. In case of failure to comply with accounting obligations, a fine up to CHF 1 000 (EUR 912) applies and, in serious cases or in the event of a recurrence, the fine can be up to CHF 10 000 (EUR 9 129) (LIFD, Art. 174; LHID, Art. 55). The use of forged, falsified or inaccurate accounting books, balance sheets, profit and loss accounts for the purpose of evading tax is punished by a custodial sentence of up to three years or a pecuniary penalty up to CHF 1 080 000 (EUR 985 975) (LIFD, Art. 186; LHID, Art. 59). A fine up to CHF 800 000 (EUR 730 352) applies if false information is provided to the tax administration in VAT matters (VAT Law, Art. 96). Finally, if the accounting records and underlying documents are intentionally or negligently not maintained as required by the Code of Obligations, a fine of up to CHF 10 000 (EUR 9 129) is applicable (CP, Art. 325). This provision was applied in 438 cases for the period 2015-18.

202. These accounting and record keeping obligations are supplemented by the AML legislation where applicable. Indeed, AML obliged professionals, including professional trustees, must keep records of all the transactions carried out with and for their customers. These documents must be retained for ten years from the end of the business relationship or the transaction. The compliance framework as well as the enforcement measures are the same as those described in paragraphs 103 *et seq*.

203. Finally, with respect to non-professional trustees of foreign trusts that do not carry on commercial activities, paragraph 234 of the 2016 Report found that there was no systematic monitoring of their compliance with their accounting and record-keeping obligations. Indeed, these trustees are not subject to the AML legislation nor the Code of Obligations. The accounting obligation is however monitored where the trustee claims not being the owner of the assets and revenues of the trust. No change has been made during the review period. Therefore, as concluded by the 2016 Report, Switzerland should monitor whether Swiss non-professional trustees of foreign trusts that do not carry on commercial activities keep accounting records that fully meet international standard and that those records are kept for at least five years in all cases (see Annex 1 below).

Availability of accounting information in EOIR practice

204. Switzerland received 318 requests for accounting information during the review period, of which 273 were answered, 21 were declined, 11 were withdrawn by the EOI partners and 13 are still pending. Peers indicated to be generally satisfied with the accounting information (balance sheet, income statements, invoices, etc.) provided by Switzerland, including with respect to trusts and foundations. Where accounting information was not provided, the issue was not about the availability of this information. Peers have not raised concerns in that respect.

A.3. Banking information

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

205. The 2016 Report concluded that the legal and regulatory framework was in place. It nevertheless noted that although bearer savings books cannot be issued anymore and the existing ones must be cancelled upon their physical presentation at the bank, some bearer savings books still existed. Switzerland was thus recommended to implement measures to identify the owners of any remaining bearer savings books. Element A.3 was rated compliant with the standard as banking information was available in practice.

206. No changes were made to the legal framework and its practical implementation during the review period. As the number of remaining bearer savings books has become immaterial, the recommendation made in the 2016 Report is no longer relevant.

207. The EOIR Standard now requires that beneficial ownership information in respect of accountholders be available. Banks are AML obliged professionals and must comply with the CDD and record-keeping obligations provided for by the AML legislation. While beneficial ownership information relating to bank accounts would be available, the accuracy of the beneficial ownership information maintained by banks is not ensured in all cases. Some deficiencies have been identified regarding the identification of the beneficial owners of operational entities and the beneficial owners of non-operational entities and legal arrangements (see para. 89, 98, 99 and 170). Therefore, Switzerland is recommended to ensure that, in all cases, banks maintain accurate and updated beneficial ownership information for all account holders in line with the standard.

208. The supervision of banks with respect to their CDD and record-keeping obligations has been found effective and enforcement measures were applied where breaches of these obligations have been identified.

209. During the review period, Switzerland received 1 748 requests for banking information, of which 1 508 were answered. In addition, it received eight group requests, of which five have been answered, two are pending, and one has been withdrawn by the partner. It also received 16 bulk requests for which 40% of the requested information was provided.

210. The new table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	Banks are required to identify the beneficial owners of all legal entities and arrangements. However, the AML legal framework contains some deficiencies with respect to the identification, verification and updating of the beneficial owners of legal entities and arrangements that may result in banks not always maintaining beneficial ownership information in line with the standard.	Switzerland is recommended to ensure that, in all cases, banks maintain accurate and up-to-date beneficial ownership information for all account holders in line with the standard.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		
Practical Implementation of the standard		
Rating: Largely Compliant		

A.3.1. Record-keeping requirements

211. In Switzerland, banks are AML obliged professionals and therefore must comply with the CDD and record-keeping obligations under the Swiss AML legislation (LBA, Art. 2(2); refer to para. 92).

212. Banks must identify and verify the identity of their clients, and identify the beneficial owners. These obligations apply to all accounts, books, deposits and safe deposit compartments designated by a number or a code (CDB 16, Art. 1(3)). While the opening of new bearer savings books is prohibited, there are still bearer savings books with unknown account holders and beneficial owners in Switzerland. These savings books must be cancelled when they are physically presented and the person making the withdrawals must be identified (CDB 16, Art. 5). Switzerland advised that the number

of bearer saving books has continued to drop since the last review period. They represent 0.00196% of the total assets held in Swiss bank accounts as of 31 March 2019 compared to 0.022% mentioned in the 2016 Report. Bearer savings books are no longer a significant issue. Switzerland should continue to monitor the cancellation of the remaining bearer savings books (see Annex 1 below).

213. Financial statements must be maintained in accordance with the provisions of the Code of Obligations (LB, Art. 6). Therefore, the obligations described in Section A.2 above are applicable to banks. In particular, they must keep records of all the transactions carried out with and for their customers (refer to para. 202).

214. Beneficial ownership information would be available with banks. However, there are some deficiencies in the Swiss AML legislation that may lead to banks not always maintaining accurate and/or up-to-date beneficial ownership information (see para. 89, 98, 99 and 170). Consequently, Switzerland is recommended to ensure that, in all cases, banks maintain accurate and updated beneficial ownership information for all account holders in line with the standard.

215. Records relating to the identification of the account holders, the beneficial owners, the business relationships and the transactions must be maintained for at least ten years from the end of the business relationship or the transaction. In case of liquidation of the bank, the liquidator must keep books and records in a safe place for 10 years (CO, Art. 747). In case of transfer, merger or split, the new bank will take over the record-keeping obligations.

216. Banks are directly supervised by FINMA, to which they have to provide their external AML audit report and their audited financial statements. In addition to FINMA supervision, more than 90% of the Swiss and foreign banks are members of ASB and they are supervised by its supervisory board regarding compliance with the CDB 16. Banks that are not members of ASB must still adhere to the CDB 16 but they are sanctioned by FINMA in case of non-compliance. The supervision of banks is detailed in paragraphs 107-113. There is effective supervision of banks and enforcement measures are taken where appropriate.

Availability of bank information in EOI practice

217. Switzerland received 1 748 requests for banking information during the review period, of which 1 534were answered, 96 were declined; 51 were withdrawn by the EOI partners and 67 requests are still pending. No requests concerning bearer saving books were received.

218. In addition, Switzerland received eight group requests among which one has been withdrawn. The seven remaining requests amount to 5 289 cases relating to banking information, of which five have been answered, and two are pending. Switzerland also received 16 bulk requests with a total of 94 604 cases relating to banking information. A reply was provided to 37 935 cases (40%) either because the account was closed before the period concerned by the request, the information was provided through another EOI agreement or the person concerned has consented (see para. 403).

219. Peers indicated to be generally satisfied with the banking information provided by Switzerland, which includes, for instance, account balances, bank statements, account opening contracts and powers, authorisation and signatures, and identity of the beneficial owners. Some concerns were raised regarding the redaction of certain information in the bank statements, which are discussed in paragraph 316 *et seq*. Where banking information was not provided by Switzerland, the issue was not about the availability of this information. Peers have not raised concerns in that respect.

Part B: Access to information

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

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

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

221. The Swiss tax authority has broad access powers. However, the 2016 Report noted that certain agreements concluded by Switzerland did not contain wording akin to Article 26(5) of the OECD Model Tax Convention, and that the Law on International Administrative Assistance in Tax Matters (LAAF)[51] did not allow the exchange of banking information for those treaties. A recommendation was made in this regard.

222. Since then, Switzerland has taken steps to align its EOI agreements with the international standard (see Elements C.1 and C.2), and the Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention – MAC) entered into force in January 2017. The recommendation is therefore removed.

223. In the current review period, Switzerland received over 3 000 requests from more than 50 treaty partners and never failed to provide the information due to a lack of access powers. The Exchange of Information Unit (*Service d'Echange d'Informations*, SEI) obtained information from a variety of

51. *Loi fédérale du 28 septembre 2012 sur l'assistance administrative internationale en matière fiscale*.

sources, including banks, federal and cantonal tax authorities, Commercial Registries and other information holders.

224. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

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

225. The competent authority in Switzerland in respect of EOI is the AFC. The competence for matters related to exchange of information upon request has been delegated to the SEI of the AFC.

226. The LAAF governs the execution of administrative assistance in respect of any international agreement that provides for exchange of information for tax purposes (LAAF, Art. 1). Access powers apply in respect of requests made under bilateral and multilateral agreements.

Accessing information generally

General principles of the LAAF

227. The LAAF sets the principles that guide the EOI process. However, the provisions of an EOI agreement prevail over the LAAF in case of a discrepancy (LAAF, Art. 1(2)). The general principles of the LAAF are the following:

- Administrative assistance should be carried out swiftly (Art. 4(1) and (2)).
- The LAAF forbids providing information on persons not concerned by the request (Art. 4(3)), i.e. on persons who are clearly not involved in the case under investigation, e.g. a person whose name appears on documents related to the person concerned but who is not directly concerned with the procedure.[52]
- A request will be declined if it constitutes a fishing expedition, if it requests information not covered by the applicable EOI agreement

52. Explanatory report of 6 July 2011 concerning the LAAF (*Message du 6 juillet 2011 concernant l'adoption d'une loi sur l'assistance administrative fiscale*).

or if it violates the principle of good faith, particularly if it is based on information obtained through a criminal offence under Swiss law (Art. 7). See Section C.4 on this point.

- For the purpose of collecting information, only measures which are in accordance with Swiss law for the assessment and enforcement of the tax claims referred to in the request may be taken (Art. 8(1)), intending to reflect Article 26(3)(a) of the OECD Model Tax Convention.
- Information in possession of a bank, another financial institution, a mandated or authorised person or a fiduciary, or information concerning a participation in a legal entity may be requested if the applicable agreement provides for the transfer of such information (Art. 8(2)).
- The LAAF provides the SEI with four sources for the collection of information: the person concerned (Art. 9), a third party information holder, e.g. company, bank, fiduciary, representative (Art. 10), cantonal tax administrations (Art. 11) and other Swiss authorities (Art. 12). The explanatory report of the law specifically indicates that the SEI can collect information from these sources "simultaneously" and that there is no specific order to respect when requesting the information.

228. In practice, the most commonly used information sources are the persons concerned, information holders and cantonal tax administrations. These powers can be used to obtain ownership, accounting and banking information.

229. Paragraph 267 of the 2016 Report noted that the prohibition to provide information on persons not concerned by the request (LAAF, Art. 4(3)) was not intended to restrict the exchange of information that is foreseeably relevant to the investigation. The explanatory note also clarifies that if the deletion of the information related to the person not concerned makes the response to the EOI request useless for the requesting jurisdiction, it is possible to provide such information. During the period under review, several peers indicated that they received redacted banking information, with the explanation that it was not foreseeably relevant. This topic is discussed under Section C.1.1.

Accessing information from a person concerned or an information holder

230. A "person concerned" is defined as the person who is the subject of the request for information, in other words, the taxpayer being investigated. The holder of the information is the person who possesses or has control over the information (LAAF, Art. 10(3)).

231. The AFC can collect information from the person concerned if that person "has limited or unlimited tax liability in Switzerland" (LAAF, Art. 9(1)). This condition is only applicable in respect of the person concerned, not in respect of the information holder. Therefore, if a person concerned has no tax liability in Switzerland, yet possesses the information required to answer an EOI request, then that person would be regarded by the AFC as an information holder and required to provide the requested information.

232. The SEI can ask the person concerned or the holder of the information to provide the information (LAAF, Art. 9 and 10). The information is requested through a disclosure order sent by registered letter, which contains the minimum information necessary to obtain the information requested from the person concerned or the holder of information (name of the taxpayers if needed, information needed, tax years covered and applicable EOI agreement). The SEI grants a deadline of 10 days to provide replies. In exceptional urgent cases, shorter deadlines can be applied as well.

233. The timeframe to provide the information is normally respected. Once the initial notice to provide information is sent, a reminder is sent five days later to ensure a timely response. There is a possibility to extend the deadline but this must be justified and the extension is again ten days with no possibility of a further extension. Extensions of deadline have been applied in practice in cases where the taxpayer was a legal person and the information was not available in the specific form required.

234. In Switzerland, beneficial ownership information is either kept by entities themselves for certain types of companies, or by AML obliged professionals. In both cases, the SEI can access the information through a disclosure order to the information holder.

Accessing information from another government agency

235. In Switzerland, the SEI has access to information such as information on VAT and withholding taxes from the AFC, and such information is available within one or two days.

236. Information in the possession of the cantonal tax authorities and relating to federal and cantonal direct taxes, land tax and communal tax, may be requested by the AFC, including the complete tax file, if necessary. The entire EOI request is communicated to the cantonal tax authorities, which are bound by strict tax confidentiality rules, and the SEI fixes a period within which the information should be provided (LAAF, Art. 11), which is in practice 14 days. The contact details of the requesting competent authority are redacted. Cantonal tax authorities provide information that is already in their possession, so they do not have to obtain it from the taxpayer directly, as this power lies with the SEI, including the power to take compulsory

measures (LAAF, Art. 13). Consequently, there is generally no impediment to obtaining information within the required deadline.

237. Where information is held by another Swiss authority (whether federal, cantonal or communal), e.g. the State Secretariat for Migrations, which is in charge of the registration of natural persons, the SEI requests the provision of the information within 14 days. The SEI provides the authority with the minimum information necessary to obtain the information requested (i.e. name of the taxpayer, address, birthdate if relevant, and information requested – the EOI letter is not enclosed) (LAAF, Art. 12). Ownership information in relation to some companies and partnerships is directly available to the SEI from the Commercial Registry. If the information is available electronically in the federal or cantonal Commercial Registries, it can be obtained on the same day; otherwise, the paper version is requested from the relevant cantonal Commercial Registry and is received within a week.

238. Paragraph 286 of the 2016 Report indicated that Switzerland did not provide copies of tax returns of its taxpayers, but instead the SEI provided the relevant information contained in the tax return. In the same way, Switzerland did not provide copies of tax rulings during most of the period under review. As this is not linked to access powers, this topic is discussed under Section C.1.1 below.

Accessing banking information

239. To obtain banking information, a disclosure order is issued to the bank requiring it to provide the requested information within ten days. In urgent cases, the deadline has been reduced to five days. Switzerland reported that the deadline to provide the information is adhered to for 95% of individual banking requests. The SEI can obtain banking information even when the name of the bank is not mentioned in the request, on the condition that the bank account number is known (which allows to identify the bank), as Switzerland does not have a centralised register of bank accounts. Considering the large number of banks in Switzerland (259), the above practice conforms to the standard.

240. Switzerland has made considerable efforts to update agreements that did not allow for exchange of banking information so that they comply with the standard and the MAC entered into force in January 2017 (see C.1 and C.2). There are still 14 bilateral EOI relationships that have not been updated to the international standard and they do not provide for the exchange of banking information as these agreements do not contain wording equivalent to Article 26(5) of the OECD Model Tax Convention. Therefore, banking information would not be accessible for requests made under these agreements. Given that Switzerland has done everything possible to update those agreements, the recommendation made in the 2016 Report is removed.

241. The Federal Tribunal has confirmed that access to foreseeably relevant banking information is not subject to limitations under Swiss domestic law (TF 142 II 161 of 24 September 2015). This ruling is regularly confirmed by the courts.

242. During the current review period, Switzerland received more than 3 000 requests for information. In responding to those requests, the SEI obtained information from a variety of sources, including banks and other information holders, tax authorities and Commercial Registries. Peers overall reported having received the information requested and there has been no case in which Switzerland has not provided information due to an inability to access information.

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

243. The powers to obtain information under Articles 9-12 of the LAAF apply specifically for the purpose of EOI under international agreements entered into by Switzerland. The Swiss authorities do not require that the requested information be needed for their own tax purposes in order for the access powers to apply. There has been no issue in practice regarding the application of access powers despite the lack of a Swiss tax interest in the information requested.

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

244. The person(s) concerned and the information holders must produce all requested information that is in their possession or under their control, and failure to comply with an order of disclosure is subject to a fine up to CHF 10 000 (EUR 9 129) (LAAF, Art. 9 and 10). The SEI's competence to impose fines on information holders (including persons concerned if they are information holders) who do not provide the information requested on time was confirmed by a ruling of the Federal Tribunal (TF 2C_941/2014 of 20 August 2015). In this case, a fine imposed to an information holder who refused to provide the information was appealed against by the information holder. The case went to the Federal Tribunal, which confirmed that the fine could be applied.

245. Furthermore, compulsory measures can be used, such as searching of rooms, searching and/or seizure of objects, documents and records in written form or on image and data carriers, and enforced appearance of duly summoned witnesses (LAAF, Art. 13). These measures may be ordered if such measures are provided for under Swiss law (i.e. where there are reasonable grounds to establish tax fraud or serious tax infractions) or if the provision

of ownership, identity or banking information is required. For other types of information, these coercive measures cannot be ordered if the information is requested for "ordinary avoidance of tax" (*soustraction d'impôt ordinaire*).

246. These coercive measures may be ordered by the Commissioner of the AFC or an authorised representative only. The exercise of these coercive powers is subject to articles 42, 45-50 of the federal Law on Administrative Criminal Law (*loi fédérale du 22 mars 1974 sur le droit pénal administratif*), which sets out certain rights and safeguards. In particular, these provisions require that searches must be undertaken in a manner which respects the principles of administrative criminal law and professional secrecy. Professional secrecy does not cover documents related to the activities of a professional acting as financial intermediary (see Section B.1.5 below).

247. In cases where cantonal tax administrations or other Swiss authorities are involved as holders of information (LAAF, Art. 11 and 12), no specific measures are necessary to ensure enforcement of the orders as these authorities have a general obligation to collaborate with the federal authorities.

248. In practice, the SEI indicated that deadlines are respected in almost all cases. During the period under review, five fines were applied for a total amount of CHF 12 150 (EUR 11 092). Fines led to the disclosure of the information in three cases. For the two remaining cases, the procedure is still ongoing, cumulative fines are applied and police interviews conducted. No coercive measures were used for EOI purposes. The SEI also highlighted that fines act as a deterrent as they appear in the criminal records.

B.1.5. Secrecy provisions

Bank secrecy

249. The rules under the LAAF prevail over bank secrecy rules for the purpose of exchange of information under Switzerland's EOI agreements. Bank secrecy may be lifted where information is required based on an agreement that includes the equivalent of Article 26(5) of the OECD Model Tax Convention (LAAF, Art. 8(2)).

250. As noted above, the SEI has processed a large number of requests for banking information and the bank secrecy rules have not been raised as a bar to the access powers under the LAAF.

Professional secrecy

251. Professional secrecy includes legal privilege and encompasses information that has been confided to a lawyer in the normal exercise of its function (see para. 302-309 of the 2016 Report). Swiss law distinguishes

between "*activités typiques*" (typical legal services) and "*activités atypiques*" (non-typical legal services) of a lawyer. Typical legal services include legal advice and writing of documents, including writing of contracts and company incorporation documents. Swiss courts have found that a lawyer acting in the capacity of an asset manager (ATF 112 Ib 606), director or member of the board of a company (ATF 114 III 107, ATC 115 Ia 197), payment agent (ATF 120 Ib 118) or trustee is not exercising the typical legal services of a lawyer, and these activities would qualify as financial intermediation. A lawyer acting as a trustee is also a financial intermediary and is not exercising the core activity of a lawyer ("*activité atypique*"). Confidential information obtained in the course of such activities is therefore not covered by legal privilege.

252. "*Secret de fonction*" applies to employees of public administrations in the performance of their duties. In case of an EOI request, the authorities are compelled to co-operate with Switzerland's competent authority in accordance with federal law.

253. In practice, Switzerland reported that information was sought from lawyers and that legal privilege has never been an impediment to obtaining information during the period under review, and this is consistent with the input received from peers.

B.2. Notification requirements, rights and safeguards

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

254. The Swiss law provides for notifications of the person concerned before exchange can take place, for the right to inspect the EOI file, and for the right to appeal against the decision to exchange information.

255. The 2016 Report noted that information could not always be exchanged in relation to deceased persons because of the impossibility to notify the deceased person (or the estate). During the current period under review, the SEI and its EOI partners have found practical arrangements in a majority of these cases so that the request and notification rather relate to the heirs. In addition, the LFM in force since 1 November 2019 introduces a specific provision for the exchange of information on deceased persons. The recommendation to amend the law is thus removed, but as this law is recent and could not be sufficiently assessed in practice, Switzerland is recommended to monitor its proper implementation.

256. The 2016 Report also found that although the LAAF includes an exception to prior notification and to the right to inspect the file in appropriate cases, its application was limited and Switzerland was therefore recommended to monitor that its implementation is in line with the standard.

257. Switzerland received 32 requests for an exception to prior notification and granted 23. Its interpretation of the exception is generally in line with the standard for individual requests. There is uncertainty regarding Switzerland's interpretation of the exception to notification for group and bulk requests without identification of taxpayers. In addition, and mainly due to the requests for clarifications, the length of the procedure was not necessarily shorter for requests where an exception to prior notification applied. Switzerland is therefore recommended to monitor the practical implementation of the exception to prior notification (including for group and bulk requests) to ensure that it is in line with the standard and that responses are always provided in a timely manner.

258. Although improvements were noted towards the end of the review period, delays have been experienced in practice regarding both the notification and appeal procedures. Switzerland is recommended to monitor the implementation of the notification and appeal procedures to ensure that it does not unduly prevent or delay the effective exchange of information.

259. The EOIR standard as amended in 2016 requires that, in circumstances where an exception to notification has been granted, an exception from time-specific post-notification can also be granted. When the exception to notification is granted, there is no time-specific post-notification done by Switzerland, and Switzerland would notify the persons concerned and entitled to appeal only once the requesting jurisdiction gives its authorisation. This conforms to the standard.

260. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	Switzerland introduced a new law which entered into force on 1 November 2019 and introduces a specific provision for the exchange of information on deceased persons.	Switzerland should monitor the implementation of the recently introduced legislation to ensure that information in relation to deceased persons can be exchanged in all cases.

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
	During the review period, delays have been experienced in replying to some requests due to the notification and appeal procedures. Although improvements can be acknowledged towards the end of the review period, the length of procedures in Switzerland may unduly delay the effective exchange of information.	Switzerland should monitor the implementation of the notification and appeal procedures to ensure that it does not unduly prevent or delay the effective exchange of information.
	Switzerland granted the exception to notification for individual requests in most of the cases (23 out of 32 cases). There is uncertainty regarding Switzerland's approach to notification exceptions for group and bulk requests without identification of taxpayers. In addition, the response time was not necessarily shorter when the exception applied, with improvements towards the end of the review period.	Switzerland is recommended to monitor the practical implementation of the exception to prior notification (including for group and bulk requests) to ensure that it is in line with the standard and that responses are always provided in a timely manner.
Rating Largely Compliant		

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

261. The right to be heard is a constitutional right in Switzerland (Federal Constitution, Art. 29(2)). It is interpreted by courts as giving to litigants the right to explain themselves before a final decision is taken to their detriment (and thus to be notified of the upcoming decision), the right to provide evidence as to the facts likely to influence the outcome of the decision, the right to have access to the file, the right to participate in the taking of evidence, to obtain knowledge of it and to take position on it.

Notification procedure

262. The notification procedure in Switzerland includes a prior notification requirement, and a notification of the decision to exchange the information by the AFC when no consent has been provided by the person(s) concerned.

Prior notification

263. The LAAF requires the AFC to notify, in writing, the person concerned about the existence of a valid EOI request and its "essential elements" (Art. 14(1)) and the persons that might be entitled to appeal about the administrative assistance procedure (Art. 14(2)). A person concerned is defined as the person who is the subject of the request for information, i.e. the taxpayer being investigated. Persons entitled to appeal include persons specifically affected by the decision to exchange information: (i) a person that has participated or has been refused the opportunity to participate in the procedure before the lower instance court; (ii) a person that has been specifically affected by the contested decision; and (iii) a person that has an interest that is worthy of protection in the revocation or amendment of the decision (LAAF, Art. 14(2) and Administrative Procedure Act, Art. 48). In practice, persons that may be entitled to appeal may include the information holder.

264. The collection of the information and the notification procedure take place simultaneously. If the persons have an address in Switzerland, they are notified by the SEI through registered mail. There are three ways to notify the person(s) concerned and entitled to appeal that has its domicile abroad:

- notification via the information holder (LAAF, Art. 14(3))
- direct notification in the requesting jurisdiction, if the requesting authority expressly consents to this procedure (LAAF, Art. 14(4)).
- If the foreign resident cannot be contacted, then the notification takes place through publication in the federal gazette (*feuille fédérale*) (LAAF, Art. 14(5)).

265. In case of a bulk request, where taxpayers are individually identified by their name, the notification procedure is the same as for individual requests. Where taxpayers are not identified by name but by other means (e.g. a list of bank account numbers), the notification procedure is done through the information holder, who identifies the taxpayers and notifies them. For group requests, the notification is done through the federal gazette. The persons are not identified in the publication but a description of the behaviour, facts and circumstances is included (see C.3).

266. The notification letter gives a deadline of ten days to the persons concerned and entitled to appeal to consent to the transmission of the information collected.

- If the person concerned and the persons entitled to appeal give written permission to the AFC, the AFC can transmit the information to the EOI partner (LAAF, Art. 16). Once given, the consent is irrevocable. The consent can be given at any step of the procedure. This is the simplified procedure.

- Where consent is refused or is not received from any of the persons notified, or if any of them decides to participate in the procedure (LAAF, Art. 15) and to nominate an intermediary, the AFC must make a decision on whether to exchange information (LAAF, Art. 17). This is the ordinary procedure.

267. When the persons decide to participate in the procedure, in order to allow them to properly exercise their right to be heard before the AFC's decision to exchange the information collected is issued, the LAAF provides for a right to inspect the file (Art. 15(1)). This right is exercised after the collection of the information. The LAAF provides that the right to inspect the file can be dispensed with where the requesting party establishes grounds for secrecy (*des motifs vraisemblables*) for maintaining the confidentiality of the process or with respect to certain elements of the file (Art. 15(2)). The impact of the right to see the file on confidentiality is analysed under Section C.3.

Notification of the decision to exchange

268. The final decision to exchange the information must state why administrative assistance is being provided and specify the extent of the information to be transmitted (LAAF, Art. 17(1)) (see Section C.3). The person(s) concerned and the persons entitled to appeal must be notified of this decision. If the person is resident in Switzerland, the SEI sends a registered mail to this person. If the person is foreign resident, the notification of the final decision happens as follows (LAAF, Art. 17(3)):

- by a notification to the intermediary in Switzerland designed to receive the notifications on behalf of the person notified.
- If no such intermediary has been designated, then the notification takes place by publication of a notice in the federal gazette (*feuille fédérale*).

269. The decision is subject to appeal in accordance with Swiss domestic law governing appeals against administrative decisions (LAAF, Art. 19). A 30-day appeal period applies after the final decision has been issued. Any decision preceding the final decision (i.e. including the disclosure orders) may be enforced immediately and may only be challenged together with the final decision to exchange the requested information (LAAF, Art. 19(1)).

Appeal rights

270. The persons concerned by the request and the persons entitled to appeal have a right to appeal against the decision of the SEI to exchange the information within 30 days from the notification of the final decision by the AFC (LAAF, Art. 19; APA, Art. 44; Federal Administrative Court Act,

Art. 31 *et seq.*). The appeal is made to the Federal Administrative Tribunal (*Tribunal administratif fédéral*). The court decision can then be subject to appeal before the Federal Tribunal (*Tribunal fédéral*), which is the highest instance court, within ten days (Federal Court Act, Art. 100(2b)). The Federal Tribunal will only proceed if a principle question of law arises.

271. In practice, during the review period, Switzerland received 3 252 individual requests, and 157 requests were appealed against before the Federal Administrative Tribunal (first instance). Out of these 157 requests, 48 were appealed before the Federal Tribunal (last instance). This represents respectively 4.8% and 1.5% of the total of the individual requests received.

272. Switzerland does not maintain statistics regarding the legal grounds for appeals, but indicates that the claims mainly relate to the interpretation of the foreseeably relevant criteria and to the principle of subsidiarity (exhaustion of all domestic means).

273. When the Federal Administrative Tribunal takes a decision going against the final decree of the AFC, Switzerland almost systematically lodges an appeal before the Federal Tribunal. Switzerland always goes until the last instance to obtain the administrative assistance.

274. On these 123 appeals, the SEI had to decline 3 requests. The judge considered these three requests not to be admissible because they were based on stolen banking data that the requesting jurisdiction had expressly committed not to use when submitting EOI requests to Switzerland. No requests were declined following the 48 rulings of the Federal Tribunal.

275. During the review period, 13 appeals have been lodged with regard to group requests, which have all been settled. Ten appeals were lodged with regard to bulk requests and are currently pending before the TAF. One leading case related to these appeals has been settled, which will allow for the processing of the pending appeals (see para. 427).

Timeliness of notifications and appeals and practice

276. The length of the processing of requests, including the notification procedure during the period under review is as follows:[53]

53. In the table, about 45 days (appeal-period and confirmation from the court) should be added to the times indicated for cases where no consent has been granted by the notified persons, either because the taxpayer was passive, or refused consent.

	1 July 2015-30 June 2016	1 July 2016-30 June 2017	1 July 2017-30 June 2018
Median length (in days) of all requests (excluding cases which have been subject to court proceedings)	212	174	103
Average length (in days) of all requests (excluding cases which have been subject to court proceedings)	281.5	227	131.5
Median length (in days) of all requests (excluding cases which have been subject to court proceedings, and time for clarification)	133.5	78	91
Average length (in days) of all requests (excluding cases which have been subject to court proceedings, and time for clarification)	164.5	99.5	115.5
Median length (in days) of requests where consent to provide the information was granted	294	188.5	98.5
Average length (in days) of requests where consent to provide the information was granted	340	225.5	120
Median length (in days) of requests where consent to provide the information was granted excluding time for clarification	172	88	94.5
Average length (in days) of requests where consent to provide the information was granted excluding time for clarification	228.5	135.5	114.5

277. Switzerland reported that in a straightforward case where a taxpayer is passive (i.e. there was no reaction to the notification), the length of the notification procedure amounts in theory to 65 days: 20 days to notify the person concerned, 30 days for the appeal-period and 15 days to receive the confirmation from the court that no appeal has been lodged. The length of the procedure was not necessarily shorter in cases where the consent to provide the information to the foreign partner has been granted, as the consent can intervene at any moment in the procedure (even after a person concerned decides to participate in the procedure).

278. The length of appeal procedures in Switzerland during the period under review is as follows:

	July 2015-June 2016	July 2016-June 2017	July 2017-June 2018
Median length (in days) of all cases that have been subject to court proceedings	829	610	501
Average length (in days) of all cases that have been subject to court proceedings	829	633.5	477.5
Median length (in days) of the court proceedings (between the final decree of the AFC and the decision of the court which can include two instances)	373.5	415	296
Average length (in days) of the court proceedings (between the final decree of the AFC and the decision of the court which can include two instances)	433.5	381	291

279. As for the notification procedure, the duration of court proceedings decreased over the review period. Switzerland highlighted that principle questions of law for group and bulk requests arose during the period under review, and that the two instances treated those two cases within 292 days for the case concerning a group request, and 532 days for the cases concerning a bulk request.

280. Several peers complained about the delays caused by the notification procedure and appeals in practice. A peer indicated that the notification requirements can hinder exchanges, and that they are reluctant to make requests in respect of litigious companies because they fear that the use of the Swiss legal system may delay or frustrate the exchange of information. Other peers echoed this comment saying that the Swiss notification procedure as well as the subsequent appeal procedure is an important issue that delays and sometimes prevents effective EOI. Switzerland acknowledged that when contacts have been established with partners to better explain the notification procedure, it generally ensures a better understanding of the situation and requests are consequently processed in a more efficient manner. For example, partners can already authorise direct notification abroad at the time of the request, or an agreement to access the file. It should be noted that the median length of the notification procedure decreased significantly during the review period.

281. To conclude, the length of procedures in Switzerland may delay the effective exchange of information. Although improvements can be acknowledged towards the end of the review period, Switzerland should monitor the implementation of the notification and appeal procedures to ensure that it does not unduly prevent or delay the effective exchange of information.

Deceased persons

282. Paragraphs 323-324 of the 2016 Report noted that Switzerland could not transmit information on deceased persons in a few cases, as they could not be notified. While solutions had been found in practice with some peers, sending the request for information under the name of the heirs when possible, Switzerland was recommended to ensure that information in relation to deceased persons could be exchanged in all cases.

283. During the period under review, two peers indicated that they could not receive information on deceased taxpayers in less than 10 cases. Switzerland does not maintain precise statistics on the number of cases linked to deceased persons but estimates it at less than 50 cases for the period under review. Switzerland indicated that, in a wide majority of those cases, requests were made in the name of the heirs and were answered successfully.

284. Since 1 November 2019, the LAAF as amended by the LFM has provided for administrative assistance for deceased persons, giving their successors the status of party in the procedure. This amendment should fix the issue of exchange of information on deceased persons and solve the cases identified by the peers with succession estates, as they are able to be notified. Switzerland is recommended to monitor the implementation of this new provision to ensure that information in relation to deceased persons can be exchanged in all cases.

Exceptions to prior notification

285. Article 21a of the LAAF provides for an exception to the prior-exchange notification requirement: if the requesting authority demonstrates that the purpose of the administrative assistance and the success of its investigation would be compromised by prior notification, the AFC will send notifications only after the information has been transmitted to the requesting authority.

286. The requesting partner must demonstrate the necessity to postpone the notification. The two conditions are cumulative. However, they appear to overlap in any event, and a single situation, such as urgency, can satisfy both conditions (see paragraph 322 of the 2016 Report). The same conditions apply in the cases of individual, group and bulk requests.

287. Paragraphs 325-329 of the 2016 Report noted that although Switzerland introduced an exception to notification, its application in practice was limited as the provision entered into force in July 2014. Out of 24 requests, Switzerland had granted 6 exceptions to notification towards the end of the review period (i.e. 25%). Switzerland was therefore recommended to monitor the application of the exception to notification to ensure its application in line with the standard.

288. During the current period under review, Switzerland received 32 requests for exception to prior notification in individual requests, out of 3 252 requests. Of those requests, 23 met the conditions and were granted (including 2 because of urgency), representing 72% of the cases. One peer indicated that the conditions of the exception to prior notification were difficult to meet. Switzerland considers that the remaining requests where the exception was not granted did not contain sufficient explanations in relation to the specific cases.

289. Switzerland stated that a clear explanation on why the notification should be postponed is required but that it is not necessary to provide supporting documents to justify the exception. Switzerland sent a letter to its EOI partners with an overview of the notification procedure applicable in Switzerland. The letter specifies that to apply the exception, the existing risk

necessitating the exception to the notification must be concrete and clearly explained by the requesting authority. The risk may arise, for instance, because of the overall context of the specific case (e.g. ongoing covert investigation), because of antecedents of the taxpayer or because of the particular urgency of the case. During the on-site visit, Switzerland explained that the expiration of a limitation period could be considered sufficient on its own. In this regard, the fact that a taxpayer is not co-operative does not meet by itself the conditions for the exception to prior notification to be granted.

290. Switzerland explained that they provide help to their peers before a request is made with draft versions of the request, including the justification to apply for an exception to notification and guidance from Swiss jurisprudence, with the aim to give advice on how to meet the requirements and reduce further requests for clarification *a posteriori*. This practice was acknowledged by peers.

291. One peer called for exceptions to notification in one bulk request identifying the taxpayers by other means than the name and in three group requests. The peer stated that prior notification would seriously undermine the success of the ongoing investigation and further argued that prior notification could lead the taxpayers concerned to divert their assets, thus avoiding the payment of taxes related to the assets illicitly held in Switzerland. Switzerland did not consider these justifications to meet with the required conditions for the exception. The SEI considered that they were not able to identify any specific reason in relation to the group of persons (not known by the peer) showing tangible clues or indications that the persons concerned would divert their assets. The SEI therefore considered that the risk of diversion of assets by the persons concerned was rather of hypothetical nature, which was not sufficient to apply the exception to notification. Switzerland held bilateral discussions with its partner, and ultimately, as a way to move the request forward, the peer agreed to notify the taxpayers concerned and lifted the requests for exception to notification in these cases. Switzerland however highlighted to its partner that an exception to the notification for group or bulk requests could be justified, for example, if the requesting jurisdiction justifies a pattern of behaviour or a criminal context, which would demonstrate that the conditions for the exception apply to the vast majority of the group. Switzerland did not provide further examples of cases that would justify an exception to the notification procedure for group or bulk requests, but will analyse each request on a case by case basis.

292. There is uncertainty regarding Switzerland's approach when it comes to group and bulk requests without identification of the taxpayers. It is acknowledged that fulfilling the conditions to obtain the exception to prior notification in such cases is more complex for the requesting jurisdiction, and the possibilities of litigation in Switzerland's legal framework explain the SEI's

cautious approach in that regard. However, the threshold to meet the exception to prior notification for group and bulk requests without identification of taxpayers may be in certain circumstances higher than for individual requests.

293. The lengths of response for the 23 cases where the exception to notification has been granted during the review period are as follows:

	1 July 2015-30 June 2016	1 July 2016-30 June 2017	1 July 2017-30 June 2018
Median length (in days)	262	221.5	220
Average length (in days)	213	191	171.5
Median length (in days) excluding the time of requests for clarification	135	96.5	69
Average length (in days) excluding the time of requests for clarification	111.5	91	80.5
Shortest length (in days)	64	60	14
Shortest length (in days) excluding time for clarification	21	49	14
Longest length (in days)	371	260	280
Longest length (in days) excluding time for clarification	164	124	159

294. Responses to requests where the exception to prior notification has been granted during the review period took more time than requests where the notification occurred. Switzerland explained that this was mainly due to requests for clarification. Further, the procedure was still quite recent, and the competent authority had to make sure that the necessary conditions were met, as the responsibility of the State is engaged.

295. A few peers mentioned that it was rather difficult to obtain the exception to prior notification in practice and that many clarifications were requested from Switzerland. The exception to prior notification is now in place since July 2014, and the requests including an exception to prior notification received during the period under review were among the first ones received. Although the length of the procedure was not necessarily shorter when the exception was applied during the review period, the timeliness of replies given to requests where an exception to prior notification was granted improved towards the end of the review period.

296. In the light of the above, Switzerland is recommended to monitor the practical implementation of the exception to prior notification (including for group and bulk requests) to ensure that it is in line with the standard and that responses are always provided in a timely manner.

Post-exchange notification

297. When the exception to prior notification is granted, the notification is made after the exchange of information, but the law does not provide a deadline to do so. The SEI explained that in order to avoid any hindrance or interference in foreign procedures, the notification is done only once the requesting jurisdiction gives its authorisation to notify the persons concerned or entitled to appeal.

298. As of 7 October 2019, out of the 23 exceptions to prior notification granted, 22 post-notifications had been done, the remaining one is still awaiting an approval from the requesting jurisdiction.

299. Exceptions to notification aim at preserving the purpose of the administrative assistance and the success of the foreign investigation. If the persons informed of the existence of the EOI request inform the persons concerned or entitled to appeal, this would nullify the exception. Article 21a of the LAAF thus provides for an anti-tipping off provision that applies to the holder of information and the authorities informed of the request. These persons are forbidden to inform the persons concerned or entitled to appeal, until the persons have been notified by the AFC, after the information has been exchanged. The fact that the person(s) concerned cannot be informed clearly appears in the disclosure order sent to the information holder. A sanction of a maximum of CHF 10 000 (EUR 9 129) is applicable for failure to comply with the anti-tipping off provision (LAAF, Art. 21a(3)). The provision was used in all applicable cases but no sanctions were imposed in practice during the review period since the Swiss authorities did not have any indications that any information holder has breached its obligation.

Part C: Exchanging information

300. Section C evaluates the effectiveness of Switzerland's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Switzerland's relevant partners, whether the confidentiality of information received is ensured, whether Switzerland's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Switzerland can provide the information requested in a timely manner.

C.1. Exchange of information mechanisms

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

301. Switzerland made a commitment in March 2009 to meet the internationally agreed EOIR standard. The EOI agreements negotiated by Switzerland up until 2009 did not meet the standard. This was a serious issue, which has been progressively addressed since then. The 2016 Report concluded that Switzerland had taken active steps to update its network of EOI agreements by signing new agreements and protocols to existing agreements that include the language of Article 26(4) and 26(5) of the OECD Model Tax Convention. However, 32 EOI agreements were still not consistent with the standard.

302. Since then, Switzerland ratified the Multilateral Convention on 26 September 2016, which entered into force on 1 January 2017. In addition, Switzerland has concluded 11 new EOI agreements.[54] As a result, Switzerland has an EOI mechanism with 155 jurisdictions, of which 141 are to the standard. Switzerland did everything that was under its control to address the

54. Switzerland has signed double tax treaties including protocols and revisions in accordance with Article 26 of the OECD Model Tax Convention since July 2016 with the following jurisdictions: Bahrain, Brazil, Ecuador, Iran, Kosovo, Kuwait, Latvia, Pakistan, Saudi Arabia, Ukraine and Zambia.

bilateral treaties not up to the standard, in particular by contacting the treaty partners, with a view to amend their treaties in line with the standard. The recommendation from the 2016 Report is therefore removed.

303. The interpretation by Switzerland of its EOI instruments has also raised some concerns in the past. The 2016 Report concluded that Switzerland had a restrictive approach to the concept of foreseeable relevance, which created delays in the treatment of the requests and limited exchange of information in certain cases. Since then, Switzerland changed some of its practices. Nevertheless, in some cases Switzerland has applied a restrictive approach when assessing the relevance of the information obtained from information holders. Switzerland is therefore recommended to monitor the application of the foreseeable relevance standard to ensure that all foreseeably relevant information is provided to its EOI partners as required under the standard in all cases.

304. The EOIR standard now includes a reference to group requests in line with paragraph 5.2 of the Commentary to Article 26 of the OECD Model Tax Convention. Switzerland received eight group requests among which one has been withdrawn. The seven remaining requests amount to 5 289 cases, of which five have been answered and two are pending.

305. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	Switzerland had a restrictive approach to the concept of foreseeable relevance in some cases. While assessing the relevance of the information obtained from information holders, Switzerland has applied a restrictive interpretation of its relevance to requests during the review period. This practice has changed towards the end of the review period.	Switzerland should monitor the application of the foreseeable relevance standard to ensure that all foreseeably relevant information is provided as required under the standard in all cases.
Rating Largely Compliant		

Other forms of exchange of information

306. Apart from EOIR, Switzerland also engages in Automatic Exchange of Information as well as Spontaneous Exchange of Information. The first automatic exchanges of financial account information took place in 2018. Switzerland also exchanges Country-by-Country Reports in line with BEPS Action 13 and spontaneously exchanges information on rulings in accordance with the Action 5 BEPS report.

C.1.1. Foreseeably relevant standard

307. Exchange of information mechanisms should allow for EOI on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. The 2016 Report (para. 355) found that all agreements concluded by Switzerland since 2009 complied with the standard. Up until 2009, EOI provisions in Switzerland's DTCs were negotiated on the basis that administrative assistance would only be provided to the extent that it related to the application of the treaty. The 2016 Report noted that 32 agreements were not in line with the standard.

308. Since the 2016 Report, Switzerland signed and ratified protocols with Albania, Belgium, Ecuador, Ghana, Iran, Italy, Latvia, Norway and the United Kingdom. It also signed a protocol with Ukraine, which has not yet entered into force. It signed new DTCs to the standard with Brazil (not yet in force), Kosovo,[55] Liechtenstein, Oman, Pakistan, Saudi Arabia (not yet in force) and Zambia. Finally, the protocol amending the DTC with the United States entered into force. All these agreements contain wording consistent with the foreseeable relevance standard.

309. In addition, Switzerland ratified the Multilateral Convention on 26 September 2016, which entered into force on 1 January 2017. This has significantly widened Switzerland's EOI network, and has brought additional relationships in line with the standard. Switzerland also ratified the 2015 Amending Protocol to the Agreement between the European Union and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments, which entered into force on 1 January 2017.

310. Currently, Switzerland has 14 EOI relations not in line with the standard, i.e. bilateral agreements not in line with the standard and not complemented by a regional or multilateral agreement in line with the standard and in force with Algeria, Bangladesh, Belarus, Côte d'Ivoire, Egypt,

55. 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.

Gambia, Kyrgyzstan, Malawi, Sri Lanka, Tajikistan, Thailand, Trinidad and Tobago, Venezuela and Viet Nam. Eight[56] of those 14 agreements do not include an EOI provision.

311. Switzerland has taken several steps to improve the situation, and started to negotiate protocols (see Section C.2). Switzerland also indicated that it contacted two jurisdictions not members of the Global Forum, but could not find relevant contacts or information on their intention to join the Multilateral Convention. Switzerland did everything that was under its control to address the bilateral treaties not up to the standard, in particular by contacting the treaty partner with a view to bring it in line with the standard. The recommendation from the 2016 Report is therefore removed.

Clarifications and foreseeable relevance in practice

312. The 2016 Report noted that Switzerland had a restrictive approach to the concept of foreseeable relevance, which created delays in the treatment of the requests and limited the exchange of information in certain cases. It also noted that this practice changed towards the end of the review period (1 July 2012 to 30 June 2015), and Switzerland was recommended to monitor its implementation of the foreseeable relevance concept to ensure it is in line with the standard.

313. The interpretation of the concept of foreseeable relevance has been confirmed several times by the Swiss courts. Recent decisions by the Federal Administrative Tribunal and the Federal Tribunal confirmed a broad understanding of the concept of foreseeable relevance that is in line with the international standard. The following principles were highlighted:

- The concept of foreseeable relevance must be interpreted in a broad manner in Switzerland in line with the commentary of Article 26 of the OECD Model Tax Convention.
- The condition of foreseeable relevance is deemed to be achieved if at the time of the request, there is a reasonable possibility that the requested information will be relevant. It does not matter if once provided, it turns out that the information requested is finally irrelevant.[57]
- It is not the responsibility of the requested State to decline a request or refuse to transmit the information because that State is of the opinion that the information is not relevant to the underlying investigation or

56. Belarus, Côte d'Ivoire, Egypt, Sri Lanka, Tajikistan, Trinidad and Tobago, Venezuela and Viet Nam.

57. TF 142 II 161 of 24 September 2015 considérant 2.

control. The role of the requested State is limited to a plausibility check, i.e. a foreseeable relevance check, and to confirm whether the documents requested relate to the factual situation presented in the request and whether they can potentially be used in the foreign proceeding.

- The requested State might refuse to transmit the information only if it appears with certainty that the requested information is not relevant to the requesting jurisdiction.
- It would be otherwise a misunderstanding of the meaning and purpose of administrative assistance to require the requesting State to submit a request without any gap or contradiction, as the request for assistance involves by nature some obscure aspects that information asked to the requested State must clarify.[58]

314. Apart from the elements listed in the applicable agreement, Switzerland does not require any particular information to be provided by the requesting jurisdiction in applying the foreseeable relevance standard. Switzerland reported that during the period under review, less than 10 requests were declined because they did not meet the foreseeable relevance criteria, representing 0.3% of the total of the requests overall.

315. When the foreseeable relevance is unclear in a request, the practice of the SEI is to first seek clarifications from the requesting jurisdiction. If no relevant clarification is provided, the request may be declined. In those cases, an explanation as to why the information cannot be provided is always given.

316. Article 4(3) of the LAAF provides that "it is forbidden to provide information on persons not concerned by the request unless this information is foreseeably relevant to the assessment of the tax situation of the person concerned or the legitimate interests of persons who are not persons concerned outweigh the interest of the requesting party in the transmission of the information". Further, Article 17(2) foresees that "information that is likely to be immaterial may not be transmitted. The AFC shall remove or redact such information".

317. Several peers mentioned that during the period under review, Switzerland had a restrictive interpretation of the foreseeable relevance, limiting the exchange of information in certain cases. In particular, with regard to banking information, a few peers mentioned that Switzerland redacted information with the explanation that it was not foreseeably relevant. They further explain that as entire pages are redacted, it is very difficult for them to know whether the information could be foreseeably relevant. Another peer mentioned that when asking for copy statements for a specific period, it expected the opening balance to be covered, which would be necessary to calculate

58. TF 1l42 II 161 of 24 September 2015 considérant 2.1.1.

gains from securities. Switzerland explained that the redactions concern the name of the employee of the bank, or information not covered by the period indicated in the request. Another peer reported that in some cases the information concealed was the price and date of acquisition of financial investments preventing their tax auditors to assess the relevant capital gains. Although the date of the acquisition was prior to the requested period, it impacted the period for which the information was sought. In this case, Switzerland indicated that this request was at the beginning of the review period when it had a restrictive interpretation in a few cases. Switzerland indicated that this case did not reflect the majority of cases, and that the practice is to redact information from banking documents only concerning employees of financial institutions, or information not covered by the requested period.

318. Paragraph 286 of the 2016 Report indicated that Switzerland does not provide copies of tax returns of their taxpayers, but instead the SEI provides on request the relevant information contained in the tax return. During the period under review, several peers indicated that the tax return was not provided as it was considered an internal Swiss document. They reported that this practice was problematic to assess transfer pricing cases. Switzerland indicated that the practice has changed on 20 February 2018. The new policy is to provide the tax return, while redacting the parts that are not relevant to the EOI request, i.e. the name of the administrator in charge of the file in the cantonal tax administration, and information dating prior to the applicable treaty. This new practice has been confirmed by peers.

319. Several peers also indicated that in a similar manner as for tax returns, tax rulings were not provided. They indicated that it was difficult to prove the foreseeable relevance of some information required, such as the list of employees of a Swiss company, including their salaries and domiciles. Switzerland reported that since they are exchanging rulings on a spontaneous basis, they also provide copies of such rulings upon request, while redacting some parts since 20 February 2019. Regarding the redactions, Switzerland indicated that they would redact the name of the employee of the firm, but not the name of the fiduciary, and information prior to the period indicated in the EOI request. Switzerland is therefore recommended to monitor implementation of these new practices and ensure that it exchanges copies of relevant documents with its partners (see Annex 1 below).

320. Another issue raised by several peers includes the lack of information provided by Switzerland on the current tax year. Several peers noticed that Switzerland does not provide information for the current tax year, with the explanation that as a rule they do not transmit information relating to the current fiscal year since the regular sources of information available under internal taxation procedure might not have been exhausted as taxpayers might still be on time to file their tax return domestically. Switzerland explained that although they were looking at the filing deadline to consider

whether the subsidiarity principle was respected, it has changed its practice on 1 January 2019, and now provides information regardless of whether the domestic filing deadline has passed or not in the requesting jurisdiction.

321. Although certain redactions are justified when linked to employees of financial institutions or periods outside of the request or applicable agreements, Switzerland had a restrictive approach of the foreseeable relevance in some cases. Switzerland is recommended to monitor its interpretation of the foreseeable relevance concept to ensure it is in line with the standard.

Group requests

322. Switzerland's procedure to deal with group requests is the same as those used for dealing with an individual request and is detailed in Switzerland's EOI Manual (see element C.5 for details). The main difference relates to the information that must be included in the request as per paragraph 5.2 of the Commentary to Article 26 of the OECD Model Tax Convention, which includes the following information that the requesting jurisdiction should provide: (i) a detailed description of the group, (ii) the specific facts and circumstances that have led to the request; (iii) an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis; and (iv) a showing that the requested information would assist in determining compliance by the taxpayers in the group.

323. Usually, the step of the collection of information in group requests is longer, since it may relate to several thousands of taxpayers (the notification procedure for group requests is explained under Section B.2). However, Switzerland reported that in general, only few persons take part in the proceeding.

324. During the peer review period, Switzerland received eight group requests among which one has been withdrawn. The seven remaining requests amount to 5 289 cases, of which five have been answered and two are pending. The SEI has not encountered particular difficulties in answering these requests, and this was confirmed by peers.

325. When requests relate to groups of taxpayers not individually identified, Switzerland explained that it is usually more difficult to establish whether they represent fishing expeditions or not. Switzerland pays special attention to this element with the aim to avoid unnecessary costs, court proceedings and negative precedents. When the reason to believe that the specific group of taxpayers has been non-compliant with the law is not supported by a clear factual basis, Switzerland usually requires further clarifications. Once the clarifications are received, Switzerland generally does not encounter difficulties in answering group requests.

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

326. None of Switzerland's EOI agreements signed after 2009 restricts the jurisdictional scope of the EOI provisions to the "persons covered" (equivalent to Article 1 of the OECD Model Tax Convention). However, the 2016 Report found that 20 agreements were restricted to requests concerning persons otherwise covered by the Convention. Today, six relationships[59] still contain such restriction, although the Swiss authorities approached its partners to upgrade them.

327. The additional agreements that Switzerland has entered into since the 2016 Report do not have such restrictions. Except for the issues identified above in Section C.1.1, no other issues restricting the exchange of information in respect of the residence or nationality of the person concerned by the request or the information holder have been indicated by the Swiss authorities or by the peers.

C.1.3. Obligation to exchange all types of information

328. All agreements concluded by Switzerland since 2009 expressly include a provision that the requested State may not decline to supply information solely because it is held by a financial institution, a nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person. This express provision ensures that bank secrecy will not apply for the exchange of information under these agreements.

329. Of the 14 agreements that have not been upgraded either by a protocol, a new DTC or by the Multilateral Convention, 8 do not include an EOI provision. In the case of the six remaining agreements,[60] bank secrecy will limit the exchange of information.

330. During the period under review, Switzerland has not declined a request based on an agreement in line with the standard, because it was held by a bank, other financial institution, nominees or persons acting in an agency or fiduciary capacity or because the information related to an ownership interest. On the contrary, it exchanged these types of information.

C.1.4. Absence of domestic tax interest

331. Each of the agreements signed since 2009 include an express provision (equivalent to Article 26(4) of the OECD Model Tax Convention) that information shall be exchanged by the requested party notwithstanding that it may have no domestic tax interest in it.

59. Algeria, Bangladesh, Gambia, Kyrgyzstan, Malawi and Thailand.
60. Algeria, Bangladesh, Gambia, Kyrgyzstan, Malawi and Thailand.

332. Of the 14 agreements that have not yet been upgraded either by a protocol, a new DTC or by the Multilateral Convention, 8 do not include an EOI provision. The remaining six agreements, negotiated prior to March 2009, do not include a provision equivalent to Article 26(4) of the OECD Model Tax Convention but are interpreted by Switzerland in such way that no domestic tax interest applies.

333. Switzerland has provided information in which it had no domestic tax interest in many cases (e.g. banking information) during the review period, and this is consistent with the feedback received from peers.

C.1.5. Exchange information relating to both civil and criminal tax matters and C.1.6. Absence of dual criminality principles

334. Switzerland's network of agreements signed since 2009 provide for exchange in both civil and criminal matters and none restricts exchange by the dual criminality principle (see para. 372-374 of the 2016 Report). In practice, Switzerland has been able to exchange information in both civil and criminal matters.

335. The six remaining agreements which contain an EOI provision are limited to civil tax matters.[61] Switzerland also has eight agreements that do not include an EOI provision.

C.1.7. Provide information in specific form requested

336. The 2016 Report noted that there are no impediments in Swiss law which would prevent the information being obtained in the form, for example, of an authenticated copy of original document to the extent that this is consistent with domestic law. In the case of the latter, such a request may however necessarily affect the speed with which the request could be met.

337. According to comments received from Switzerland's partners, there do not seem to have been any instances during the period under review where Switzerland was not in a position to provide the information in the specific form requested.

C.1.8 and C.1.9. Signed agreements should be in force and be given effect through domestic law

338. The 2016 Report noted that the timeframe for ratification in Switzerland improved significantly and in general, the agreements are ratified within 12 to 18 months after signature.

61. Algeria, Bangladesh, Gambia, Kyrgyzstan, Malawi and Thailand.

339. Since the 2016 Report, Switzerland ratified the Multilateral Convention (which it signed on 15 October 2013) on 26 September 2016, and it entered into force on 1 January 2017. Switzerland also signed and/or ratified new protocols with Albania, Belgium, Ecuador, Ghana, Iran, Italy, Kuwait (not yet in force), Latvia, Norway, Ukraine (not yet in force) and the United Kingdom. It signed and/or ratified new DTCs with Bahrain (not yet in force), Brazil (not yet in force), Kosovo, Liechtenstein, Oman, Pakistan, Saudi Arabia (not yet in force) and Zambia. Finally, the TIEAs signed with Grenada, Belize and Brazil, and the protocol to the DTC with the United States entered into force.

340. Once initialled and agreed, an agreement (DTC, TIEA or protocol to an existing agreement) is sent to the cantons and interested economic circles for consultations. The text is then presented to the federal Council (*Conseil fédéral*) for approbation of signature. The agreement must be translated in the three official languages, i.e. French, German and Italian. After the signature, the text of the agreement is sent to the Parliament for final approbation with an explanatory report (*message*). The approbation by the Parliament is confirmed by the publication of a federal decree (*arrêté fédéral*) which can be subject to a referendum if 50 000 citizens ask for such a referendum within 100 days from its official publication. So far, no referendums have ever been requested for an EOI agreement. Once the 100-day period expires or the decree is approved in the referendum, the approval process is completed. The other party to the agreement is then informed, generally by diplomatic note, that internal procedures for the entry into force of the agreement have been completed. Switzerland reported that it did not encounter any issue to bring an agreement into force.

EOI mechanisms

			Total	Total bilateral instruments not complemented by the MAC
A	Total number of DTCs/TIEAS	[A=B+C]	117	20
B	Number of DTCs/TIEAs signed (but pending ratification), i.e. not in force	[B=D+E]	5 (Bahrain, Iran, Kuwait, Saudi Arabia, Ukraine)	1 (Iran)
C	Number of DTCs/TIEAs signed and in force	[C=F+G]	112	19
D	Number of DTCs/TIEAs signed (but pending ratification) and to the Standard		5	1
E	Number of DTCs/TIEAs signed (but pending ratification) and not to the Standard		0	0
F	Number of DTCs/TIEAs in force and to the Standard		68	5
G	Number of DTCs/TIEAs in force and not to the Standard		44[62]	14

62. Switzerland has an EOI relationship to the standard with 30 of these jurisdictions via the MAC.

341. Switzerland has in place the legal and regulatory framework to give effect to its EOI mechanisms.

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

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

342. The 2016 Report found Switzerland concluded agreements with all jurisdictions that had expressed an interest in negotiating agreements that respect the international transparency standard. Switzerland was found to have a sufficiently wide network of EOI mechanisms in place. Currently, this is still the case with 155 partners.

343. Since the previous review, Switzerland has taken active steps to continue updating its network of EOI agreements. Switzerland ratified eight DTCs or protocols to existing agreements[63] (see Annex 2below). It also signed a protocol to a DTC with Ecuador, Iran, Kuwait, Latvia and Ukraine and six new DTCs which are in line with the standard, with Bahrain, Brazil, Kosovo, Pakistan, Saudi Arabia and Zambia.

344. Switzerland ratified the Multilateral Convention on 26 September 2016; the Convention entered into force on 1 January 2017. In addition, Switzerland negotiates TIEAs when so requested. In agreement with three MAC partners, Switzerland decided not to pursue the negotiation of a TIEA. Switzerland also ratified the Amending Protocol to the Agreement between the European Union and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments, which entered into force on 1 January 2017.

345. Switzerland initiated negotiations in view of amending the DTCs with the treaty partners with an EOI provision not consistent with the standard. Switzerland reports that negotiations are ongoing with 12 jurisdictions, 6 of which are not signatories of the MAC. Furthermore, a new DTC is ready for signature with three jurisdictions (participating in the MAC). A few other jurisdictions have not replied so far to Switzerland's proposal to update the EOI provision of their DTC.

346. Switzerland's EOI network covers 117 jurisdictions through bilateral instruments. The Multilateral Convention expands this EOI network by 38 jurisdictions.

63. Albania, Belgium, Ghana, Italy, Liechtenstein, Norway, Oman and the United Kingdom.

347. Comments were sought from Global Forum members in the preparation of this report and no jurisdiction indicated that Switzerland refused to negotiate or sign an EOI instrument with it. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Switzerland should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1 below).

348. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

C.3. Confidentiality

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

349. Each of Switzerland's agreements includes a confidentiality provision and Switzerland has a strong domestic confidentiality regime applicable to persons who in the course of their public duties have access to tax information.

350. The LAAF provides that every person concerned by a request or entitled to appeal must be notified and allows a right to see the file, including the request letter. Although exceptions can apply, this is not in accordance with the principle that the letter should be kept confidential as required by the standard. The recommendation from the 2016 Report therefore remains and Switzerland is recommended to ensure that it does not exceed the confidentiality requirements as provided for under the international standard.

351. The 2016 Report noted the commitment of Switzerland to interpret broadly the exception of the right to see the file (including the request letter). As the exception was recently introduced in the law and could not be assessed in practice, Switzerland was recommended to monitor its new approach. During the current period under review, Switzerland contacted its partners every time it received a request to inspect the file, asking them whether they wish to apply for the exception to the right to see the file. However, to ensure the right to be heard, Switzerland always has to provide persons concerned and entitled to appeal with some elements of the background of the requests, so that those persons understand why the administrative assistance was granted. This practice is therefore not an exception to the right to see the file but rather a restriction on the extent of the file inspected. In practice, in a few cases,

elements which peers had originally asked to keep secret have been disclosed, after discussions with the partner jurisdiction. Switzerland should ensure that the application of the exception to the right to see the file is in line with the confidentiality requirements as provided under the international standard.

352. When published in the federal gazette, the prior notification and the notification of the decision to exchange is noticed as a communication from the AFC, and it specifically states that it concerns administrative assistance. Peers have raised concerns regarding the publication of the full name of taxpayers in relation to administrative assistance. In addition, the publication of the notification for group requests in the federal gazette mentions the requesting authority, the date of the request letter as well as the legal basis. Switzerland is recommended to ensure that it only discloses the minimum information necessary for the notification.

353. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	Any person concerned by the request or with a right to appeal can exercise his/her right to see the file, including the request letter, subject to exceptions. This is not in accordance with the principle that the request letter should be kept confidential as required by the standard.	Switzerland is recommended to ensure that it does not exceed the confidentiality requirements as provided for under the international standard.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	The application in practice of the exception to the right to see the file (including the request letter) is rather a restriction on the extent of the file inspected by the person concerned or entitled to appeal, and allows the disclosure of background information of the request in all cases, going beyond what is permitted under the standard.	Switzerland should ensure that the application of the exception to the right to see the file (including the request letter) is in line with the confidentiality requirements as provided under the standard.

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
	The notification in the federal gazette is published as a communication from the Federal Tax Administration (AFC), and it specifically states that it concerns administrative assistance. Peers have raised concerns regarding the publication of the full name of taxpayers in relation to administrative assistance. In addition, the publication of the notification for group requests in the federal gazette mentions the requesting authority, the date of the request letter as well as the legal basis.	Switzerland is recommended to ensure that it only discloses the minimum information necessary for the notification.
Rating: Partially Compliant		

C.3.1. Information received: disclosure, use and safeguards, and C.3.2. Confidentiality of other information

354. Each of the EOI agreements concluded by Switzerland provides for confidentiality in accordance with Article 26(2) of the OECD Model Tax Convention and these provisions prevail over the LAAF in case of conflicts (LAAF, Art. 1(2)).

355. In addition, Swiss domestic tax law contains provisions to ensure the confidentiality of information exchanged, namely a professional secrecy provision applicable to tax officers, including after cessation of employment, and provisions to protect both the public and private interests in maintaining confidentiality of tax information (federal Act on the Harmonisation of the Direct Taxes of Cantons and Communes, Art. 110). Violations of tax secrecy laws may be sanctioned using disciplinary measures, or through civil or criminal sanctions.

356. Switzerland has implemented a number of measures to ensure confidentiality in its EOI processes and practices. EOI documents are kept separate from all other tax files, with the SEI. Electronic documents and emails are stored in a separate electronic folder, to which only the personnel of the SEI has access. Switzerland's servers are secure and firewalled. Access to the premises of the SEI is secured by electronic badge and all employees dealing with EOI

are subject to security clearance before starting their employment. All documents received by the SEI are stamped or watermarked to indicate they are treaty protected. Information is sent by registered mail/package with a tracking number, and encrypted e-mail is used for other correspondence. If large amounts of documents are sent by post, they are encrypted on a USB stick.

357. The LAAF provides that the AFC must inform the information holders (banks, companies, etc.) of the content of the request insofar as this is necessary for providing the information (Art. 9 and 10). The SEI does not provide further information about the request at the stage of the collection of the information. In practice, the disclosure orders therefore only list the information which must be produced by the holder. The request letter is never provided to the information holder at this stage.

358. The 2016 Terms of Reference clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides for the authority supplying the information to authorise the use of information for purposes other than tax purposes and where tax information may be used for other purposes in accordance with their respective laws. Such an exception is in accordance with the amendment to Article 26 of the OECD Model Tax Convention. During the period under review, Switzerland received less than 10 requests to use the information for purposes other than tax purposes and granted the authorisation when the conditions were met. Switzerland never made such requests to its partners.

Notification procedure

359. Article 14 of the LAAF provides that every person concerned by a request must be notified, and that some information is disclosed in the notification (unless the exception under Article 21a of the LAAF applies, see para. 285). If the persons concerned have a registered address in Switzerland, they are notified by the SEI through registered mail. If the persons concerned and entitled to appeal are domiciled abroad, they can be notified through the information holder, via direct notification abroad if the requesting authority expressly consents to this procedure or through the federal gazette (see Section B.2 above).

360. The direct notification abroad includes the legal basis of the exchange (the LAAF), as well as the main elements of the request, i.e. the person(s) concerned, the information holder(s), the period, the tax or types of tax, the tax purpose and the circumstances, i.e. a summary of the key points of the request (e.g. there is an ongoing tax investigation, the person concerned has a bank account in Switzerland, the person concerned refuses to provide the information needed). The notification letter through the information holder

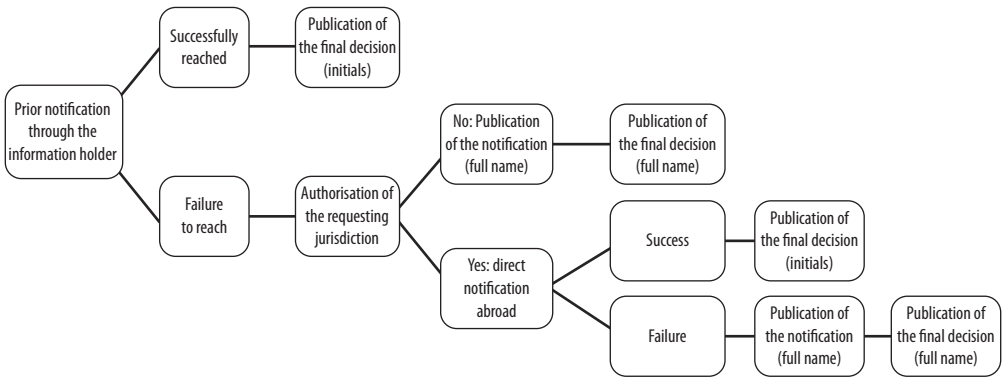
includes the legal basis (the applicable agreement and the LAAF), the information holder(s) which sends the notification letter and the period for which the information is sought.

Publication in the federal gazette

361. Article 14(5) of the LAAF provides for a notification of a foreign resident by the publication of a notice in the federal gazette when there is no intermediary designated or when the foreign resident could not be directly notified abroad (i.e. when all other means to contact the person concerned by the request have been unsuccessful).

362. In cases where the person(s) concerned do not consent to the transmission of the information (see ordinary procedure under B.2), the AFC must issue a final decision, and the person(s) concerned by the request have to be informed of this decision. If the person(s) are resident(s) abroad, the final decision of the competent authority to exchange the information also needs to be notified in the federal gazette (LAAF, Art. 17).

363. The information provided in the federal gazette concerns the identification of the person (name, date of birth if available and nationality) and asks them to contact the AFC and to appoint a representative in Switzerland within 10 days (LAAF, Art. 14(5)). Depending on whether the person could be reached or not, the full name or the initials of the persons are included in the publication as follows:



364. The publication of the full name of the person only occurs when the person could not be reached; otherwise, the practice since 2017 is to publish only the initials of the person. As for the notification of the final decision, the same identification information is included (name or initials, date of birth and nationality), and the publication in the gazette further includes the available appeal procedure. The notification in the gazette goes beyond than simply

disclosing minimal information (name, date of birth and nationality and the fact that the person(s) concerned must contact the ministry of finances). Indeed, the notification in the gazette is published as a communication from the AFC, and it specifically states that it concerns administrative assistance. Peers have raised concerns regarding the publication of the full name of taxpayers in relation to administrative assistance. In addition, the publication of the notification for group requests in the federal gazette mentions the requesting authority, the date of the request letter as well as the legal basis. To conclude, Switzerland is recommended to ensure that it only discloses the minimum information necessary for the notification.

Right to inspect the file

365. In order to allow the persons entitled to appeal (which includes the persons concerned) to properly exercise their right to be heard in respect of the AFC decision to exchange the information, the LAAF provides for a right to inspect the file (Art. 15(1)). Both the person under investigation in the requesting jurisdiction and persons with a right to appeal (including the information holder in certain cases) have this right. In practice, the file includes the request letter and all correspondences with the requesting jurisdiction, the disclosure orders to information holders, and information collected.

366. The 2016 Report noted that the standard requires that the request letter should be considered confidential as a general principle and does not envisage any exceptions apart from public court proceedings or judicial decisions (OECD Model Tax Convention, Art. 26(2)). The report finally concluded that the scope of the persons who can access the file and ultimately see the request letter is not in accordance with the standard as the standard only provides for disclosure to the persons concerned by the request, their proxy or to witnesses in the context of a judicial process. The impact is that requesting partners willing that their request letters be kept confidential have to request the application of the exception providing reasons (see para. 368) and there is a possibility that this application is rejected. This is not is accordance with the standard as the request letter should be kept confidential at all times. Switzerland was therefore recommended to ensure that it does not exceed the confidentiality requirements as provided for under the standard.

367. The commentary of Article 26(2) of the OECD Model Tax Convention foresees that if court proceedings or the like under the domestic laws of the requested State necessitate the disclosure of the competent authority letter itself, the competent authority of the requested State may disclose such a letter unless the requesting State otherwise specifies. In Switzerland, the right to see the file, including the request letter and all correspondence, takes place at the stage of the administrative procedure, before the stage when a judicial proceeding can be launched. Peers mentioned that all clarifications

of grounds of foreseeable relevance, as well as the justification given to apply an exception to prior notification (if not granted), and all correspondences are included in the file which can be inspected. This is not in accordance with the requirement that competent authority letters, including the letter requesting information, should be kept confidential. As noted in the 2016 Report, the fact that the request letter can be disclosed at the administrative stage is not in line with the standard. The legal framework has not been modified since then, and the jurisprudence confirmed the right to access the file, including the request letter in several instances. The recommendation therefore remains.

Exception to the right to see the file

368. Article 15(2) of the LAAF provides that the right to see the file can be dispensed with where the requesting party provides reasonable justification (*motifs vraisemblables*) to maintain the confidentiality of the process or with respect to certain contents of the file. Article 27 of the Administrative Procedure Act (*Loi fédérale du 20 décembre 1968 sur la procédure administrative* – PA) provides for exceptions to the right to see the file where there are essential public or private interests.

369. The Federal Tribunal[64] clarified the scope of the confidentiality principle in 2015 and distinguishes between two situations:

- In certain cases, the applicable agreement expressly refers to the internal procedural rules. In these cases, the domestic provisions (Art. 27 of the PA in conjunction with Art. 15 of the LAAF) are applicable and not the conventional rule of confidentiality. In practice, in those cases, the requesting jurisdiction needs to invoke essential public or private interests in keeping certain parts of the request secret. If the conditions are met, the access to the request letter can be restricted.
- When the applicable agreement does not contain a specific provision referring to the internal procedural rules, the confidentiality principle, as defined in Article 26(2) of the OECD Model Tax Convention, is applicable. Therefore, it is not necessary to fulfil the conditions of Article 27 of the PA (essential public or private interests) to apply the exception to the right to see the file, and in particular access to the request letter. However, "essential elements" of the requests, including parts of the background on why the request has been made in the first place, have to be provided, but certain elements can be excluded.

64. Decision of the Federal Tribunal of 27 August 2015, 2C_112/2015.

370. As a result of the Federal Tribunal's decision in 2015, the process in respect of the inspection is as follows:

i. Once a request is received by the Swiss authorities, Switzerland collects the necessary information.

ii. Switzerland then notifies the person concerned by the request and any persons with a right to appeal unless an exception to prior notification is applicable.

iii. Once notified, the aforementioned persons may decide to exercise their right to see the file.

iv. If a person decides to exercise his/her right to see the file, the requesting partner can apply for an exception to the right to see the file so that the request is kept confidential and the application must set grounds for secrecy. This exception can also be requested at the time the EOI request is sent.

371. The 2016 Report noted that an exception to the right to see the file exists, and that the requesting partner has to provide grounds for secrecy, and justify why the request is to be kept confidential. The exception was recently introduced and was not assessed in practice.

372. Switzerland reported that since the 2016 Report, it systematically informs the requesting jurisdiction that a request to see the file has been received and provides the opportunity to the jurisdiction to restrict the inspection of the file. The elements of the request which are provided in the inspected file have to be agreed beforehand between Switzerland and the requesting jurisdiction. However, it is never possible to keep the entire file confidential, as the person concerned or entitled to appeal has to understand why the administrative assistance is granted. Therefore, in practice, the exception to the right to see the file is rather a restriction on the extent of the file inspection, which is not in line with the standard.

373. Peers confirmed that Switzerland always notified them and provided them with the opportunity to keep certain aspects of the file confidential. However, several peers highlighted that they did not manage to obtain the exception to the right of persons concerned by the request to inspect the file. Switzerland explained that some background information, the tax purpose, the questions asked and the link between the two have to appear in the elements disclosed. In order to apply the right to be heard, the person concerned has to understand why Switzerland decided to grant the administrative assistance and to what extent.

374. During the period under review, access to the file was requested in 280 cases, and peers requested to apply an exception to the right to see the file in 9 cases. Switzerland reported that peers agreed to allow for complete

access to the file in five cases, withdrew their request in two cases and that in the two remaining cases, the SEI restricted the access to the file and provided the taxpayer with a general summary prepared in agreement with the requesting jurisdiction. The application in practice of the exception to the right to see the file (including the request letter) is rather a restriction on the extent of the file inspection by the person concerned or entitled to appeal, and allows the disclosure of essential elements of the request in all cases, going beyond what is permitted under the standard. Switzerland is recommended to ensure that the application of the exception to the right to see the file is in line with the standard.

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

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

375. The 2016 Report noted that Switzerland refused EOI based on the concept of good faith in all cases where it considered that the requests were solely based on stolen data. In such cases, its policy took no account of the circumstances in which the requesting jurisdiction came into possession of the information. This approach had a significant impact on EOI in practice and Element C.4 was therefore rated Partially Compliant.

376. The Federal Tribunal issued a ruling in 2018, which provides that Switzerland can process requests based on stolen data, as long as the requesting authority has not actively sought out stolen data outside an administrative assistance procedure, including buying data from a private person. Assistance is not provided if the requesting authority had previously given assurances that it would not use the stolen data. This new interpretation of the concept of good faith allowed Switzerland to provide information for requests made during the last round period under review, when partners indicated that requests were still relevant. The new interpretation of the concept of good faith is in line with the standard. Switzerland is recommended to monitor its proper implementation in practice.

377. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	Following a ruling from the Federal Tribunal in July 2018 on the interpretation of the good faith principle, Switzerland modified its practice and now provides information to requests based on stolen data, provided that the requesting jurisdiction had not committed not to use the data or did not actively seek it out, outside an administrative assistance procedure.	Switzerland is recommended to monitor the application of the concept of good faith to ensure it is in line with the standard.
Rating Largely Compliant		

C.4.1. Exceptions to provide information

378. Switzerland's DTCs include a provision equivalent to the exception in Article 26(3) of the OECD Model Tax Convention, which allows a State to decline to exchange certain types of information, including those which would disclose any trade, business, industrial, commercial or professional secret or trade process.

379. In addition, communications between a client and an attorney or other admitted legal representative are only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. To the extent that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule (see para. 251).

380. During the period under review, Switzerland did not experience practical difficulties in responding to EOI requests due to the application of rights and safeguards.

Principle of good faith under the LAAF

381. The 2016 Report (para. 436) noted that Switzerland's approach regarding the application of the concept of good faith had a significant impact on EOI in practice. The exception based on good faith came up exclusively in relation to the issue of data stolen from Swiss banks, where Switzerland refused to provide assistance on that ground.

382. Article 7 of the LAAF includes the elements to be taken into account in the preliminary review of a request and provides the basis for declining a request. It indicates that a request will not be considered if (i) it constitutes a fishing expedition; (ii) it requests information not covered by the administrative assistance provision of the applicable agreement; or (iii) it violates the principle of good faith, particularly if it is based on information obtained through a criminal offence under Swiss law.

383. The 2016 Report noted that the explanatory report gives interpretation to the concept of good faith and information obtained through a criminal offence. It particularly takes as an example banking data obtained illegally and then given or sold to another jurisdiction. The practice of Switzerland was to deny a request because it violates the principle of good faith in cases the request was "solely based on stolen data". This meant that where independent elements were demonstrated, information could be exchanged. For example, Switzerland replied to requests based on stolen data for which investigations had been carried out independently from what the Swiss government considered as data obtained in breach of Swiss law.

384. Switzerland's practice changed in 2018. Based on an interpretation of the concept of good faith applied to international law, the Federal Tribunal upheld the right of the AFC to exchange information, although the request was solely based on stolen data (Federal Tribunal judgment 2C_648/2017 of 17 July 2018). This ruling specifically provides that requests based on stolen data may be sent to Switzerland, as long as the requesting State has not given assurances that it would not use the stolen data (so there is no violation of good faith on its side) and that it has not actively sought out stolen data outside an administrative assistance procedure.[65]

385. Following this decision, Switzerland modified its practice and amended its EOI Manual as follows: "In the future, it will indeed be possible to deal with requests from a foreign State which has received such data as part of the ordinary administrative assistance procedure or which has obtained them from sources accessible to the public. On the other hand, administrative assistance remains excluded when a State has actively sought out stolen data outside an administrative assistance procedure."

386. Switzerland commenced to supply information in response to requests based on stolen data provided that the data has not been acquired contrary to good faith, and contacted its partners to indicate that information that was not provided in the past could now be provided. One peer indicated that following the ruling, Switzerland asked them to indicate which requests were still valid, and started to provide information based on those cases.

65. Judgement TF 2C_648/2017 of 17 July 2018, Recital no. 3.

Switzerland reported that it has processed more than 330 such cases since the end of the review period.

387. To conclude, the new interpretation of good faith in Switzerland following the ruling issued in July 2018 is in line with the standard. As the implementation of this recently changed practice could not be fully assessed, Switzerland is recommended to monitor the application of the concept of good faith to ensure it is in line with the standard.

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

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

388. The 2016 Report concluded that Switzerland provided the requested information in a timely manner to a large extent and that processes and resources were generally in place to ensure effective exchange of information. However, it identified room for improvement, mainly in relation to the establishment and monitoring of deadlines and the workload of the EOI Unit. Consequently, Switzerland was recommended to improve its resources and streamline its processes for handling EOI requests to ensure that all requests are responded in a timely manner.

389. Since then, the process of handling EOI requests has improved with a new computer system to handle the large amount of requests received and volume of data processed, through continuous monitoring of deadlines and co-ordination within the restructured EOI Unit to ensure smooth workflow. The number of employees working in the SEI (EOI Unit) has increased from 43 to 87.5 full time equivalent.

390. Changes implemented since the 2016 Report brought improvement in the areas subject of the recommendation. Nevertheless, challenges remain mainly in terms of the timeliness of responses which is impacted by various factors, including the complexity of the EOI process in Switzerland as described mainly under Elements B.2 and C.3. Although it is acknowledged that the provision of the requested information may take a long time in some cases due to valid reasons (such as complexity of the requested information), the timing of responses does not fully correspond with effective exchange of information. Switzerland is therefore recommended to continue in its efforts to ensure timeliness in the provision of the requested information.

391. During the period under review, Switzerland suspended the processing of 12 bulk requests received from 12 jurisdictions while waiting for a Federal Tribunal decision. This practice has been used to avoid unnecessary appeals and subsequent costs, but it has generated so far delays of more than

two years in processing these bulk requests in most of the cases. In addition, Switzerland required additional commitments regarding the confidentiality requirements from a partner. Switzerland is recommended to monitor its practice to ensure that EOI is not subject to restrictive conditions.

392. The table of recommendations and rating is as follows:

Legal and Regulatory Framework		
This element involves issues of practice. Accordingly, no determination has been made.		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice	Although it is acknowledged that the provision of the requested information may take a long time in some cases due to valid reasons, the timing of responses does not fully correspond with effective exchange of information.	Switzerland should continue its efforts to ensure timeliness in the provision of requested information.
	During the period under review, Switzerland put on hold 12 bulk requests received from 12 jurisdictions, while awaiting a Federal Tribunal decision on one of them. Although this practice has been used to avoid unnecessary appeals and subsequent costs, it has generated so far delays of more than two years in processing these bulk requests in the majority of cases. In addition, following the publication of the judgement, Switzerland required additional commitments regarding the confidentiality requirements from a partner before transmitting the requested information.	Switzerland is recommended to monitor its practice to ensure that EOI is not subject to unduly restrictive conditions.
Rating Largely Compliant		

C.5.1. Timeliness of responses to requests for information

393. Over the period under review (1 July 2015-30 June 2018), Switzerland received 3 252 individual requests for information. The information sought in these requests related to (i) legal ownership information (128 cases), (ii) beneficial ownership information (100 cases), (iii) accounting information

(318 cases), and (iv) banking information (1 748 cases). Some requests received do not fall within these categories, such as residence or cross border cases where other types of information are requested. In addition, Switzerland received eight group requests and 16 bulk requests with a total of 99 893 cases. Switzerland's most significant EOI partners for the period under review are France, Germany, India, Italy, the Netherlands and Spain. The following table relates to the requests received during the period under review and gives an overview of response times of Switzerland in providing a final response to these requests, together with a summary of other relevant factors impacting the effectiveness of Switzerland's exchange of information practice during the reviewed period.

		1 July 2015-30 June 2016		1 July 2016-30 June 2017		1 July 2017-30 June 2018		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E+F]	960	30	1 129	35	1 163	36	3 252	100
Full response: ≤ 90 days		223	23	165	15	299	26	687	21
≤ 180 days (cumulative)		460	48	387	34	655	56	1 502	46
≤ 1 year (cumulative)	[A]	617	64	774	69	893	77	2 284	70
> 1 year	[B]	218	23	227	20	70	6	515	16
Declined for valid reasons	[F]	91	9	49	4	79	7	219	7
Outstanding cases after 90 days		737	77	964	85	864	74	2 565	79
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days)		737	100	964	100	864	100	2 565	100
Requests withdrawn by requesting jurisdiction	[C]	27	3	28	2	38	3	93	3
Failure to obtain and provide information requested	[D]	1	0	0	0	1	0	2	0
Requests still pending at date of review	[E]	6	1	51	5	81	7	138	4

Notes: a. Switzerland counts one request per person involved by the request. A supplementary request, i.e. a further request for information on the same matter, is counted separately if the original request has been treated and closed. If the additional request is received while the original request is still being treated, the additional request does not count as a new request and is put in the same file as the original request.

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. The table does not take into account group and bulk requests received as they are not comparable to normal requests. Switzerland received a total of 99 893 cases in group and bulk requests.

394. Switzerland explained that requests that are not fully dealt with within 90 or 180 days do not typically relate to a particular type of information. However, these are usually complex requests, involving several companies and/or holders of information, with substantial documentation to be provided. Switzerland indicated that since the last peer review period, the complexity of requests has increased (e.g. with several information holders, and information not always available in the form required with the holders), which makes the collection of the requested information and their review, as well as the preparation of the replies to the requesting jurisdictions, more demanding.

395. The increase of response time during the second year of the review is the consequence of a bilateral disagreement over confidentiality between Switzerland and one of its main partners, which led the Swiss authorities to suspend the processing of requests coming from this partner between March and July 2017. Deducting the suspension of exchanges with Switzerland's main partner, the response time of requests received during the second year of the review period would be as follows: 398 requests replied within 90 days (35%), 640 requests replied within 180 days (57%), 839 requests replied within a year (74%) and 162 requests replied in more than a year (14%). Consequently, the response time of the total of requests received during the period under review would be: 920 requests replied within 90 days (28%), 1 755 requests replied within 180 days (54%), 2 349 requests replied within a year (72%) and 450 requests replied in more than a year (13%).

396. Peers pointed to some other elements creating delays in practice: the notification procedure and subsequent possibility of appeal (see Section B.2 above).

397. Regarding the requests still pending at the date of the review, Switzerland indicated that court proceedings are in progress for the six cases of the first year of the review period (1 July 2015-30 June 2016), i.e. more than three years after having received the requests. Out of the 51 cases of the second year (1 July 2016-30 June 2017), 20 court proceedings are in progress. 24 cases are related to two requests received from two different jurisdictions (computed according to the number of taxpayers involved). These 24 cases are still pending due to a need for clarification and discussions that took place between Switzerland and the requesting jurisdictions regarding some modalities of the two requests. The majority of the 81 individual requests which are pending for the last year (1 July 2017-30 June 2018) were received close to the end of the peer review period and are still being processed. Among them, court proceedings are in progress for 60 cases, and there are 7 cases for which Switzerland is waiting for clarifications from the requesting jurisdictions.

398. In the period under review, Switzerland sought clarification in approximately 13% of the EOI requests received, which is an increase compared to the previous review period (5%). Switzerland explained that in the majority

of the cases, clarifications are sought because there is a doubt about the information which is requested or to confirm some facts described (e.g. the period for which information is requested). Clarifications have also been requested in some cases when the information holder was not identifiable. Switzerland indicated that the objective of the requests for clarification is always to ensure a comprehensive exchange of information as well as a proper and efficient conduct of the procedure, and in particular to avoid court proceedings. The possible delays generated by these requests for clarification have mainly depended on the time needed for the requesting jurisdiction to provide the clarifications requested. Peers have noted that clarifications were requested in a number of cases, sometimes leading to a restrictive interpretation of the foreseeable relevance principle (see C.1 above).

399. Switzerland highlighted that 70% of the 216 requests declined during the peer review period related to situations not covered by the temporal scope of the applicable agreement. In 20% of the declined requests, the information holder was not identifiable or was not in Switzerland. The rest of the cases related to various issues, such as stolen data cases (see paras. 381-387), deceased persons (see paras. 282-284) or lack of foreseeable relevance. This is consistent with inputs received from peers.

400. Switzerland put in place several measures to improve the processing of EOI requests. The procedure is well defined and backed by the use of templates. The competent authority has also set up a decision-making committee and a new organisation structure for the EOI Unit in 2017 with additional team leaders. Switzerland has consistently hired new staff to address the increasing number of requests received. New deadlines have also been set up when Switzerland asks the requesting jurisdiction for direct notification or access to the file and communication with partners and requests for clarification are made electronically where possible.

401. Although it is acknowledged that the provision of the requested information may take a long time due to valid reasons such as complexity of the case, the timing of responses does not fully correspond with effective exchange of information and should be further improved to ensure that the requested information is provided in a timely manner in all cases. Switzerland should therefore continue its efforts to ensure timeliness in the provision of the requested information.

Group and bulk requests

402. For bulk and group requests, the gathering of information takes longer since they concern a huge volume of information (and can involve several thousands of taxpayers). Switzerland acknowledged that it is cautious when dealing with a group or bulk request, particularly in order to avoid negative decisions from courts (i.e. negative precedents for subsequent

requests). With the aim of avoiding unnecessary appeals, the SEI usually first processes only a few pilot cases. Once the court rulings are received, the remaining cases are processed, usually without court proceedings. Peers have noted that significant delays are experienced due to administrative processing following an appeal procedure, extending the time taken by Swiss authorities to respond to those bulk requests.

403. During the review period, the SEI received eight group requests among which one has been withdrawn. The seven remaining requests amount to 5 289 cases, of which five have been answered. Two significant group requests from a partner are still pending. These are based on a common understanding agreed in March 2017. The requests were made in May 2017. Further to some contacts and clarifications, the two requests were supplemented with further details in November 2018. The SEI started processing the requests in April 2019 after the partner agreed to withdraw its request for an exception to notification (see para. 291). For the first group request, the first data was delivered in October 2019 and there are only two cases pending before the TAF. The second request is still being processed but some cases have already been transmitted. As for the five group requests which have been answered, 90% of the information has been provided within a year.

404. Switzerland has received 16 bulk requests amounting to 94 604 cases. Switzerland indicated that the requesting jurisdictions were provided with 37 769 answers (representing 40% of the total cases received in bulk requests) related to accounts inactivated before the requested period or having been exchanged on the basis of another agreement as well as based on the person's concerned consent. Information was sent in 180 days in 10% of the cases, within one year in 21% of the cases (cumulative) and in more than one year for the remaining 19%. Finally, 12 bulk requests were on hold and Switzerland started processing them following the release of a positive court ruling by the Federal Tribunal on 4 December 2019. This matter is discussed in more details under Section C.5.3 below.

Status updates and communication with partners

405. Since 2015, Switzerland sends status updates systematically to all partner jurisdictions every six weeks (i.e. the second update approximately coincides with the expiry of 90 days). The status updates include an update of the situation of all pending requests of the jurisdiction and indicate at which step of the procedure each case is. If the information is to be transmitted in the near future, the update usually indicates the forecasted date of transmission. This is consistent with the feedback received from peers. If required, Switzerland provides a more detailed feedback. However, until the final decision is issued, Switzerland cannot communicate material information on the case, as it would be contrary to the procedure.

406. Inputs received from peers unanimously agree that it is very easy to contact the Swiss authority and that the SEI is always very co-operative in trying to find a solution with its partners. Communication with peers happens through different means depending on the need, and regular meetings are held with foreign competent authorities to discuss pending cases, clarify procedures or prepare upcoming cases. Switzerland promotes regular contacts (especially over the phone) with the requesting competent authorities and encourages the use of drafts (see below).

C.5.2. Organisational processes and resources

Organisation of the competent authority

407. Switzerland's competent authority in respect of EOI is the AFC or the Commissioner of the AFC. The competence for matters related to exchange information on request has been delegated to the EOI Unit (SEI) of the AFC. Contact information for the competent authority is available in the Global Forum's secure Competent Authority database, as well as on the AFC's public website.

408. The EOI Unit comprises 87.5 full time equivalent working in EOI on request (an increase of more than 40 people since the last peer review). The Unit is staffed with 51 lawyers and 25 technical specialists, who are headed by 13 team heads, 3 section heads and the head of division, supported by 6 administrative assistants.

409. A reorganisation of the SEI took place on 1 January 2017. The aim was to take into account the increasing numbers of both requests received and employees hired, and to further enhance the quality of the processing of the cases. The employees of the SEI are now split in three sections. The first section is mainly responsible for group and bulk requests, as well as more straightforward requests (e.g. banking or cross border cases). The second and third sections focus mainly on more complex requests (such as transfer pricing cases) and on cases involving court proceedings. During the reorganisation, a special focus was placed on the training of the new employees of the SEI.

Resources and training

410. Since the last review, considering the increasing workload, the SEI has been continuously recruiting and training new employees. Every employee receives detailed information on EOI and the Swiss EOI procedure in writing. Further, regular updates are provided by email. Confidentiality obligations are included in each employee's work contract, bringing particular attention to it. Internal workshops and trainings are organised twice a year to provide

employees with further knowledge on specific topics and to bring them up to date on current issues relevant to their work. In addition, general SEI staff and team meetings take place on a regular basis to update everyone on current issues relevant to their work, visits, special requests or court decisions.

411. Case handlers in the SEI have the possibility to enhance their knowledge on tax through different workshops in Switzerland and abroad organised by state agencies (e.g. from the AFC), universities, as well as private tax and finance entities. The AFC also offers courses on tax law and language courses. Furthermore, several employees of the SEI took part in seminars organised by the Global Forum.

412. On the technical side, the AFC has developed its computer system, put in place during the summer 2016, to handle voluminous data concerning all (outgoing and incoming) requests. This new system allowed automating some steps of the procedure for group and bulk requests, and ensures a swifter process of the cases, in particular when the person concerned does not take part in the proceeding. In this internal document management system, each case is provided with a reference number and a specific file where all the case documentation is stored. It allows the SEI to keep track of deadlines and to draw a dated history of the procedural steps. It also provides for a precise description and quick research of general case information, such as the subject of the request, other persons and entities involved and the case specificities. All cases are easily identifiable and the team head can duly monitor the progress of each case. At the end of each month, the progress of the cases is evaluated.

Incoming requests

413. All international requests for information are received, handled and processed by the SEI. The SEI is responsible for communication with the other competent authorities and for the administration of the information gathering process. Once received, the request is first stamped and registered in the system, one file being created for each person concerned by the request. In addition, a paper file is created and a reference number is attributed to each file. This reference number allows the tracking of the progress of each request (by case reference number, requesting partner, name, positive or negative response to requests).

414. The requesting jurisdiction usually sends its request to the SEI by encrypted email or by registered post. The SEI secretariat confirms receipt of the request on the day it is received with the Swiss reference number and requires the password to open the file when needed. The request is then assigned to an employee of the SEI by the section or the team head. Both the employee and the team head verify that the request is complete and that there is a valid legal basis. This analysis is based on a checklist and is completed within approximately one day.

415. When a request is unclear or incomplete, the handler of the case first provides the team head with his/her analysis of the request. The case is then discussed internally (the head of section or, exceptionally, the head of division may be involved). If the SEI comes to the conclusion that further information is needed in order to proceed with the case in an efficient manner, the SEI seeks clarification or additional information from the requesting jurisdiction, by encrypted email or letter, defining exactly what is lacking or which further information should be provided.

416. Switzerland provides its partners with a template request. For complex requests, Switzerland offers to its partners to work on draft requests to avoid misunderstandings and facilitate the processing of the requests once received. The aim is to ensure that the explanation provided meets the foreseeable relevance criteria and is not defeated in case of appeal in front of the courts. This practice ultimately resulted in standardised requests that are provided by Switzerland to its peers. Peers are globally satisfied by this practice.

417. If the request is complete, the person in charge of the request starts the collection process. The SEI uses model letters for all steps of the process. The notification is sent once the information has been collected, either by the AFC, the information holder or through a publication in the federal gazette (see Section B.2 above).

418. In Switzerland, tax information can be held by the AFC or by cantonal or communal tax authorities. If the information is held by the AFC, the SEI requests via encrypted email the AFC division in possession of the information to provide it. This is generally done within a few days. If the information is available with another tax or government authority, the SEI requires the information within 14 days. Depending on the cases, this deadline may be reduced.

419. If the information is in the possession or control of the person that is the subject of the enquiry, or a third party such as a service provider (e.g. a trustee or a bank), a disclosure order is issued with a deadline of 10 days to provide the requested information. The disclosure order contains the minimum information necessary to obtain the information requested (name of the taxpayer(s), information needed, tax years covered) as well as the applicable EOI agreement. In practice, the SEI collects information from several information holders at the same time. In the majority of cases, the deadline is respected. There is a possibility to extend the deadline of a further ten days (with no possibility of a further extension) in certain circumstances (such as a large volume of requested information).

420. Once the requested information is received by the SEI, the handler of the case reviews it to ensure that it is complete and accurate, and then prepares the reply for the partner jurisdiction. This step generally takes five

days. The replies contain clear response to each question asked as well as the relevant documentation. If the requested information is not yet complete or accurate, further information holders are contacted or the information holder already designated can be contacted again. The completed file is then reviewed by the team head.

421. Depending on the status of the notification, the process to send the information differs (see Section B.2 above). If a consent was received, the information is sent as soon as possible to the requesting jurisdiction (simplified procedure). If no reply was received or the consent was denied, the AFC issues a final decision. In total, the transmission of the information takes generally 45 days.

Outgoing requests

422. Within the AFC, the SEI has the overall responsibility for exchange of information on request, which includes both incoming and outgoing EOI requests.

423. Switzerland reports that the process for outgoing requests is usually initiated when assistance from a foreign jurisdiction is needed to a tax administration in Switzerland that is conducting an investigation. In such a case, the tax administration contacts the SEI (by encrypted email or registered mail) and asks it to provide the information needed via the foreign jurisdiction.

424. The procedure of preparing an outgoing request within the SEI is the same as described for incoming requests for administrative assistance. In practice, this means that the tax administration concerned provides the SEI with the necessary information. The completeness and accuracy of the information is reviewed by the case handler, who also prepares the request. If a clarification is needed, the SEI gets back to the tax administration and seeks further information (mainly by encrypted email). The person in charge of outgoing requests uses a template and fulfils all necessary elements. The template is based on the one provided by the OECD and therefore contains the same fields to be completed. Outgoing requests are reviewed by the head of the team and usually signed by the head of the SEI. This procedure aims at ensuring that outgoing requests are complete and meet the relevant criteria. The general means of transmission of such requests to the foreign jurisdiction is the encrypted email or registered mail.

425. During the period under review, Switzerland sent 65 requests. It did not receive any request for clarification. For several linked and complex requests sent to one partner in 2015, several phone calls were held to facilitate the collection of the information.

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

426. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions.

427. One peer questioned Switzerland's policy for group and bulk requests to proceed only with one pilot case to avoid negative decisions from the courts. The peer further explained that Switzerland announced the suspension of the administrative assistance procedure with regard to its requests, as they appear to be "very similar" to a bulk request submitted by another jurisdiction, which had been rejected by the Federal Administrative Tribunal, against which the Swiss Tax Administration had appealed to the Federal Tribunal. The peer fears that time might be lost, and consequent revenues with the expiry of the statute of limitation, due to the fact that the requests are not processed in parallel by the Swiss competent authority. It should be noted that bulk requests received by 12 different jurisdictions were put on hold, pending the Federal Tribunal decision. The Swiss authorities explained that moving on with similar cases would have not been efficient as these cases would also have been subject to appeals, and would have delayed the exchange process even further. The Federal Tribunal released its conclusions on 26 July 2019. Following the publication of the ruling on 4 December 2019, the remaining bulk requests are being processed. The process still encompasses the ordinary right of appeal of any concerned party (see para. 270-275).

428. Another peer mentioned that in February 2020, the bulk request which was the subject of the ruling of Federal Tribunal released on 26 July 2019 and published on 4 December 2019 remains unanswered. The peer mentioned that following the publication of the ruling, the Swiss competent authority is requesting commitments from its partner on the confidentiality requirements before sending the required information.

429. Bulk requests that were put on hold in July 2018 were received as from 2016. The decision of the Swiss authorities generated delays of more than two years to process those bulk requests, which impacted the capacity of its partners to use the information once received. While this practice has been used to avoid unnecessary appeals and subsequent costs, it unduly prevented effective EOI. In addition, following the publication of the judgement, Switzerland required additional commitments from a partner before transmitting the requested information. Switzerland is recommended to monitor its practice to ensure that EOI is not subject to unduly restrictive conditions.

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**: With respect to the register of beneficial owners maintained by Swiss companies, Switzerland should consider aligning the identification process of beneficial owners of Swiss companies provided for in the Code of Obligations with the definition and approach laid down in the standard (para. 74). It should also monitor the enforcement of the newly introduced supervision and enforcement measures to ensure that shareholders provide companies with beneficial ownership information and companies maintain up to date the register of beneficial owners (para. 76 and 80) and it should introduce effective incentives for the shareholders in the shareholding chain to provide the information needed to identify the ultimate controlling person (para. 77).
- **Element A.1.1**: Switzerland should ensure sufficient written guidance is provided to the AML obliged professionals, in particular banks, regarding the concept of control by means other than (direct or indirect) ownership (para. 90).
- **Element A.1.1:** Switzerland should ensure that legal and beneficial ownership information is always available where the agent or *treuhänder* is not subject to the Swiss AML legislation (para. 137).
- **Element A.1.4**: Switzerland should ensure that non-professionals trustees and trustees not acting as financial intermediaries that do not have a bank account nor engage an AML obliged professional maintain information that identifies the beneficial owners of the trusts (para. 173).

- **Elements A.2.1 and A.2.2:** Switzerland should monitor whether Swiss non-professional trustees of foreign trusts that do not carry on commercial activities keep accounting records that fully meet international standard and that those records are kept for at least five years in all cases (para. 203).
- **Element A.3.1**: Switzerland should continue to monitor the cancellation of the remaining bearer savings books (para. 212).
- **Element C.1.1:** Switzerland should monitor implementation of new administrative practices and ensure that it exchanges copies of relevant documents with its partners (para. 319).
- **Element C.2**: Switzerland should continue to conclude EOI agreements with any new relevant partner who would so require (para. 347).

Annex 2: List of Switzerland's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Albania	DTC	12 November 1999	12 December 2000
		Protocol to DTC	9 September 2015	1 December 2016
2	Algeria	DTC	3 June 2006	9 February 2009
3	Andorra	TIEA	17 March 2014	27 July 2015
4	Anguilla[66]	DTC		26 August 1963
5	Antigua and Barbuda[67]	DTC		26 August 1963
6	Argentina	DTC	23 April 1997	
		DTC (new)	20 March 2014	27 November 2015
7	Armenia	DTC	12 June 2006	7 November 2007
8	Australia	DTC	28 February 1980	13 February 1981
		DTC (new)	30 July 2013	14 October 2014
9	Austria	DTC	30 January 1974	4 December 1974
		Protocol to DTC	3 September 2009	1 March 2011
10	Azerbaijan	DTC	23 February 2006	13 July 2007
11	Bahrain	DTC	23 November 2019	
12	Bangladesh	DTC	10 December 2007	13 December 2009
13	Barbados[68]	DTC		26 August 1963

66. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 20/26 August 1963.
67. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 20/26 August 1963.
68. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 20/26 August 1963.

	EOI partner	Type of agreement	Signature	Entry into force
14	Belarus	DTC	26 April 1999	28 December 1999
15	Belgium	DTC	28 August 1978	26 September 1980
		Protocol to DTC	10 April 2014	19 July 2017
16	Belize[69]	DTC		30 September 1954
		TIEA	10 August 2015	13 October 2016
17	Brazil	TIEA	23 November 2015	4 January 2019
		DTC	3 May 2018	
18	British Virgin Islands[70]	DTC		30 September 1954
19	Bulgaria	DTC	28 October 1991	10 November 1993
		DTC (new)	19 September 2012	18 October 2013
20	Canada	DTC	5 May 1997	21 April 1998
		Protocol to DTC	22 October 2010	16 December 2011
21	Chile	DTC	2 April 2008	5 May 2010
22	China (People's Republic of)	DTC	6 July 1990	27 September 1991
		DTC (new)	25 September 2013	15 November 2014
23	Colombia	DTC	26 October 2007	11 September 2011
24	Côte d'Ivoire	DTC	23 November 1987	30 December 1990
25	Croatia	DTC	12 March 1999	20 December 1999
26	Cyprus[71]	DTC	27 July 2014	15 October 2015

69. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 20/26 August 1963.

70. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of20/26 August 1963. Extension of the Multilateral Convention by the United Kingdom (receipt by Depositary on 13 November 2013 and entry into force on 1 March 2014).

71. 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.

	EOI partner	Type of agreement	Signature	Entry into force
27	Czech Republic	DTC	4 December 1995	23 October 1996
		Protocol to DTC	11 September 2012	11 October 2013
28	Denmark	DTC	23 November 1973	15 October 1974
		Protocol to DTC	21 August 2009	22 November 2010
29	Dominica[72]	DTC		26 August 1963
30	Ecuador	DTC	28 November 1994	22 December 1995
		Protocol to DTC	26 July 2017	17 April 2019
31	Egypt	DTC	20 May 1987	14 July 1988
32	Estonia	DTC	11 June 2002	12 July 2004
		Protocol to DTC	25 August 2014	16 October 2015
33	Faroe Islands[73]	DTC		20 March 1978
		Protocol to DTC		29 November 2010
34	Finland	DTC	16 December 1991	26 December 1993
		Protocol to DTC	22 September 2009	19 December 2010
35	France	DTC	9 September 1966	26 July 1967
		Protocol to DTC	27 August 2009	4 November 2010
36	Gambia[74]	DTC		26 August 1963
37	Georgia	DTC	15 June 2010	5 August 2011
38	Germany	DTC	11 August 1971	29 December 1972
		Protocol to DTC	27 October 2010	21 December 2011
39	Ghana	DTC	23 July 2008	30 December 2009
		Protocol to DTC	22 May 2014	29 October 2018
40	Greece	DTC	16 June 1983	21 February 1985
		Protocol to DTC	4 November 2010	27 December 2011
41	Greenland	TIEA	7 March 2014	22 July 2015

72. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 20/26 August 1963.
73. Extension of the DTC of 23 November 1973 and the Protocol of 21 August 2009 by Denmark (exchange of letter of 20 March 1978 and 29 November 2011).
74. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 20/26 August 1963.

	EOI partner	Type of agreement	Signature	Entry into force
42	Grenada[75]	DTC		26 August 1963
		TIEA	19 May 2015	21 December 2016
43	Guernsey	TIEA	11 September 2013	3 November 2014
44	Hong Kong, China	DTC	4 October 2010	15 October 2012
45	Hungary	DTC	9 April 1981	27 June 1982
		DTC (new)	12 September 2013	9 November 2014
46	Iceland	DTC	3 June 1988	20 June 1989
		DTC (new)	10 July 2014	6 November 2015
47	India	DTC	2 November 1994	29 December 1994
		Protocol to DTC	30 August 2010	7 October 2011
48	Indonesia	DTC	29 August 1988	24 October 1989
49	Iran	DTC	27 October 2002	31 December 2003
		Protocol to DTC	3 June 2019	
50	Ireland	DTC	8 November 1966	16 February 1968
		Protocol to DTC	26 January 2012	14 November 2013
51	Isle of Man	TIEA	28 August 2013	14 October 2014
52	Israel	DTC	2 July 2003	22 December 2003
53	Italy	DTC	9 March 1976	27 March 1979
		Protocol to DTC	23 February 2015	13 July 2016
54	Jamaica	DTC	6 December 1994	27 December 1995
55	Japan	DTC	19 January 1971	26 December 1971
		Protocol to DTC	21 May 2010	30 December 2011
56	Jersey	TIEA	16 September 2013	14 October 2014
57	Kazakhstan	DTC	21 October 1999	24 November 2000
		Protocol to DTC	3 September 2010	26 February 2014
58	Korea	DTC	12 February 1980	22 April 1981
		Protocol to DTC	28 December 2010	25 July 2012
59	Kosovo	DTC	26 May 2017	10 October 2018
60	Kuwait	DTC	16 February 1999	31 May 2000
		Protocol to DTC	6 November 2019	

75. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 20/26 August 1963.

	EOI partner	Type of agreement	Signature	Entry into force
61	Kyrgyzstan	DTC	26 January 2001	5 June 2002
62	Latvia	DTC	31 January 2002	18 December 2002
		Protocol to DTC	2 November 2016	3 September 2018
63	Liechtenstein	DTC	22 June 1995	17 December 1996
		DTC (new)	10 July 2015	22 December 2016
64	Lithuania	DTC	27 May 2002	18 December 2002
65	Luxembourg	DTC	21 January 1993	19 February 1994
		Protocol to DTC	25 August 2009	19 November 2010
66	Malaysia	DTC	30 December 1974	8 January 1976
67	Malawi[76]	DTC		21 September 1961
68	Malta	DTC	25 February 2011	6 July 2012
69	Mexico	DTC	3 August 1993	8 September 1994
		Protocol to DTC	18 September 2009	23 December 2010
70	Moldova	DTC	13 January 1999	22 August 2000
71	Mongolia	DTC	20 September 1999	25 June 2002
72	Montenegro	DTC	13 April 2005	10 July 2007
73	Montserrat[77]	DTC		30 September 1954
74	Morocco	DTC	31 March 1993	27 July 1995
75	Netherlands	DTC	12 November 1951	9 January 1952
		DTC (new)	26 February 2010	9 November 2011
76	New Zealand	DTC	6 June 1980	21 November 1981
77	Norway	DTC	7 September 1987	2 May 1989
		Protocol to DTC	31 August 2009	22 December 2010
		Protocol to DTC	4 September 2015	6 December 2016
78	North Macedonia	DTC	14 April 2000	27 December 2000
79	Oman	DTC	22 May 2015	13 October 2016

76. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 7 April/3 May 1965.

77. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 20/26 August 1963. Extension of the Multilateral Convention by United Kingdom (receipt by Depositary on 25 June 2013 and entry into force on 1 October 2013).

	EOI partner	Type of agreement	Signature	Entry into force
80	Pakistan	DTC	19 July 2005	24 November 2008
		DTC (new)	21 March 2017	29 November 2018
81	Peru	DTC	21 September 2012	10 March 2014
82	Philippines	DTC	24 June 1998	30 April 2001
83	Poland	DTC	2 September 1991	25 September 1992
		Protocol to DTC	20 April 2010	17 October 2011
84	Portugal	DTC	26 September 1974	17 December 1975
		Protocol to DTC	25 June 2012	21 October 2013
85	Qatar	DTC	24 September 2009	15 December 2010
86	Romania	DTC	25 October 1993	27 December 1994
		Protocol to DTC	28 February 2011	16 July 2012
87	Russia	DTC	15 November 1995	18 April 1997
		Protocol to DTC	24 September 2011	9 November 2012
88	Saint Kitts and Nevis[78]	DTC		26 August 1963
89	Saint Lucia[79]	DTC		26 August 1963
90	Saint Vincent and the Grenadines[80]	DTC		26 August 1963
91	San Marino	TIEA	16 May 2014	20 July 2015
92	Saudi Arabia	DTC	18 February 2018	
93	Serbia	DTC	13 April 2005	5 May 2006
94	Seychelles	TIEA	26 May 2014	10 August 2015
95	Singapore	DTC	25 November 1975	17 December 1976
		DTC (new)	24 February 2011	1 August 2012
96	Slovak Republic	DTC	14 February 1997	23 December 1997
		Protocol to DTC	8 February 2011	8 August 2012
97	Slovenia	DTC	12 June 1996	1 December 1997
		Protocol to DTC	7 September 2012	14 October 2013

78. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 20/26 August 1963.
79. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 20/26 August 1963.
80. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 20/26 August 1963.

	EOI partner	Type of agreement	Signature	Entry into force
98	South Africa	DTC	8 May 2007	27 January 2009
99	Spain	DTC	26 April 1966	2 February 1967
		Protocol to DTC	27 July 2011	24 August 2013
100	Sri Lanka	DTC	11 January 1983	14 September 1984
101	Sweden	DTC	7 May 1965	6 June 1966
		Protocol to DTC	28 February 2011	5 August 2012
102	Chinese Taipei	DTC (private convention)	8 October 2007	13 December 2011
103	Tajikistan	DTC	23 June 2010	26 October 2011
104	Thailand	DTC	12 February 1996	19 December 1996
105	Trinidad and Tobago	DTC	1 February 1973	20 March 1974
106	Tunisia	DTC	10 February 1994	28 April 1995
107	Turkey	DTC	18 June 2010	8 February 2012
108	Turkmenistan	DTC	8 October 2012	11 December 2013
109	Ukraine	DTC	30 October 2000	22 February 2002
		Protocol to DTC	24 January 2019	
110	United Arab Emirates	DTC	6 October 2011	21 October 2012
111	United Kingdom	DTC	30 September 1954	23 February 1955
		DTC (new)	8 December 1977	7 October 1978
		Protocol to DTC	7 September 2009	15 December 2010
112	United States	DTC	2 October 1996	19 December 1997
		Protocol to DTC	23 September 2009	20 September 2019
113	Uruguay	DTC	18 October 2010	28 December 2011
114	Uzbekistan	DTC	3 April 2002	15 August 2003
		Protocol to DTC	1 July 2014	14 October 2015
115	Venezuela	DTC	20 December 1996	23 December 1997
116	Viet Nam	DTC	6 May 1996	12 October 1997
117	Zambia[81]	DTC		21 September 1961
		DTC	29 August 2017	7 June 2019

81. Extension of the DTC between United Kingdom and Switzerland by exchange of notes of 14 October 1965.

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).[82] 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 Switzerland on 15 October 2013 and entered into force on 1 January 2017 in Switzerland. Switzerland can exchange information with all other Parties to the Multilateral Convention.

As of 20 December 2019, the Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Aruba (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), Brunei Darussalam, 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, Dominica, Dominican Republic, Ecuador, El Salvador, 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) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China)

82. 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.

(extension by China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Morocco, Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Peru, Poland, Portugal, Romania, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, 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), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Armenia, Benin, Bosnia and Herzegovina, Burkina Faso, Cabo Verde, Gabon, Kenya, Liberia, Mauritania, Mongolia, Montenegro, North Macedonia (entry into force on 1 January 2020), Oman, Paraguay, Philippines, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

Agreement between the European Union and the Swiss Confederation

Switzerland ratified the Amending Protocol of 21 May 2015 to the Agreement between the European Union and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments, which entered into force on 1 January 2017.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 20 December 2019, Switzerland's EOIR practice in respect of EOI requests made and received during the three year period from 1 July 2015 to 30 June 2018, Switzerland's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Switzerland's authorities during the on-site visit that took place from 13-17 May 2019 in Bern.

List of laws, regulations and other materials received

Tax laws and regulations

Loi fédérale sur l'assistance administrative internationale en matière fiscale (LAAF)

Loi fédérale sur l'impôt fédéral direct (LIFD)

Loi fédérale régissant la taxe sur la valeur ajoutée (LTVA)

Loi fédérale sur les droits de timbre (LT)

Loi fédérale sur l'impôt anticipé (LIA)

Circulaire 30 de la Conférence Suisse des impôts

Loi fédérale sur l'harmonisation des impôts directs des cantons et des communes (LHID)

Laws, regulations and other materials relating to Financial Markets

Loi sur l'Autorité fédérale de surveillance des marchés financiers (LFINMA)

Loi fédérale sur les placements collectifs de capitaux (LPCC)

Loi fédérale sur les banques et les caisses d'épargne (LB)

Ordonnance du 17 mai 1972 sur les banques et les caisses d'épargne (OB)

Convention relative à l'obligation de diligence des banques (CDB16)

Loi fédérale concernant la lutte contre le blanchiment d'argent et le financement du terrorisme dans le secteur financier (LBA)

Pratique de l'Autorité de contrôle en matière de lutte contre le blanchiment d'argent relative à l'art. 2, al. 3, LBA

Règlement LBA de l'OAR VQF

Ordonnance de l'Autorité fédérale de surveillance des marchés financiers du 6 novembre 2008 sur la prévention du blanchiment d'argent et du financement du terrorisme dans les autres secteurs financiers (OBA-FINMA 3)

Ordonnance du 18 novembre 2009 sur l'activité d'intermédiaire financier exercée à titre professionnel (OIF)

Commercial laws, regulations and other materials

Constitution fédérale de la Confédération Suisse (Cst.)

Loi fédérale complétant le Code civil Suisse (CO)

Ordonnance sur le registre du commerce (ORC)

Ordonnance concernant la tenue et la conservation des livres de comptes

Code civil Suisse (CC)

Loi fédérale sur le droit international privé

Loi fédérale sur les titres intermédiés (LTI)

Code pénal Suisse (CP)

Convention relative à loi applicable au trust et à sa reconnaissance

Loi fédérale du 23 juin 2000 sur la libre circulation des avocats (LLCA)

Authorities interviewed during on-site visit

Representatives from the Ministry of Finance including:

- Representatives of the State Secretariat for International Financial Matters, SIF, Federal Department of Finance FDF, including:
  - Representatives of the tax treaty negotiation team, SIF
  - Representatives of the Anti-Money Laundering team, SIF

Representatives from the Tax administrations:

- Federal tax administration (Administration fédérale des contributions – AFC), including :
  - Exchange of Information Unit (*Service d'échange d'informations en matière fiscale* – SEI)
- Cantonal tax administration (Geneva and Zurich)

Representatives of the Swiss Banking Association (*Association suisse des banquiers*)

Representatives of the Financial Market Supervisory Authority (FINMA)

Representatives of the federal Supervisory Authority for Foundations (*Autorité fédérale de surveillance des fondations*), Federal Department of Home Affairs FDHA

Representatives of the federal Commercial Registry (*Office federal du register de commerce*), Département fédéral de justice et police DFJP

Representatives of the following Self-Regulating Organisations (OAR):

- OAR for the VQF – Financial Services Standards Association
- OAR for the Swiss Federation of Lawyers and the Swiss Federation of Notaries (*Organisme d'autoréglementation de la Fédération Suisse des Avocats et de la Fédération Suisse des Notaires*)
- OAR for the Wealth Managers *(Association Suisse des Gérants de Fortune)*

Current and previous reviews

This report is the fourth review of Switzerland conducted by the Global Forum. Switzerland previously underwent a review of its legal and regulatory framework (Phase 1) originally in 2011 and a supplementary review (Phase 1)

in 2014 and the implementation of that framework in practice (Phase 2) in 2016. The 2016 Report containing the conclusions of the first review was first published in July 2016 (reflecting the legal and regulatory framework in place as of May 2016).

The Phase 1 and Phase 2 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.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Mr Juan Pablo Barzola, Argentina, Mr Torsten Fensby, Denmark and Ms Caroline Malcolm, Global Forum Secretariat	n.a.	March 2011	June 2011
Round 1 Supplementary to Phase 1	Ms Shauna Pittman, Canada, Mr Harald Piérard, Belgium and Ms Mélanie Robert, Global Forum Secretariat	n.a.	December 2014	March 2015
Round 1 Phase 2	Ms Laura de Lisle, Guernsey, Ms Wendy Roelandt, Belgium, and Ms Mélanie Robert, Global Forum Secretariat	1 July 2012 to 30 June 2015	May 2016	July 2016
Round 2	Ms Elisabeth Meurling, Sweden, Ms Yamini Rangasamy, Mauritius and Ms Mathilde Sabouret and Mr Hakim Hamadi, Global Forum Secretariat	1 July 2015 to 30 June 2018	20 December 2019	March 2020

Annex 4: Switzerland's response to the review report[83]

Switzerland expresses its thanks and gratitude to the assessment team and to the Secretariat for the preparation of this high-quality report, for their availability and for the constructive collaboration throughout this review.

Switzerland also thanks the members of the Peer Review Group and its other EOI partners for their useful and appreciated contributions to this assessment.

Switzerland takes due note of the findings of the report and considers that the overall rating fairly reflects the progress it has made in the area of exchange of information since the previous round of reviews. It also reflects the proper functioning of the legal framework and its implementation in practice with regards to exchange of information on request in Switzerland.

Switzerland also takes good note of the recommendations made and will examine them carefully, with the aim of further improving its framework and practice in the area of exchange of information.

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

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request SWITZERLAND 2020 (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 160 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 2020 Peer Review Report on the Exchange of Information on Request of Switzerland.

PAPERBACK ISBN 978-92-64-90390-6
PDF ISBN 978-92-64-31409-2

9 789264 903906