

GLOBAL FORUM ON
**TRANSPARENCY AND EXCHANGE OF
INFORMATION FOR TAX PURPOSES**



Peer Review Report on the Exchange of Information
on Request

TUNISIA

2020 (Second Round)

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

PEER REVIEW REPORT ON THE EXCHANGE
OF INFORMATION ON REQUEST

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 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

AML	Anti-money laundering
AML/CFT law	Law on anti-money laundering and countering the financing of terrorism
BCT	<i>Banque Centrale de Tunisie</i> , Central Bank of Tunisia
CDD	Customer due diligence
CDPF	<i>Code des droits et procédures fiscaux</i> , Code on Tax Rights and Procedures
CIRPPIS	<i>Code de l'impôt sur le revenu des personnes physiques et de l'impôt sur les sociétés</i> , Tax Code on Revenue of Natural Persons and Companies
CMF	<i>Conseil du Marché Financier</i> , Financial Market Council
Competent authority	The competent authority(ies) appoint(s) the person(s) or the public authority(ies) appointed by Tunisia as competent for the purposes of exchanging information in conformity with an EOI agreement (e.g. a DTC, a multi-lateral convention, a TIEA, an EU Directive or any other regional tax information exchange arrangements).
CSC	<i>Code des Sociétés Commerciales</i> , Commercial Companies Code
CTAF	<i>Commission Tunisienne des Analyses Financières</i> , Tunisian Financial Analysis Commission
DGI	<i>Direction Générale des Impôts</i> , Directorate General of Taxation
DGSB	<i>Direction Générale de la Supervision bancaire</i> , General Directorate of Banking Supervision
DTC	Double Tax Convention

EOI	Exchange of information
EOIR	Exchange of information on request
FATF	Financial Action Task Force
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IBRD	International Bank for Reconstruction and Development
IFAC	International Federation of Accountants
IFPC	<i>Institut de formation de la profession comptable</i> , Institute for the accountants training
IMF	International Monetary Fund
INNORPI	<i>Institut National de la Normalisation et de la Propriété Industrielle</i> , National Standards and Industrial Property Institute
MENAFATF	Middle East and North Africa Financial Action Task Force
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
Multilateral Convention (MAAC)	Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
OECT	Tunisian certified accountants Body
RNE	National Register of Enterprises
2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2010.
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.
TIEA	Tax Information Exchange Agreement

Executive summary

1. This report analyses the implementation by Tunisia of the international standard of transparency and exchange of information on request (EOIR) for tax purposes as part of the second review cycle by the Global Forum. It reviews both the legal implementation of the standard as well as its operation in practice, in particular in respect of EOI requests handled during the period from 1 April 2015 to 31 March 2018. This second round report concludes that Tunisia is rated overall “**Largely Compliant**” with the standard.

2. Tunisia joined the Global Forum in 2012, and in 2016 the Global Forum conducted an assessment of its legal framework without subsequently analysing its implementation in practice, as the first review cycle was coming to an end. This report is, therefore, the first to record Tunisia’s practice in terms of transparency and exchange of information on request.

Comparison between the outcomes of the 2016 and 2020 reviews

Element	2016 Report	2020 Report	
	Determinations	Determinations	Ratings
A.1 Availability of identity and ownership information	In place	In place	Largely Compliant
A.2 Availability of accounting records	In place	In place	Compliant
A.3 Availability of banking information	In place	In place	Largely Compliant
B.1 Access to information	Needs improvement	In place	Largely Compliant
B.2 Rights and safeguards	In place	In place	Compliant
C.1 EOIR mechanisms	In place	In place	Compliant
C.2 Network of EOIR mechanisms	In place	In place	Compliant
C.3 Confidentiality	In place	In place	Compliant
C.4 Rights and safeguards	Needs improvement	In place	Compliant
C.5 Quality and timeliness of requests and responses	N/A	N/A	Largely Compliant
Overall	N/A	N/A	Largely Compliant

Progress since the previous review

3. The 2016 Report on Tunisia assessed the country's legal framework and recommended that legal professional privilege should be reviewed in the light of uncertainties concerning its scope within the framework of the tax conventions entered into by the Tunisian authorities. Although a draft law was tabled, it has not been approved and has been the subject of action before the constitutional court. Therefore, this recommendation has not been actively implemented. However, the elements analysed as part of the current review show that the impact of this legal deficiency is only minor in practice.

4. Tunisia has taken new measures to enhance the transparency of legal entities in its territory, in particular as regards the availability of beneficial ownership information.

Key recommendations

5. In April 2019, Tunisia set up a national register of beneficial owners for all Tunisian companies and legal arrangements. The anti-money laundering law is also a source of information on beneficial ownership. It was amended in 2019 in order to align all the definitions of beneficial owner existing in the various areas of Tunisian legislation with international standards, including when diligence obligations are performed by professionals who are not from financial institutions. As these new measures have only recently been introduced, Tunisia is recommended to oversee the practical implementation of the new legal framework for beneficial ownership requirements.

6. As regards access to information, the law permitting the competent authority to obtain banking information called for new practices, which did not exist prior to 2017, to be introduced, including the appointment of a single point of contact in each bank, responsible for dealing with international requests for information. This point of contact facilitates communication among the various parties involved. However, this new practice is only recent, and Tunisia needs to satisfy itself that it is being effectively implemented in order to improve response times. There were no changes regarding the concept of professional secrecy and its broad scope, which raised queries as to its interpretation in the 2016 Report. This recommendation still stands even if the analysis of the practice of exchange of information by Tunisia showed that in practice the impact of this deficiency was minor.

7. Between 1 April 2015 and 31 March 2018, Tunisia received 194 requests for information and sent 110 requests. The time taken by Tunisia to respond to partners' requests for information is long, and the status updates sent to requesting jurisdictions on how requests are progressing were erratic during the evaluation period. Tunisia is therefore recommended to ensure that the

necessary resources are put in place so that responses are sent in a timely fashion, and that requesting jurisdictions are kept informed of how their requests are progressing in the event that the competent authority is unable to respond to them within 90 days.

Overall rating

8. Since the 2016 Report, Tunisia has continued to implement the standards on transparency and information exchange for tax purposes in a generally satisfactory manner. The overall assigned rating for Tunisia in relation to the EOIR standard is Largely Compliant.

9. Elements A.1, A.3, B.1 and C.5 are rated “Largely Compliant”. The other elements are rated “Compliant”.

10. This report was approved at the Global Forum Peer Review Group meeting in February 2020 and was adopted by the Global Forum on 27 March 2020. A follow-up report on the steps undertaken by Tunisia to address the recommendations should be provided to the Peer Review Group no later than 30 June 2021, in accordance with the procedure set out in the 2016 Methodology.

Summary of determinations, ratings and recommendations

Conclusions	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 (<i>ToR A.1</i>)		
The legal framework is in place		
Largely Compliant	The Tunisian authorities have recently changed their legal framework in order to ensure that information on beneficial ownership of companies, partnerships and trusts is available, with the introduction of a national register of beneficial owners in April 2019, supplemented by a new anti-money laundering regime. It has not been possible to test the practical implementation of this new legal framework sufficiently.	Tunisia is recommended to oversee the practical implementation of its recently introduced legal framework on beneficial ownership and to ensure that accurate information on the beneficial owners is maintained by the companies, partnerships and trusts.

Conclusions	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The legal framework is in place		
Compliant		
Banking information and beneficial ownership information should be available for all account holders (<i>ToR A.3</i>)		
The legal framework is in place		
Largely Compliant	The circular implementing the definition of beneficial ownership of a bank account in accordance with the international standard is recent.	Tunisia is recommended to ensure that the banks comply with their obligations to identify and verify beneficial ownership.
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) (<i>ToR B.1</i>)		
The legal framework is in place	The scope of legal professional privilege is not defined in Tunisian law and could go beyond the scope allowed under the international standard on the exchange of information on request.	Tunisia should clarify the scope of legal professional privilege in order to ensure that it is in conformity with the international standard on the exchange of information on request.
Largely Compliant	Delays in obtaining banking information have been noted during the evaluation period. In order to make good this deficiency, a single point of contact has been appointed in each bank. This procedure has recently been introduced.	Tunisia is recommended to ensure that banking information is available from banks within the time limits laid down in law.
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 (<i>ToR B.2</i>)		
The legal framework is in place		
Compliant		

Conclusions	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)		
The legal framework is in place		
Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
The legal framework is in place		
Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
The legal framework is in place		
Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
The legal framework is in place		
Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner (<i>ToR C.5</i>)		
Legal framework	This element involves issues of practice. Accordingly, no determination on the legal framework has been made.	
Largely Compliant	The Information Exchange Unit had not been granted sufficient resources to be able to respond effectively to requests for information falling to it in addition to the other tasks for which it was responsible.	Tunisia is recommended to ensure that the resources required to deal with the incoming requests remain adequate so that the requests can be processed in a timely manner.
	Tunisia had provided status updates for only 22 of the 170 requests that had not been processed within 90 days.	Tunisia is recommended to ensure that status updates for requests that cannot be dealt within 90 days are provided to the requesting jurisdictions in all cases.

Overview of Tunisia

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

Legal system

12. The Constitution of Tunisia currently in force was adopted on 27 January 2014 and promulgated on 10 February 2014. It provides for a parliamentary system under which the President of the Republic is vested with certain powers. Legislative power is exercised by the elected Assembly of Representatives of the People. Executive power is exercised jointly by the President of the Republic and the Head of Government. Additionally, in Tunisia, the judiciary guarantees the administration of justice, the supremacy of the Constitution, the sovereignty of the law and the protection of rights and freedoms.

13. Tunisian law is based on civil law and includes a system of rules, a significant number of them being codified. The Tunisian legal system is based on a single national body of law. International agreements are approved and ratified by Parliament and take precedence over laws but rank below the Constitution.

14. Tunisia acceded to the Global Forum in 2012. Since 1 February 2014, it has been a party to the Multilateral Convention, which it signed on 16 July 2012.

Tax system

15. The Tunisian tax system comprises national taxation and local taxation, with personal income tax, corporation tax, registration and stamp duties, value-added tax, customs duties, consumption tax, local tax and various charges on certain products, means of transport and insurances.

16. Corporation tax is applied to taxable profits, which are determined based on the accounting profit and making add-backs and deductions to comply with tax law or in line with provisions conferring tax concessions.

17. The income of companies registered in Tunisia is taxed on a territorial basis in respect of income on their business activities. The rates vary between 10%, 20%, 25% and 35%, according to the nature of the activity. Non-resident companies are liable to tax in Tunisia on proceeds, profits and income related to assets they hold, the activities in which they engage and the gainful operations they perform in Tunisia. A company is deemed to be non-resident when its share capital is held by Tunisian non-residents or foreigners where at least 66% of the company's capital was derived from convertible foreign exchange.

18. Personal income tax is levied on the income and profits of natural persons and the share of company profits that corresponds to their rights in tax-transparent companies operating in Tunisia. This category of tax-transparent companies includes all the partnerships. Income of foreign origin is also subject to tax in Tunisia, if it has not previously been taxed in the country of origin. A natural person who is resident for tax purposes in Tunisia may be taxed on income of Tunisian and foreign origin. Natural persons who are not resident for tax purposes in Tunisia may be taxed only on their income of Tunisian origin. A natural person is resident for tax purposes in Tunisia when his/her permanent residence is in Tunisia or where the duration of his residence in Tunisia whether continuous or intermittent, exceeds 183 days in a calendar year (Article 2 of the CIRPPIS). The tax scale for income tax is graduated up to a maximum rate of 35%. Dividends distributed by companies established in Tunisia, by mutual funds that invest in stocks as provided for in the Code on Collective Investment Schemes, and by business angels, are subject to a withholding tax on the payment agent at a rate of 10% where such dividends are distributed to resident or non-resident natural or non-resident legal persons. The rate rises to 25% where the dividends are distributed to legal persons resident or established in states or territories with preferential tax regimes, or a state or territory where the tax is 50% lower than the tax payable in Tunisia for the same activity (Articles 14 and 52 of the CIRPPIS).

Financial services sector

19. The Tunisian financial system consists of the banking sector, which includes the Tunisian Central Bank (BCT), 23 credit institutions having the status of resident banks, two business banks, seven off-shore banks, six offices representing foreign banks, two factoring companies and eight leasing companies. It is also comprised of the General Insurance Committee (CGA), 22 resident insurance businesses and six offshore insurance companies. The

financial system also includes the Financial Market Council, Tunis Stock Exchange, the Tunisian Central Securities Depository and the Settlement System, investment companies and Collective Investment Schemes, the Office National des Postes (Tunisian Post Office) and the Autorité de Contrôle des Microfinances (Microfinance Control Authority).

20. The financial sector is monitored by the BCT, the Financial Market Council (CMF) and the General Insurance Committee.

21. Tunisian regulations on foreign exchange controls categorise seven offshore banks as non-resident institutions based on their activities with non-residents. Therefore, they are not required to repatriate their external assets to Tunisia. They are free to conduct foreign-exchange operations with non-residents and may grant non-residents any type of assistance, including in the form of shares or company capital, as well as any type of guarantees. However, Tunisia is not an important international financial centre.

22. The CMF has responsibility for protecting savings invested in stocks and financial products that are tradable on a stock exchange and any investment floated on public stock markets. It also has responsibility for organising and ensuring the smooth operation of the stock markets and the market for financial products that are tradable on a stock exchange.

23. At the end of July 2019, total banking assets were TND (Tunisian dinars) 132.5 billion (EUR 41.3 billion).

FATF evaluation

24. In Tunisia, the legal framework to combat money laundering and counter financing of terrorism (AML/CFT) is based on Organic Law No. 2015-26 of 7 August 2015 on Countering Terrorism and Suppressing Money-Laundering (AML/CFT Law), as amended by Organic Law No. 2019-9 of 23 January 2019. The AML/CFT Law describes the financial activities subject to the anti-money laundering and financing of terrorism mechanism and sets out the basic principles of the prevention, detection and enforcement of compliance with obligations in that regard: client identification, introduction of a detection and audit system for money-laundering and the financing of terrorism, declaration of unusual or suspicious transactions, role of financial sector monitors in enforcing compliance with obligations and disciplinary and criminal sanctions in the event of failure to comply.

25. All the financial activities described in the FATF recommendations are performed by financial institutions covered by the basic financial regulation principles.

26. Tunisia is a member of MENAFATF, which adopted the report of the second review cycle for Tunisia in 2016. The third follow-up report was adopted in December 2018 and concluded that recommendations 24 on Transparency and beneficial ownership of legal persons and 25 on Transparency and beneficial ownership of legal arrangements were both rated as partially compliant. This report is available for consultation at the following link: <https://www.fatf-gafi.org/media/fatf/content/images/MENAFATF-3rd-FUR-Tunisia.pdf>. The fourth follow-up report was adopted at the most recent MENAFATF Plenary Meeting in November 2019. The report found an improvement in the rating for recommendations 24 and 25, which are now rated “Largely Compliant”.

Recent developments

27. In accordance with a 2019 reform, the BCT, the banks and the Office National des Postes are required to declare to the tax authorities the account numbers of the accounts open with them as at 31 December 2019 and the identity of the account holders by 15 February 2020, according to a model provided by the authorities. As from 1 January 2020, any accounts opened or closed must be declared within 15 days of the end of the calendar quarter during which the opening or closing of the account is recorded as taking place. The transmission of this information will substantially help to improve response times to requests for banking information.

28. Tunisia plans to make amendments to four conventions in order to bring them into line with the standard laid down in the inclusive framework under the BEPS project.

Part A: Availability of information

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

A.1. Legal and beneficial ownership and identity information

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

30. The 2016 Report concluded that the information on the ownership of all forms of Tunisian companies was available to the commercial register either at registration or during information updates, or from registers of partners or shareholders, or from the tax authorities, whether through its internal database or its access to external databases, or from the companies themselves. Persons associated with trusts are still identifiable through the anti-money-laundering law.

31. Since the 2016 Report, no change to the legal framework has been made that calls the report's conclusions on the evaluated aspects into question.

32. In practice, the tax authorities' supervision is effective. This supervision has counterbalanced the oversight that was, until recently, conducted by the commercial register, which required systematic recourse to the courts in order to apply sanctions. Oversight by the commercial register should now improve because of the reforms introduced in terms of human resources and procedural means, including automated processing of data received from companies.

33. In respect of beneficial ownership information, one of the new aspects of the standard that was enhanced at the end of 2016, the Tunisian legal framework includes several provisions on the identification of beneficial owners of companies and legal arrangements. These are to be found in commercial law and in legislation to counter money laundering and the financing of terrorism (AML/CFT law).

34. Pursuant to the provisions of the Commercial Code, all commercial companies that have their registered office or a place of establishment in

Tunisia are required to obtain and keep accurate, up-to-date information on their beneficial owners, and to provide that information to the commercial register at registration and after any change affecting this information on the beneficial owners. Moreover, the National Register of Enterprises set up in 2019 contains a register of beneficial owners of the entities and legal arrangements. However, these are very recently introduced requirements that have not yet been fully implemented. Tunisia is therefore recommended to oversee the practical implementation of its new legal framework on beneficial owners.

35. Information on beneficial owners is also available under AML/CFT from banks and other financial institutions, and from certain AML/CFT-obliged non-financial establishments and professionals. However, the requirements to obtain and retain information on beneficial owners entered into force only recently for non-financial establishments and professionals, and it has not been possible to evaluate how effective their implementation has been.

36. Ownership information must also be retained in the National Register of Enterprises on companies that have ceased to exist for 10 years after closure. Additionally, there were thorough controls by the commercial register and the tax authorities in order to monitor that companies that are no longer active are deregistered.

37. Tunisia received 81 requests for information on legal and beneficial ownership, and responded to all of them. Peer input did not raise any particular problems concerning the quality of the information provided by Tunisia, and peers were satisfied with the quality of the information produced.

38. The table of determination and rating is as follows:

Legal framework		
Determination: In place		
Practical implementation of the standard		
	Underlying factors	Recommendation
Deficiencies identified	The Tunisian authorities have recently changed their legal framework in order to ensure that information on beneficial ownership of companies, partnerships and trusts is available, with the introduction of a national register of beneficial owners in April 2019, supplemented by a new anti-money laundering regime. It has not been possible to test the practical implementation of this new legal framework sufficiently.	Tunisia is recommended to oversee the practical implementation of its recently introduced legal framework on beneficial owners and to ensure that accurate information on the beneficial owners is maintained by the companies, partnerships and trusts.
Rating: Largely Compliant		

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

39. There are four categories of stock companies all with legal personality in Tunisia:

- *Société anonyme* (public limited company – SA): an SA is a company limited by shares. It must have at least seven shareholders whose liability is limited to the amount of their contributions. The minimum share capital is TND 5 000 (EUR 2 273) and TND 50 000 where the SA makes a public offering of securities. On 9 December 2019, 6 306 SAs were registered with the DGI.
- *Société en commandite par actions* (partnership limited by shares – SCA): an SCA is also a company limited by shares. Unlike the SA, it is established by contract between two or more general partners and a number of silent partners. The silent partners act as shareholders and, as such, their liability is limited to the amount of their contributions. There must be at least three silent partners. The general partners have the status of traders and have unlimited joint and several liability for the company's debts. On 9 December 2019, ten SCAs were registered with the commercial register.
- *Société à responsabilité limitée* (limited liability company – SARL): an SARL is established between two or more persons (subject to a maximum of 50 partners) whose liability is limited to the amount of their contributions. The minimum share capital is TND 1 000 (EUR 454). Where an SARL has only one partner, it is described as a *société unipersonnelle à responsabilité limitée* (single member limited liability company – SUARL). On 9 December 2019, 122 244 SARLs and 33 408 SUARLs were registered with the DGI.

40. Of these companies, those where the share capital is held by Tunisian non-residents or foreigners where at least 66% of the company's capital was derived from convertible foreign exchange are deemed to be non-resident companies. On 9 December 2019, 8 955 companies were registered with the DGI as non-resident. The Tunisian authorities confirmed that the non-resident companies are subject to the same commercial and fiscal rules of incorporation and disclosure based on the legal form under which they incorporate (SARL or SA for instance). The non-resident companies are created in Tunisia and then differ from the foreign companies, which have been created abroad but are resident in Tunisia for tax purposes.

41. Stock companies are required to comply with the commercial law procedures in respect of their entry on the commercial register and disclosure formalities throughout the life of the company. Additionally, stock companies are subject to tax requirements in respect of their registration with the

tax authorities from the time of their registration, and to annual tax return procedures.

42. The procedure for setting up a company is governed essentially by the Commercial Companies Code (CSC) which lays down requirements in respect of the availability of information on identity and legal ownership. Those requirements are supplemented by the General Tax Code. Information on beneficial ownership is made available pursuant to the requirements of AML/CFT legislation. The following table summarises the legal requirements on the availability of legal and beneficial ownership information for the various types of stock companies in Tunisia.

Legislation regulating legal ownership information of stock companies

Type	Commercial law	Tax law	AML law
SA	All	All	Some
SCA	All	All	Some
SARL/SUARL	All	All	Some
Foreign companies resident in Tunisia for tax purposes	All	All	Some

Information on legal ownership

Information available from the commercial register

43. Information on legal ownership is available from the commercial register in the form of the registration information and the various instruments in the life of the company that make it necessary to update that information.

44. The commercial register centralises information on companies and makes it publicly available. Each court of first instance holds a local commercial register registering by declaration (Article 2 of Law 1995-44 on the Commercial Register):

- companies with legal personality whose registered office is in Tunisia
- foreign commercial companies and representative offices that have an establishment or branch in Tunisia, as well as non-resident companies
- other legal persons for which registration is required by law (economic interest groupings, civil law companies, mutual agricultural services companies)
- natural persons qualifying as traders under Article 2 of the Commercial Code and natural persons working on behalf of a de facto company and qualifying as traders, and foreigners conducting commercial activities in Tunisia.

45. The information required for company registration includes the following:
- the family name, given name, personal residence, nationality, place and date of birth of partners with unlimited joint and several liability for the company's debts
 - the family name, given name, date and place of birth, personal residence, nationality of partners and third parties with the power to direct, manage or commit the company, indicating for each such person for a commercial company whether that person acts alone or with others in order to commit the company in relation to third parties
 - the members of the board, the general management, the supervisory board or the auditors
 - a record of the shares or stocks stating *inter alia* information on the securities being registered, the identity of their respective owners, the transactions that they have undergone and the charges and duties on the securities in question, subject to the provisions of Law No. 2000-35 of 21 March 2000 on paperless securities
 - a bank certificate for a bank account that was open as at the date of establishment of the company.

46. All stock companies must publish their articles of association via an entry in the Official Journal of the Tunisian Republic (*Journal Officiel de la République Tunisienne* – JORT).

47. This information is to be updated (Article 54 of Law No. 1995-44 of 2 May 1995) and maintained in the Commercial Register for an indefinite period, with the exception of the registers of shareholders in SAs. Under Article 63 of the CSC, any person may arrange for the Registrar to issue copies or extracts of the entries and instruments filed at annex.

Information available from the National Register of Enterprises

48. On 5 February 2019, Law 52-2018 established a unique National Register of Enterprises. The Register centralises information about businesses in a single national database.

49. The National Register of Enterprises includes the following sub-registers:

- a centralised commercial register recording traders, trading companies, legal arrangements, publicly owned companies, non-administrative public institutions, legal persons required to register under specific laws and provisions, and artisans

- a professional register of professional undertakings and independent professionals performing remunerated activities (lawyers, notaries, accountants)
- the register of beneficial owners (see below)

50. Law No. 52-2018 has now replaced law No. 1995-44. Although the information contained in the commercial register of the RNE is similar than the one contained in the previous commercial register (see paragraph 45), persons registered in line with Law No. 1995-44 of 2 May 1995 as amended and supplemented by Law No. 2010-15 of 14 April 2010 are required to update their information and data in conformity with the legal and procedural conditions that apply to the National Register of Enterprises within six months calculated from the establishment of the Centre for the National Register of Enterprises as part of its duties (14 March 2019). This should ensure that the information set out in the National Register is up to date. Since 11 September 2019, more than 70 000 late filing penalties have been applied for failure to update the information in relation with the companies registered before the creation of the RNE. The proportion of these entities which have already updated the information on their beneficial owners in the National Register is 38%. In addition, pursuant to Article 26 of the law on the RNE, the registered person must notify any change requiring an update in the National Register of Enterprises within one month from the date of the change. Information available from the tax authorities

51. Article 45 of the CIRPPIS states that corporation tax applies to SAs, SCAs and SARLs and resident foreign companies. Any legal person subject to corporation tax is required, prior to commencement of its activities, to file with the tax control office for its place of taxation a statement of existence (Article 56 CIRPPIS) accompanied by a copy of the articles of association for legal persons. The legal ownership information provided in the annex of the statement of existence is the same as the one provided to the RNE at the time of registration of the entity. The competent tax control office issues those persons with a tax identification card that they are required to display in the place where they pursue their activities.

52. Article 57 of the CIRPPIS provides that all documents establishing an amendment to articles of association, increases or reductions in capital and the accountants' and auditors' reports are to be filed with the tax office or relevant centre, within 30 days of the date of the deliberations of the general meeting. Moreover, shareholders in a Tunisian company are required to complete an annual tax return for their income or profits or a capital gains tax return (Article 59 of the CIRPPIS) if they are liable to tax in Tunisia. The distributions made by the company to its non-resident shareholders are subject to a withholding tax, and the identity of the beneficiary of the distribution is disclosed by the company through a tax return submitted to the tax administration.

53. Lastly, Article 58 of the CIRPPIS requires taxpayers who cease trading to declare this to the tax authorities within 15 days of cessation.

54. The Decree of 5 March 2005 states that files are to be held by the tax authorities for the entire duration of the activity plus 10 years from cessation of trading. Similarly, Article 62 of the CIRPPIS provides that ledgers and other accounting documents (including the record of the shares or stocks), and, in general, any documents that the said Code requires to be kept and produced, must be retained for 10 years.

Information available from companies

55. Stock companies, including foreign and non-resident companies, are required to hold an up-to-date register of shares or stocks.

56. SARLs must keep a register of partners at the registered office under the responsibility of the manager (Article 111 of the CSC), which must include the following:

- the identity of each partner and the number of shares he holds
- a note of payments made
- sales and transfers of shares noting the date of the transaction and its registration for a transfer *inter vivos*; for transfer by succession, the date of death must be stated.

57. SAs and SCAs must open a securities account in the name of each stock owner at their registered office or with a certified intermediary (credit institution, broker or the central depository) (Article 315 of the CSC). Securities accounts must include the following information:

- means of identifying the natural or legal persons who own the stocks and, where appropriate, the identity of the beneficial owner together with option rights and, where necessary, the person to whom those rights revert; the restrictions that may apply to the securities such as a pledge or attachment
- the account name and number must accurately identify the identity and nationality of the account holder and the characteristics of the stocks he owns in accordance with the conditions laid down in the Regulations governing the Financial Market Council.

58. Issuing companies and certified intermediaries are required to update stock accounts for which they are responsible each time that they become aware of any change either in ownership in conformity with the rules governing the stock concerned, or in the option rights and restrictions.

Information available on nominees or apparent shareholders

59. The 2016 Report found that Tunisian law had no specific provisions on the common law concept of “nominees”. Instead, Tunisian law provides for a *mandataire*, a civil law concept. Tunisian commercial law provides that, in certain specific circumstances, the shareholders of a company can be represented in various acts by a *mandataire*, who acts on behalf of the shareholder, who remains known to the company as shareholder. Either way, the nominees within the meaning of the common law concept are covered by the provisions of AML/CFT legislation even though that concept was not enshrined in commercial law. In that case, the professionals required to identify the beneficial owners of their clients must identify the persons for whom the nominee is acting. Moreover, if the nominee appears as the legal owner and does not disclose the name of the actual legal owner, this latter will not be able to enforce his or her rights. The situation continues to be the same as do the developments outlined in the 2016 Report (paragraphs 76 to 86).

Availability of information on legal ownership in practice

60. Several sanctions are applied in the event of failure to comply with requirements to keep and update the information on ownership and identity that apply to each of the legal entities.

National Register of Enterprises

61. Article 68 of Law No. 1995-44 of 2 May 1995 on the Commercial Register as amended and supplemented by Law No. 2010-15 of 14 April 2010 provides that any person who is required to register, update or correct information, or who ceases activity, and who, within 15 days counted from the date on which he is required to comply with these procedures, fails to do so without valid excuse, incurs a fine of TND 100 to 1 000 (EUR 45 to 450) and, for a repeat offence, a fine up to TND 2 000 (EUR 900). For legal persons, the fine may not be less than TND 500 (EUR 225) and, for a repeat offence, TND 1 000 (EUR 450).

62. As of 5 February 2019, Article 51 of the Law on the National Register of Enterprises established that making any registration, amendment, deletion or additional registration, or document filing, after expiry of the deadlines laid down in law incurs payment to the Centre for the National Register of Enterprises of a fine of between TND 1 000 (EUR 450) and TND 5 000 (EUR 2 250). On 15 December 2019, more than 70 000 late filing penalties had been applied.

63. Article 52 indicates that, where the Centre for the National Register of Enterprises has established that a person has failed to carry out the procedures referred to above, a certified report is to be drawn up to that effect,

and the Centre will inform that person in writing that he must complete those procedures within a maximum of 15 days counted from the date of notification. The certified report can also be drawn up by the authorised person of the Ministry of Finance (including the tax administration) or the Ministry of Commerce. For instance, on 15 December 2019, the DGI had prepared 132 minutes which were transferred to the RNE for notification.

64. If the person concerned fails to comply, the Centre will suspend the business' registration and forward the certified report and the notification to the Public Prosecutor's Office.

65. In the event of a repeat offence, the fine will be doubled. However, if the repeat offence relates to non-registration, the person who failed to register will be sentenced to one year's imprisonment and a fine of TND 10 000 (EUR 4 500).

66. For SAs, the members of the board who fail to make the documents and reports that should be submitted to the general meeting (including the register of shareholders) available to partners, thus preventing the SA from complying with the obligations incumbent upon it (explained in paragraph 57) are subject to a fine of between TND 500 (EUR 225) and TND 5 000 (EUR 2 250) (Article 222 CSC).

67. Failure to comply with the publication formalities concerning registration and all other acts that must be entered on the trade register opens the company directors responsible for such matters to a fine of between TND 300 (EUR 135) and TND 3 000 (EUR 1 350) (Article 17 CSC).

Tax authorities

68. In tax matters, failure to file a statement of existence is punishable by a fine of between TND 1 000 (EUR 450) and TND 50 000 (EUR 22 500). Failure to comply with requirements to update the information on ownership and identity placed on taxpayers is punishable by a criminal tax penalty of between TND 100 (EUR 45) and TND 10 000 (EUR 4 500) (Article 89 CDPF).

69. Article 97(1) of the CDPF prescribes a fine of between TND 100 (EUR 45) and TND 10 000 (EUR 4 500) for any person who does not keep the accounts, registers or records required under tax law, or who refuses to provide them to the agents of the tax authorities, or who destroys them before the expiry of the legal term for which they must be retained.

The commercial register and the Agency for Industry and Innovation Promotion

70. Before the introduction, in 2019, of the National Register of Enterprises, the data entered into each local commercial register was collated at a computer centre within the Ministry of Justice. A central register was held

by the National Institute of Normalisation and Industrial Property (INNORPI) that centralised the information contained in each local register. To that end, it was sent an extract of the entries made in the register and a copy of the instruments and evidence filed. If the procedural formalities laid down in the law and regulations in force for each of the categories were not complete, registration on the commercial register of legal persons was refused.

71. In practice, the Agency for Industry and Innovation Promotion and the commercial registers had no powers to conduct audits or on-site visits. However, internal procedures were in place to ensure receipt of the necessary information of the required quality. The responsible persons met during on-site visits confirmed that they all conducted quality control checks by comparing the content of the instruments and the documents provided. Additionally, if one of the documents was missing, the incomplete file was not processed. Practical difficulties were noted particularly in relation to the updating of information, such as where the company failed to file an amendment or to report a transfer of shares.

72. Prior to entry into force of the Law on the National Register of Enterprises in February 2019, the registry of each court of first instance was responsible for the oversight mechanism, under the supervision of the commercial register judge, who alone was empowered to issue a decision in the form of an order. Where a deficiency was noted, the sanction of dissolution of the company could be handed down only by the courts. Moreover, a failure to fulfil an obligation was generally visible only when the company needed to update a document in its file, because there was no automation in the system. At that time, the procedure was cumbersome because the commercial register had to consult the prosecutor's office, which had to decide whether the sanction applied. If applicable, the matter was brought before the courts. A system of refusal letters suspending the procedure requested by the company could have improved compliance, but the registrar was required to refer to the courts in order to obtain a compliance order. During the evaluation period, 100 cases were brought before the courts, 15 of which are still pending.

73. However, any change in legal ownership had to be notified to the tax authorities, which recorded the deed of transfer of shares, and to the commercial register, which handled publication. If there were any shortcomings in respect of the partner, the transfer was not valid, and the last partner known to the authorities was alone liable for the obligations falling to the company's partner. In practice, this means that, in most cases, the information may be deemed to have been updated.

74. With the new Law on the National Register of Enterprises, the Centre for the National Register of Enterprises, which is a non-administrative public entity, has direct powers to lay down sanctions. However, the law is still very recent, and Tunisia must ensure that companies that fail to comply with the

legal obligations incumbent upon them to report and retain ownership information are sanctioned effectively (see Annex 1).

Supervision by the tax authorities

75. In order to ensure the availability of information on the ownership of corporate taxpayers, the tax authorities undertake off-site controls on the statement of existence and conduct several checks. The head of the register office at the tax centre verifies and approves the content of the statement of existence so that a tax identification card can be created. In order to register with the tax authorities, the legal representative must be present except where a special power of attorney is in place.

76. In order to verify that tax returns are filed, the DGI conducts on-site inspections and comprehensive audits of tax affairs. During the evaluation period, 196 638 certified reports were issued for failure to file tax returns and failure to pay tax. If no return is submitted, the tax authorities also implement estimated taxation procedures. In 2018, the tax authorities applied 1 962 estimated taxation procedures.

77. When conducting comprehensive company audits, the agents responsible for tax controls are also required to ensure that the registers, including the register of legal entities, actually exist so that they can be used to provide information on legal ownership.

78. In order to ensure that the registered companies existed and followed their reporting obligations, the authorities “combed through the taxable activities” in an on-site inspection in order to verify that the activity had been reported correctly and reflected the floor space and the means used, for example. The purpose of these on-site inspections was to verify the physical presence and the economic substance of the registered companies. Each office had a sector to comb through and conducted an on-site visit based on the risk of a taxpayer defaulting on his obligations, for example nil profit declarations. If, during the combing process, the responsible agent concluded that the taxpayer no longer exists, the company was placed on a “combing list”. After four years, that company was put into administrative closure but continued to exist. However, the tax identifier was frozen and could no longer legally be used, preventing a resumption of activity without prior contact with the tax authorities. During the evaluation period, the DGI combed through 70 297 taxable activities. Another method used by the tax authorities to identify unregistered, active companies is inspection of invoices. Over the evaluation period, 34 842 inspections of invoices were conducted. Both these techniques combined identified 2 357 cases of taxpayers whose actual status was not in conformity with their status as declared to the tax authorities. On 1 March 2018, there were 14 473 inactive companies in administrative closure, including 224 new ones during the evaluation period.

79. Under the February 2019 Law on the National Register of Enterprises, this procedure for identifying the inactive companies is now legally framed. Thus, if a company defaults on its obligations to submit a tax return for more than two years, the DGI must inform the Centre for the National Register of Enterprises, which will then have the option of deleting the company from its register. If the company does not re-establish its status within one year, then the National Register will wind up the company. This procedure is facilitated by the fact that the company has a single identifier for the commercial register and the tax authorities.

Availability of information on legal ownership of stock companies (peer experience)

80. During the evaluation period, Tunisia received 81 requests for ownership information of companies. The responses provided were mainly based on data from the tax authorities' and commercial register databases. Tunisia's EOI partners said that they were satisfied with the information received.

Availability of beneficial ownership information

81. Since September 2019, beneficial ownership information has been available essentially under the National Register of Enterprises and it was already available under the AML/CFT law, where a company has a bank account in Tunisia. The Tunisian authorities have confirmed that companies very often have an account in Tunisia, particularly because of the exchange control legislation (see the Exchanges Code and the Law 94-41 of 7 March 1994 on Foreign Trade).

Legislation regulating beneficial ownership information of stock companies

Type	Commercial law	Tax law	AML law
SA	All	None	Some
SCA	All	None	Some
SARL/SUARL	All	None	Some
Foreign companies resident in Tunisia for tax purposes	All	None	Some

AML/CFT law requirements

82. Organic Law 26-2015 of 7 August 2015 on Countering Terrorism and Suppressing Money-Laundering determines the obligations incumbent upon AML/CFT obliged persons. The details of its implementation are set out in a number of CTAF decisions, including Decision No. 2017-03 of 2 March 2017 on

beneficial owners and the circulars of the BCT, namely Circular No. 2017-08 of 19 September 2017 as amended by Circular No. 2018-09 of 18 October 2018.¹

The scope of obliged persons

83. In Tunisia, a wide range of persons are subject to obligations to perform customer due diligence and keep customer records (including information on beneficial owners) under the laws in force now and during the evaluation period, since they include financial institutions, lawyers, notaries and accountants. The authorities explain that the information held by the banks, covering the majority of the entities, ensures that information on beneficial ownership is available for the evaluation period.

84. It was only when performing highly specific roles that the three non-financial professions (lawyers, notaries and accountants) came to be obliged persons. With the new Article 107, as amended by Law No. 9-2019, the obligations to perform customer due diligence and identify the customer must be applied in all cases of the establishment, start-up or administration of legal persons or arrangements. The authorities and representatives of these professional bodies say that, in practice, these professionals rarely carry out these roles. Consequently, broadening these roles will not help to make information on beneficial ownership available with these professionals in such a way as to compensate for any absence of this information with the banks.

Definition of beneficial owner and means of identifying and verifying the identity of the beneficial owner (CDD)

85. Although the obligation to identify the beneficial owners existed in Organic Law No. 26-2015, it is Law No. 9-2019 that now enshrines the definition of the beneficial owner. Before 2019, it was the CTAF decision of 2 March 2017 and the BCT circulars that defined the concept of beneficial owner and the applicable duties to perform customer due diligence. The 2015 Organic Law did not provide any definition of the beneficial owner and referred only to concepts of beneficiary of the operation or transaction and to natural persons that exercise control over the legal person.

1. Under Law No. 2016-48 on banks and financial establishments, where AML/CFT is concerned, the BCT is vested with legislative power, supervisory power and disciplinary power in respect of its obliged persons. As a financial information unit, the CTAF was not vested with this supervisory or disciplinary power by law. However, under Article 120 of the AML/CFT law, the CTAF publishes decisions for obliged persons, serving as guiding principles to enable them to detect suspect operations and transactions for reporting purposes. For the banking sector, the BCT refers in its circulars to the CTAF decisions, rendering them enforceable.

86. Pursuant to Article 108 of Law No. 26-2015, obliged persons must be satisfied, from official documents and other documents from independent, reliable sources, of the identity of the beneficiary of the operation or transaction and the capacity of the person acting on his behalf, the formation of the legal person, its legal form, its registered office, the distribution of its share capital and the identities of its directors and those with the authority to represent it, while taking reasonable measures to identify the natural persons that exercise control over the legal person.

87. Financial institutions and banks are governed by BCT Circular No. 2017-08 of 19 September 2017, as amended by Circular No. 2018-09 of 18 October 2018, which defines² the beneficial owner of the account holder. The amendment made in October 2018 means that the cascading tests can be brought into line with the standard. However, this standard-compliant approach has been applied only for a short time.

88. Moreover, the CTAF decision that entered into force on 2 March 2017 which applies to non-financial obliged professionals, provides a standard-compliant definition of the beneficial owner.³ However, as to how this beneficial owner was to be identified and the identity verified, it would appear that, where no natural person could be identified using the “control by any other means” method, no beneficial owner would be identified because the third tier involving the person in a managerial position was not spelt out. However, the last version of this decision, amended on 8 June 2018, and the 2019 decree described in paragraph 90 below address this deficiency. Finally, the decision refers to a threshold for shareholding or holding voting rights in the company as a means of determining that control is being exercised. This threshold was set at 20% by a decree which came into force in 2019.

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2. “Beneficial owner”: the natural person or persons who hold(s), whether directly or indirectly, more than 20% of the capital or voting rights in the legal person or arrangement, and in general any natural person who ultimately owns or exercises effective control over the client or on behalf of whom the operation is carried out. “Legal arrangement” means trusts, *fiducies* or any other similar legal arrangement within the meaning of CTAF Decision No. 2017-03.
3. Article 5: Within the meaning of Article 1, “beneficial owner” means:
- the natural person or persons who ultimately own(s) or control(s) the client, whether the latter is a natural person, or a legal person or arrangement
 - the natural person, in law or in fact, on whose behalf one or more transactions is/are performed
 - the natural person or persons who ultimately exercise(s) effective control, in fact or in law, over a legal person or arrangement.

89. Organic Law No. 9-2019, which applies both to financial institutions and to obliged non-financial professions (Articles 3, 107 and 108), defines the beneficial owner in line with the standard, as follows:

Beneficial owner: any natural person or persons who ultimately hold(s) or exercises effective control, whether direct or indirect, over the client, and/or the natural person on whose behalf the operations are carried out. It also includes any person who ultimately exercises effective control over a legal person or arrangement. The criteria and mechanisms for identifying the beneficial owner are laid down by governmental decree.

90. Governmental Decree No. 54-2019 of 28 January 2019 sets out the rules for identification and verification of the beneficial owner in line with the standard (Articles 2 and 3):

Article 2: The beneficial owner(s) of legal persons are established following reasonable measures taken to verify their identities, as follows:

- (a) The natural person(s) who hold(s) directly or indirectly a percentage greater than or equal to 20% of the capital or voting rights.
- (b) If there is doubt about the identity of the beneficial owner(s) or the beneficial owner(s) have not been identified after point (a) has been applied, the natural person(s) who exert control by any other means, in fact or in law, over the governing, management or administrative bodies or the general meeting or the functioning of the legal person.
- (c) Where no beneficial owner(s) is/are identified under points (a) and (b), the beneficial owner is the natural person who holds the position of senior managing officer of the legal person.

Article 3: The person(s) referred to below shall be deemed the established beneficial owner(s) of legal arrangements following reasonable measures to verify their identities:

For trusts: the founder of the legal arrangement, the trustee(s), the protector, if applicable, the beneficiaries and any natural person who has ultimate effective control over the legal arrangement

For other similar arrangements: the natural persons who hold equivalent or similar positions.

91. If the obliged persons are unable to verify said data or if the information is insufficient or manifestly false, they must refrain from opening the account, establishing or pursuing the business relationship or carrying out the operation or transaction, and consider reporting a suspicious transaction. Furthermore, Article 109 of the organic law 26-2015 requires the AML obliged professionals to update the information on the identity of their clients, to exercise continuous diligence through the business relationship and to carefully examine the operations and transactions carried out by their clients to ensure that they are consistent with the data they have on those clients. These professionals must carry out the above-mentioned requirements taking into account the nature of their activities, the risks they incur and, where applicable, the origin of the funds, but the frequency of the updates is not specified.

92. Tunisian banks are authorised to have recourse to third parties in order to identify their customers. Such recourse must be authorised by the BCT in accordance with the provisions of Circular 2006-01 regulating outsourcing operations and Article 9 of Circular 2017-08. That Article establishes that a financial establishment that has recourse to a third party must immediately obtain the necessary information concerning CDD measures, take adequate measures to ensure that the third party is able to supply, on request and without delay, copies of the means of identity and other relevant documents linked to CDD, and be satisfied that the third party is subject to regulations and surveillance in relation to AML and that he has taken measures to comply with CDD obligations and record-keeping requirements. Where obliged establishments have identified the countries in which third parties who comply with the conditions can be established, they must, in their relations with those third parties, take account of the information available on the level of risk associated with those countries.

93. Recourse to a third party does not exonerate an obliged establishment from its responsibilities with regard to customer identification, and, in all circumstances, it must continue to comply with the legal framework governing recourse to third parties.

94. It is also possible for banks and financial establishments to take simplified measures when the risk level for money laundering and financing of terrorism is lower. These simplified measures do not dispense with the need for banks and financial establishments always to identify the beneficial owner, even if it is possible to identify the latter after the business relationship has been established; however, they mean that the frequency of updates to the client's identification details and the intensity of constant CDD can be reduced. The element of risk must be demonstrated by the financial establishment, which must justify to the central bank that the CDD measures implemented to counter the AML risks presented by the business relationship are in compliance. It is therefore possible that the beneficial ownership

information will not always be up to date where the risk is low. Tunisia must ensure that beneficial ownership information is up to date even for low-risk customers (see Annex 1).

95. The AML/CFT Law that applies to banks, financial establishments and designated non-financial professions and businesses therefore complies overall with the international standards on beneficial ownership.

Record-keeping requirements

96. Article 52 of Circular 2017-08 requires obliged persons to keep information and documents in such a way as to be able to reconstruct all transactions and provide within the required timelines, the information requested by any authorised authority including the tax authorities, on request, including information on legal ownership and beneficial ownership.

97. Article 51 of that circular requires banks and financial establishments to keep files on their natural person customers, whether regular or occasional, on legal persons or arrangements, and on beneficial owners together with the evidence of their identities, for at least 10 years calculated from the date of the end of the relationship.

Legislative requirements concerning the National Register of Enterprises

98. The Law on the National Register of Enterprises lays down a new obligation on all businesses to identify their beneficial owners and to report that information every year on a centralised register held by the Centre for the National Register of Enterprises. In contrast to the anti-money laundering law, this law covers all relevant entities and is not confined to those that have entered into a business relationship with an obliged person.

Definition of beneficial owner and means of identifying and verifying the identity of the beneficial owner (CDD)

99. Article 2 of the law defines “beneficial owner” as follows:

Any natural person who ultimately has effective ownership or control or is in a position of dominance, whether direct or indirect, over a legal person or arrangement or over the administrative, management or supervisory bodies, and any natural person for and on whose behalf operations are conducted by a natural or legal person or arrangement. Additionally, any natural person having the status of partner, shareholder or member of a legal person or arrangement who, by virtue of his shareholding or voting rights, has an effective power of control.

100. This definition is in line with the standard, since it takes account of the concept of ultimate control and ownership and embeds ownership or control exercised through a chain of ownership or through a means of control other than direct control.

101. The law provides for the register to include sub-registers, including a register of beneficial owners that records beneficial owners in line with a form drawn up under Article 19. Article 19 explains that the form must be drawn up by the Centre for the National Register of Enterprises and “include records on each transaction, the records accurately identifying the business, partners, shareholders, directors, accountants, trustees and beneficial owners together with a declaration of honour certifying the accuracy of that data and the absence of any lawful impediment to the pursuit of the activity.”

102. Article 10 of the law requires the given name and family name; date and place of birth; address; number, date and place of issue of the identity card; and nationality of the beneficial owners.

103. Decree No. 54-2019 of 28 January 2019 on the arrangements and criteria for identifying beneficial ownership provides that the beneficial owner(s) of legal persons are established using reasonable measures to verify their identities as follows:

(a) the natural person(s) who hold(s), whether directly or indirectly, a percentage equal to or greater than 20% of the capital or voting rights

(b) in the event of doubt about the identity of the beneficial owner(s) or non-identification of the beneficial owner(s) following application of criterion (a), the natural person(s) who in fact or in law exercise(s) by any other means a power of control over the administrative, management or supervisory bodies or the general meeting or the operation of the legal person

(c) where no beneficial owner(s) is/are identified using criteria (a) and (b), the beneficial owner is deemed to be the natural person who holds the position of senior managing officer of the legal person.

104. The definition and the arrangements and criteria for establishing the beneficial owner are in line with the standard.

105. Verification is the responsibility of the company, which must provide the National Register with beneficial ownership information. This requirement exists under Article 7 of the Law on the National Register of Enterprises, which requires all companies to be entered in the Register and accordingly that they fill out the sub-registers, including beneficial ownership information.

Record-keeping requirements

106. Article 42 of the Law on the National Register of Enterprises also establishes that documents must be kept for 10 years from the date of closure. There are no legal provisions governing the nature of the information that must be kept, but the authorities confirm that the verification obligation incumbent upon businesses ensures that any underlying documents that enabled the company to comply with the obligation incumbent upon it to verify the beneficial owners are kept and made available to the authorities in the case of an audit.

Beneficial ownership information – enforceable measures and monitoring

107. The implementation of AML/CFT legislation is monitored by the BCT in respect of financial establishments and by the various professional bodies for lawyers, notaries, accountants and auditors. The Centre for the National Register of Enterprises monitors the implementation of law on the National Register of Enterprises.

Banking sector supervision

108. The banks are structured around an internal control mechanism. That mechanism has four major lines of defence that the banks must implement. First, there is the front office level, the first to apply the obligations to perform customer due diligence in order to identify the customer. Ongoing control must be established in order to ensure conformity of all data within the bank. Moreover, there is a regular control conducted by the audit body that validates the internal procedures and produces an internal audit report. It is also responsible for formulating control strategies and rules.

109. The banking sector is overseen by the General Directorate of Banking Supervision (DGSB) which is part of the BCT. The DGSB is structured by specialist area, with the two units dealing with supervision (off-site and on-site) being combined so that they can support each other in the supervision process. Supervision is divided into four main functions: ongoing supervision, general supervision and banking regulations, the development of supervisory methods, and on-site controls.

110. A risk-based approach is used to determine how to prioritise the supervision of one bank over another. The risk is assessed on the basis of each bank's size and risk-profile. This makes it possible to screen the frequency and level of controls applied (light, normal or enhanced).

111. Each bank's risk profile is determined in the light of the following documents: external audit reports, risk self-assessments, suspicious activity

reports and audit reports produced by external assessors. The representatives met during the onsite visit confirmed that they also adopt an across-the-board approach, aiming to ensure that all banks are audited.

112. An annual programme schedules the various missions, combining both the across-the-board approach and the risk-based approach. A bank with a low risk profile will be reviewed every four years as a general rule.

113. In order to perform its mission as a supervisory authority, the DGSB has access to all documents and information that it wishes to obtain as part of its mission. It also has the power to call anyone who is able to supply information related to its mission in for interview.

114. Since 2016, a dedicated AML/CFT inspection team has been set up. Each time there is a general investigation, the AML/CFT mechanism is verified. More topic-based missions may also be arranged, specifically in relation to beneficial owners. During the evaluation period, 13 inspection missions took place concerning AML/CFT, allocated as follows:

- five across-the-board missions on AML/CFT mechanism assessment
- three missions as part of the general missions series
- five missions following specific inquiries made to the BCT.

115. Since April 2018, as part of the across-the-board mission to assess the AML/CFT mechanism, five missions have been undertaken at four resident banks and one financial establishment. In October 2018, an *ad hoc* mission on evaluation of the mechanism to identify beneficial ownership was launched involving the five missions already under way, 10 banks including two Islamic banks, and one non-resident bank.

116. The scope of the missions represents 50% of the total number of banks (resident or not) and 82% of total assets in the sector.

117. During the missions, the investigator audits six main points: governance of the establishment's AML/CFT mechanism and internal control arrangements; arrangements and procedures in place; the process of identifying and updating customer information; diligence in respect of transactions, and the detection and investigation of atypical transactions and the requirements surrounding reporting of suspicious activities; record-keeping through examination of the availability and archiving conditions for files on customers, beneficial owners and supporting information.

118. In order to be satisfied of the practical arrangements implementing the requirements to identify beneficial owners, the investigating agent verifies the existence of clear, precise, formalised procedures that comply with the legal and regulatory requirements; compliance with the rules to identify and know customers and how that maps onto the customer's risk profile; and

an audit of the effectiveness of procedures to identify, control and regularly update customer and beneficial ownership information using a sample of customer files. This involves verifying the availability of beneficial ownership information (in the physical file and in the establishment's IT system). The investigator also investigates record-keeping and finally reviews the establishment's training on AML/FT and how well the staff responsible for identifying beneficiaries understand the concept. Under the BCT Circular, banks are obliged to set up a continuous in-service training programme for staff, covering information on the techniques, methods and trends in anti-money laundering and combating terrorist financing. Among other things, this training must enable internal procedures against money laundering and terrorist financing to be disseminated to customer-facing staff and all staff concerned, including, in particular, identification and knowledge of customers and beneficial owners.

119. Subsequently, the shortcomings that came to light during these investigations, essentially into beneficial ownership, gave rise to two action plans whose progress and implementation is monitored by the BCT. Financial sanctions were also applied twice for a total amount of TND 1 352 000 (the fine can be up to 15% of the minimum capital of the non-compliant establishment). Four sets of disciplinary proceedings are under way.

120. The banking sector representatives met during the on-site visit explained that the principal difficulty for the banks in AML/CFT and beneficial ownership matters is the absence of independent, reliable sources to verify information. Similarly, updating customer records requires significant resources as well as posing practical difficulties.

121. The staff in charge of the supervision missions had undergone training to develop the skills required to perform their duties properly. In total, 47 people had followed 13 training courses in all. The training is generally provided by the IMF as part of its technical assistance and by other international bodies like MENAFATF and the IBRD. An IMF expert was even provided for three years, with the particular aim of helping Tunisia improve the effectiveness of its AML/CFT arrangements. Together with the CTAF, the BCT holds training programmes at the banks' request. Generally, the training is based on real cases.

122. Representatives of the Tunisian Professional Association of Banks and Financial Establishments demonstrated adequate knowledge of the concept of beneficial ownership and are implementing the regulatory and legal obligations incumbent upon them. These include establishing internal procedures and appropriate customer profiling systems to detect unusual or suspicious transactions that automatically trigger enhanced CDD.

123. This training and awareness-raising are two significant aspects of the Association's work with its members. There are several qualifications and the AML/CFT is the main area. In terms of training and e-learning, programmes have been established for front office staff by banks that belong to one large group. An AML/CFT e-learning platform has been launched by the Tunisian Professional Association of Banks and Financial Establishments in co-operation with the Banking and Finance Academy. Since its launch in 2019, 600 people have registered, and 200 of them have passed the course.

124. More than 60 meetings were organised over the evaluation period with the creation of a committee on beneficial ownership, which drew up an explanatory note to help banks identify beneficial owners.

Conclusion

125. The level of oversight in the banking sector is adequate: sanctions are applied and audit coverage is satisfactory. However, the circular implementing the definition of beneficial ownership (Circular No. 2018-09 of 18 October 2018) is relatively recent and, consequently, Tunisia is recommended to continue ensuring that the banks comply with their obligations to identify and verify beneficial ownership (see section A3).

Supervision of accountants and legal professionals by professional bodies and organisations

126. Professionals such as lawyers, notaries and accountants are not a primary source of information, firstly because supervision of some of these professionals is still at an early stage, secondly in the light of professional secrecy, which is broad in scope, as explained in section B.1 and thirdly because these professionals are rarely involved in the establishment, the start-up or the administration of legal persons or arrangements. These professionals are supervised by their respective organisations.

127. The supervision of the 8 501 lawyers is in its infancy. An internal committee on AML/CFT was set up when CDD requirements were introduced for non-financial professions. Today, the organisation is questioning whether it has the capacity to impose sanctions and, if so, what the sanctions should be: suspension, a warning, or disbarment. In practice, recourse to a lawyer for ownership information for EOI purposes is very unlikely because there are other, more reliable sources, including the banks and the National Register of Enterprises.

128. Since the Order of the Minister of Justice of 19 April 2018, CDD requirements have been laid down by the Ministry of Justice. The entry into force of the National Register will make it possible to verify the veracity

of information received directly from the customer. The representatives of the bankers' association met confirmed that, where there are inconsistencies between the data held by them and the data set out in the Register of Enterprises, they will file a suspicious activities report with the CTAF. Training on the entry into force of the 2019 organic law had been organised with the BCT. The notaries confirmed that they are not really a significant source of information for the tax authorities, which already have extensive access to several sources of information whether directly through their internal systems or indirectly in the external systems run by other governmental agencies. There are 1 150 notaries in Tunisia.

129. In Tunisia, accountants and auditors are members of IFAC, which requires them to abide by a code of ethics. As members, Tunisian accountants agree to abide by the prescribed rules, including the requirement to ensure that the nature of the work they take on is not potentially problematic. Accordingly, accountants must undertake CDD inquiries before entering into a business relationship. To that end, they can use a methodology laid down by IFAC to establish a customer's risk profile. Generally, if it is not possible to establish a risk profile, the accountant will decide not to enter into the business relationship.

130. The level of supervision for accountants is more developed. An Anti-Money-Laundering Committee was set up on 9 May 2018. An awareness-raising day for accountants on AML/CFT organised by the CTAF and the OECT (Tunisian Certified Accountants' Body) was held on 18 May 2018. In October 2018, another training programme was held on AML/CFT; this time, it was organised by the IFPC for trainee accountants. These training programmes included a presentation on the concept of beneficial ownership.

131. Starting from the end of November 2018, the OECT embarked on an inspection process by sending out an assessment questionnaire on compliance with the professional obligations set out in Law No. 26-2015 on beneficial ownership. The questionnaire was to be completed by 30 August 2019. The number of experts who responded to it was 116 (23.3% of the total number of accountants), and the responses show that, in 80% of cases, accountants report that they systematically obtain the identification, *mandataire* and beneficial ownership documents from their clients. Similarly, 53% confirm that they identify the beneficial owner of a client from a declaration by the client. The OECT explains that on-site visits started in September 2019, and it transpires from this that, in practice, 70% of accounting firms supervised have procedures in place to identify beneficial owners.

132. Apart from the OECT, which has launched its supervision programme, the other professions are only just beginning to implement these programmes. However, these professions are not primary sources of information, since, in practice, most of the relevant bodies have a bank account in

Tunisia, which is therefore the source that the competent authority favoured until the National Register of Enterprises has been established. Tunisia must nevertheless satisfy itself that obliged professionals are duly performing their obligations as regards beneficial ownership (see Annex 1).

Implementation in practice of the new beneficial owners register

133. The Law on the Register of Beneficial Owners is very recent (February 2019), and the supervision programme has not started yet. A unit has been set up with responsibility for monitoring businesses, but this has yet to be developed. This unit is also responsible for publishing guidelines enabling obliged persons to meet their obligations. Tunisia is recommended to supervise the practical implementation of its recently introduced legal framework on beneficial ownership.

Availability of beneficial ownership information in practice (peer experience)

134. Tunisia has received 48 requests concerning beneficial ownership and has responded to all these requests. In order to process the requests, the competent Tunisian authority researched the information from databases of the tax authorities, from the commercial register or through the onsite visit by the tax administration within the company. If needed, the information gathered is compared with the information obtained from the banks. Tunisia's partners did not raise any particular difficulty in relation to the requests concerning beneficial ownership of entities.

A.1.2. Bearer shares

135. Tunisian law does not allow bearer shares to be issued because all stocks, regardless of form, issued on Tunisian territory and subject to Tunisian law, must be registered and recorded in the accounts that are held by the issuing legal person or certified intermediary.

A.1.3. Partnerships

136. Three types of partnerships can be set up in Tunisia, all of which are governed by the Commercial Companies Code:

- General partnerships (SNCs) are partnerships in which all partners are traders and have unlimited joint and several liability for the partnership's debts. The shares are registered and can be transferred only with the consent of all partners. On 31 March 2018, 210 SNCs were registered with the DGI.

- Limited liability partnerships (SCSs) include two groups of partners: general partners, who alone can have responsibility for managing the partnership and have unlimited joint and several liability for the partnership's debts; and silent partners whose liability is limited to the amount of their contributions. The general partners are subject to the same legal regime as that which applies to partners in a general partnership. The silent partners are subject to the same legal regime as that which applies to the partners in an SARL. Silent partners may not contribute sweat equity. On 31 March 2018, 68 SCS were registered with the DGI.
- Jointly owned partnerships exist only in the relationships between the partners, and third parties are not intended to be aware of them. They have no legal personality and are not subject to registration or publication formalities. If the partnership is commercial in nature, the relationships between the partners are governed by the provisions that apply to general partnerships, unless otherwise provided. As this form of partnership cannot hold assets or funds, it will not be analysed in any greater detail.

137. Information on the partners in Tunisian partnerships and foreign partnerships with a branch in Tunisia is available from the commercial register, the tax authorities and the partnership itself, as partnerships follow the same rules as those that apply to stock companies. The findings in part A.1.1 therefore apply.

138. In respect of beneficial ownership information, and given that partnerships are treated in the same way as stock companies, the findings in part A.1.1 apply. The requirements laid down in the Law on the National Register of Enterprises apply to all partnerships, and the findings on oversight are the same. Since the law is very recent, Tunisia is recommended to supervise the practical implementation of its recently introduced legal framework on beneficial ownership.

139. In practice, Tunisia does not categorise incoming requests based on the type of entities in question, and, consequently, the number of incoming requests in respect of partnership's ownership is not available. However, Tunisia has responded to all requests concerning ownership, and, consequently, if any were made in respect of partnerships, it would appear that no difficulties arose. This is confirmed by feedback from peers.

A.1.4. Trusts

140. The 2016 Report determined that information on the identity of persons associated with trusts was available through professionals acting as trustees in Tunisia who are required to identify their customers (settlers

or beneficiaries) under the AML obligations incumbent upon them. The report also found non-professional Tunisian trustees are not covered by the obligations arising from AML legislation. However, it was considered that non-professional trustees were likely to be a rarity in Tunisia. This has been confirmed during the on-site visit (see paragraph 150).

Legal requirements

141. Tunisia's legal framework has developed since the 2016 Report. This is particularly so under the National Register of Enterprises which requires legal arrangements whose director or trustee is resident in Tunisia or is resident there for tax purposes to complete the National Register of Enterprises, including information on beneficial ownership, and the January 2019 amendment to Law No. 26-2015 embeds the concept of legal arrangement in law (Article 2):

A trust or *fiducie* and any other similar legal arrangement including any operation by which a person transfers present or future assets, rights or securities to one or more trustees who, while keeping them separate from their own assets, manage or administer them for one or more beneficiaries.

142. This makes information on the ownership of trusts available in respect of professional and non-professional trustees because it is a requirement that is general in scope (unlike the AML/TF law, which applies only if a trust engages an obliged professional).

143. Article 2 of Government Decree No. 54-2019 of 28 January 2019 on the arrangements and criteria for establishing beneficial ownership sets out the steps for determining and verifying the identity of the beneficial owner so that it can be declared on the National Register of Enterprises.

The person(s) referred to below shall be deemed the established beneficial owner(s) of legal arrangements following reasonable measures to verify their identities:

For trusts: the founder of the legal arrangement, the trustee(s), the protector, if applicable, the beneficiaries and any natural person who has ultimate effective control over the legal arrangement.

For other similar arrangements: the natural persons who hold equivalent or similar positions.

144. That definition would appear to be in line with the standard because the founder (settlor), the trustee, the beneficiaries and any other person who ultimately has effective control over the legal arrangement must be identified. The Tunisian authorities confirm that, in the light of the general definition of beneficial owner, who can only be a natural person, if the founder, trustee

or beneficiaries were legal persons, there would be an obligation to look beyond the legal person in order to identify the natural person that is behind it. However, there is still no guidance to confirm this interpretation. Tunisia must ensure that persons subject to the law are informed of their legal obligations and how to perform them in practice (see Annex 1).

145. The law does not require legal arrangements to have a bank account. Consequently, the National Register of Enterprises, which also applies to legal arrangements, will be the main available source of information on beneficial ownership. However, if the legal arrangement engages an AML-obliged person, that person could also be a source of information.

146. The conclusions on the definition of beneficial ownership set out in paragraphs 99 to 102 are also relevant to trusts.

147. Until January 2019, the methods of identifying and verifying the identity of the beneficial owner of legal arrangements was not in line with the standard, since they ignored settlors, trustees and beneficiaries who hold less than 25% of the transferred assets. With the entry into force of Decree No. 54-2019, this definition is now in line with the standard.

Supervision and enforcement measures

148. Sanctions for failure by AML/CFT obliged persons and businesses to declare their beneficial owners on the National Register of Enterprises are as set out in part A.1.1.

149. The oversight provided by the central bank as explained in part A.1.1 is the same, as is the conclusion that the oversight is adequate.

150. However, it is important to note that foreign trusts are very rare in Tunisia. During the on-site visit, the bankers' association representatives explained that they had very little to do with this kind of arrangement. The lawyers also explained that, in their role, it was not their place to act as trustees. The Central Bank also explained that, when partners of banks wishing to set up business in Tunisia involved foreign legal arrangements, authorisation was not given.

151. Similarly, the law on beneficial ownership under the National Register of Enterprises is very recent, and it has not been possible to test its practical implementation. Tunisia is recommended to oversee the practical implementation of its recently introduced legal framework on beneficial ownership.

Availability of trust information in practice

152. During the evaluation period, Tunisia received no requests for information regarding trusts established abroad.

A.1.5. Foundations and associations

153. Foundations do not exist in Tunisian law. However, some associations governed by the provisions of Decree-Law No. 2011-88 of 24 September 2011 on the organisation of associations (Law on associations) do exist. Article 2 of that Decree-Law defines an association as “an agreement by which two or more persons work on an ongoing basis to achieve objectives other than making profit”. Associations are therefore not relevant under the ToR in respect of the standard on exchange of information on request (see the 2016 Report, paragraphs 106 to 109).

A.2. Accounting records

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

154. All relevant entities are required to keep accounting records that can be used to retrace all transactions, establish the entities’ financial position and draw up the financial statements; the documents in question must be retained for at least 10 years. The requirements to keep accounts arise from commercial, accounting and tax law. The 2016 Report determined that Element A.2 was “in place”, and no recommendation was made. There has been no change to the Tunisian legislation (see paragraphs 119 to 143 of the 2016 Report).

155. In practice, as part of their certification role, auditors ensure that companies’ accounts are kept in accordance with the law. Additionally, tax audits conducted by the tax authorities as part of company tax liability controls make it possible to ensure that the accounting documents are actually held by all taxpayers, whether natural or legal persons.

156. During the current review period, Tunisia received 136 requests for information concerning legal persons and accounting information and/or ownership. The competent authority essentially uses the records available in its internal databases to respond to requests for information from foreign partners. Tunisia’s EOI partners were satisfied with the responses they received to their requests for accounting information.

157. The table of determination and rating is as follows:

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

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

158. Accounting information was essentially available under fiscal, commercial and accounting law. The situation has not changed since 2016, and the conclusions on the legislative and regulatory framework of the 2016 Report are still relevant (see paragraphs 119 to 144).

Provisions of commercial and accounting law

159. Tunisian commercial and accounting laws lay down a requirement to keep accounts, and the failure to do so is subject to penalties.

160. Tunisian accounting legislation applies to stock companies, including foreign companies and the partnerships referred to in sections A.1.1 and A.1.3. It requires those entities to make available accounting and financial documents, kept in accordance with generally accepted principles, namely intelligible, relevant, reliable and comparable information. According to Articles 11 and 18 of the Accounting Law, businesses subject to accounting standards must maintain accounts (general journal, general ledger and stock ledger) and financial statements (balance sheet, profit and loss statement, cash-flow statement and notes to the financial statements).

161. Accounting records must be supported by evidence including the evidence for the accounts and the drafting and presentation of the financial statements (Article 2 of the Accounting Law). All accounting records must be made chronologically, operation by operation, and day by day, and must be supported by evidence. All records must specify the origin, content and booking reference of each data item and the references of the relevant supporting documents.

162. Article 51 of the Law on the Commercial Register requires legal persons and company auditors (see below) to file the financial statements in duplicate as an annex to the commercial register within one month following their approval by general meetings and, in any event, before the seventh month following the end of the accounting year. Article 32 of the Law on the RNE contains a similar requirement.

163. Persons who fail to comply with the obligation incumbent upon them to file financial statements with the commercial register may be punished with a fine of between TND 100 and TND 1 000 (EUR 45.1 to EUR 451) (Article 68 of the Law on the Commercial Register). In the event of a repeat offence, the fine is doubled. For legal persons, the fine may not be less than half its maximum limit (TND 500).

164. Lastly, stock companies are required to appoint an auditor for a three-year period. However, only SAs are under an absolute obligation to appoint an auditor. SARLs and SCAs become subject to that requirement in the event

that they exceed two of the three following thresholds (Article 13 *et seqq.* of the CSC): a balance sheet total greater than TND 100 000 (EUR 45 100); turnover greater than TND 300 000 (EUR 135 300); and number of employees averaging more than 10. On 15 December 2019, 12 824 enterprises registered with the NRE had appointed an auditor.

Companies that cease to exist

165. For companies that cease to exist, the financial statements are forwarded to the auditor, who closes the accounts. The notice of closure of the financial statements must be recorded and published after the dissolution, winding up, merger or de-merger. Publication must occur within one month calculated from the registration of the instrument or the minute of the decision, in the commercial register. Accounting information of companies that have ceased to exist must be transmitted by the liquidator to the RNE, which keeps it for 10 years (Article 42 of the law on the National Register of Enterprises). Failure to do so may result in the liquidator being fined between TND 1 000 (EUR 450) and TND 5 000 (EUR 2 250).

Practical implementation

166. In practice, as explained in paragraph 72 of part A.1.1, the commercial register did not have direct powers to impose sanctions, which could make imposing sanctions difficult. However, the new Law on the National Register of Enterprises provides that the Centre for the National Register of Enterprises may impose sanctions directly. Moreover, the implementation by the entities of their accounting obligations is efficiently ensured by the tax administration (see paragraphs 173 to 179 below).

Trusts

167. Tunisian law does not allow the creation of a trust governed by Tunisian law; however, a foreign trust can be administered from Tunisia.

168. According to the AML/CFT law, lawyers, notaries, accountants and professionals “authorised by virtue of their role during the preparation or performance for their customers of transactions involving the purchase and sale of immovables or business assets, or the management of clients’ assets and accounts, or arrangements for contributions to set up companies and other legal persons or the management or operation thereof; or the oversight of such operations or the supply of consultancy services in that regard” are subject to CDD requirements.

169. Generally, authorised professionals and lawyers are the persons who may act as trustees. As such, they are required to submit to Article 113

of Law No. 26-2015 on Countering Terrorism and Suppressing Money Laundering, which requires them to keep the registers, accounts and other documents held in safekeeping by them in hard copy or electronically for a period of at least 10 years counted from the date of the performance of the operation or the account closure, in order to ensure the traceability of the various phases of the financial operations and transactions carried out by them or their intermediaries, identify those involved and ensure their veracity.

170. However, no clear obligations are laid down in respect of the trust itself or a non-professional or non-AML/CFT-obliged trustee. The actual risk of a request for information about a trust administered by a non-professional or non-AML/CFT-obliged trustee is low; however, Tunisia must ensure that accounting information is available on all trusts (see Annex 1).

Tax law

171. As a general rule, Tunisian tax law requires accounts to be kept in conformity with company tax law. This obligation applies to all Tunisian legal persons, regardless of how they are taxed, and all legal persons subject to corporation tax⁴ (Article 62 CIRPPIS). Tax legislation also requires evidence to be kept, in particular to support claims for tax relief and in order to benefit from exemptions. Accounting records must be kept for 10 years.

172. Companies liable for corporation tax have to fill in an annual tax return that has several annexes including the balance sheet, the profit and loss statement, cash-flow statement, the notes to the financial statements, the table determining the tax result based on the accounting result, a detailed statement of: depreciation, bad debt reserves including the identity of the debtor and the nominal value of each debt together with the amount of the capital appropriations and the net book value of the capital appropriations by way of company shares stating the initial cost, the capital appropriations and the book value net of company shares of donations and subsidies awarded including the identity of the beneficiaries and the amounts attributed to them, certification of payment of the subscribed capital, or certification proving the payment of sums by way of reinvestment of earnings in venture capital companies or in venture capital mutual investment funds.

Practical implementation and controls

173. Any person who does not keep the accounts, registers or records required under tax law is punished with a fine of between TND 100 and TND 10 000 (Article 97 CIRPPIS), i.e. EUR 45 to EUR 451.

4. Corporation tax applies to companies and other legal persons specified in Article 45 of the CIRPPIS, regardless of their object, that pursue their activities in Tunisia.

174. In the event of a repeat offence within five years, the offender is punished by a period of imprisonment of between 16 days and 3 years and a fine of between TND 1 000 and TND 50 000 (EUR 451 to EUR 22 550). The same sanctions are applied to any person who keeps their accounts using a double entry system or who uses falsified accounting documents, registers or records in the aim of evading paying tax in whole or in part or to qualify for tax advantages or tax rebates (Article 98 CIRPPIS).

175. In practice, in order to satisfy themselves that good accounting information is available, the tax authorities have means of investigation and controls. The authorities take steps during tax examinations to satisfy themselves that accounting records are properly kept. As part of a comprehensive audit, the investigation includes the accounts of the persons being audited and the information, records and presumptions of fact or of law in other cases.

176. During the evaluation period, 8 066 comprehensive audits were carried out (there are more than 700 000 taxpayers in Tunisia) and ended up with 5 340 taxpayers supplying the information requested. In total, 2 287 certified reports on taxpayers who failed to supply the information were drawn up by the tax authorities over the evaluation period. These audits are carried out by means of a computerised risk analysis.

177. In some cases, the authorities may open an audit and adjust businesses' tax affairs on the basis of information, records and presumptions of fact or of law, in particular in the event of:

- failure to keep accounts (1 507 missing accounts or refusals to provide them were noted during the evaluation period)
- automatic rejection when there is a refusal to provide accounting documents within 30 days from the date of the notification of the request and the preparation of the relevant certified report. However, this procedure does not apply when, at the time of the request, the accounts are made available to other government agencies (such as courts, public oversight bodies, expert consultants) or in the event of *force majeure*
- rejection of accounts submitted on the basis of the detection of shortcomings that are deemed to be major, affecting their reliability and veracity.

178. Accounts are generally rejected where there are two or more significant anomalies, namely the absence of bank accounts, evidence concerning several transactions carried out by the company or the stock ledger, serious anomalies and errors in keeping the books, documents or accounts, funds in deficit and abnormal coefficients, and undeclared income. During the evaluation period, 806 accounts were rejected and 2 237 offences were found during on-site inspections.

179. In the end, the in-depth investigations carried out in practice by the tax authorities, which cover more than 1% of the entities, ensure that accounting information is available.

Availability of accounting information in practice

180. The competent authority received 136 requests and supplied information in all cases. The peers were satisfied with the quality of the information provided by the competent Tunisian authority.

A.3. Banking information

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

181. The 2016 Report concluded that Tunisian legislation ensured the availability of banking information in line with the standard. There has been no change to this since.

182. The EOIR standard, as enhanced in 2016, now requires information on beneficial ownership (in addition to legal ownership) in respect of account holders to be available. Banks are subject to AML/CFT legislation. Accordingly, they are required *inter alia* to identify their customers and, where appropriate, the beneficial owners of their customers, and to keep information on their identity up to date. They are also required to keep documents that trace all the transactions made on accounts for at least 10 years.

183. Banks' compliance with AML/CFT is overseen by the DGSB, under the aegis of the Central Bank of Tunisia (BCT), which imposes sanctions. The level of oversight in the banking sector was adequate over the evaluation period: sanctions are applied and the coverage of inspections is satisfactory. However, the circular implementing the definition of beneficial owner in line with the international standard is relatively recent, and, consequently, Tunisia is recommended to continue ensuring that the banks comply with their obligations to identify and verify beneficial ownership.

184. During the evaluation period, Tunisia received 80 requests for banking information. None of the requesting jurisdictions expressed dissatisfaction with the quality of the responses obtained. Tunisia was able to supply the banking information requested. The only difficulties noted related to the lengthy response times. However, this is attributable not to the availability of banking information but rather to the organisational issues discussed in section C.5 of this report.

185. The table of determination and rating is as follows:

Legal framework		
Determination: The element is in place		
Practical implementation of the standard		
	Underlying factor	Recommendation
Deficiencies identified	The circular implementing the definition of beneficial ownership of a bank account in accordance with the international standard is recent.	Tunisia is recommended to ensure that the banks comply with their obligations to identify and verify beneficial ownership.
Rating: Largely Compliant		

Record-keeping requirements (A.3.1)

186. In conformity with Articles 70, 71 and 97 of Law No. 2016-48, banks and financial institutions incorporated under Tunisian law, together with branches or agencies of banks and financial institutions with a registered office abroad that are authorised to pursue their activities in Tunisia, must:

- keep accounts in conformity with company tax law; comply with the specific standards and rules laid down by the BCT under that framework to enable it to exercise control over credit institutions (Article 32 of Law No. 2001-65 of 10 July 2001 on credit institutions)
- draw up every year the financial statements which must be submitted to the general meeting of shareholders and published in the Official Journal
- during the year, update the net book value at the prescribed intervals using the standard format laid down by the BCT
- supply to the BCT all documents, information, clarifications and justifications necessary to scrutinise their situation and satisfy the BCT that they are correctly applying the regulations on credit and foreign exchange controls and controls on credit institutions
- agree to external audits at the request of the BCT.

187. Accounting standards for banks have been drawn up, particularly in relation to the presentation of the financial statements of banking establishments; internal controls and the organisation of accounts in banking establishments; foreign currency transactions in banking establishments; liabilities and related income in banking establishments; and the equity portfolio in banking establishments.

188. Banking establishments must have a structure, human and logistical resources and clear, precise internal procedures to ensure the correct application and compliance with AML/CFT legal and regulatory provisions.

189. Banking establishments must keep files on their customers, whether regular or occasional, together with the evidence of their identities, for at least 10 years calculated from the date of the end of the relationship. Additionally, they must keep documents and information on operations and transactions performed by them on electronic media and/or on paper for at least 10 years calculated from the date of performance, having regard to the possibility that the competent authorities may wish to consult them (Article 113 of Law 25-2015).

190. The records must be kept in such a way that it is possible to reconstruct all transactions and provide the information requested by any authorised authority within the required timelines.

191. In the light of the points set out above, the availability of banking information is assured.

Beneficial ownership information on account holders

192. The international standard, as enhanced in 2016 requires that beneficial ownership information be available in respect of all account holders. Tunisian law prohibits banks from holding secret accounts (Article 108 of Law 26-2015).

193. The availability of beneficial ownership information on bank account holders in Tunisia is explained in detail in part A.1.1. The conclusions remain the same. The definition and supervision of the proper implementation of the beneficial ownership concept are in line with the standard.

194. Reference by the bank to a third party, whether in the same group or not, in order to satisfy the obligation incumbent upon it to know its customers, is in conformity with the standard as explained in paragraphs 92 to 93.

195. It is also possible for banks and financial establishments to take simplified measures where the risk level is lower. As stated in the conclusions to part A.1.1, this means that beneficial ownership information may not always be up to date, and more generally no frequency is set for updates. Tunisia is therefore recommended to ensure that beneficial ownership information is up to date, including for low-risk customers (see Annex 1).

Enforcement measures for the availability of banking information

196. In conformity with Articles 116 and 117 of the AML/CFT law, any failure to comply with the CDD measures provided for in Articles 108, 109, 110, 111, 112 and 113 of the AML/CFT law gives rise to disciplinary proceedings

under the procedures in force as laid down in the disciplinary regime specific to each AML/CFT obliged person. For banks, the disciplinary measures are imposed by the BCT.

197. The disciplinary authority may, after hearing the interested party, impose one of the following sanctions (Article 117 of the AML/CFT law): warning, reprimand, ban on pursuit of activity or suspension of accreditation for a period not exceeding two years, termination and permanent ban on pursuit of activity or withdrawal of accreditation.

198. In addition, failure by a bank to comply with the record-keeping requirement, which in itself constitutes a breach of the internal AML/CFT rules, is punishable by a sanction imposed by the Governor of the BCT that can range from a warning to a fine of up to 15% of the minimum capital of the offending bank.

199. The BCT has established the methods for determining the financial sanction in an internal note. To do so, the BCT assesses the seriousness and the extent of the infringements. The extent takes account of the number of shortcomings found and their seriousness; the BCT then adjusts the sanction according to the size of the bank; the sanction is adjusted by applying mitigating (such as the bank's responsiveness, action plan) or aggravating (lack of co-operation or communication with the BCT, unresponsiveness) factors. The methodology for determining the financial sanction was designed on the basis of the principles of effectiveness, proportionality and dissuasion.

200. Supervision of the banks' implementation of the requirements of AML/CFT legislation was discussed *supra* in the section *Banking sector supervision* in part A.1.

201. The controls and sanctions applied by the BCT as part of its controls programme ensure the availability of banking information in Tunisia, including information on the beneficial ownership of accounts. However, Circular 2018-09 which lays down this definition and the arrangements for identifying and verifying beneficial ownership is recent because it entered into force less than one year ago. Consequently, Tunisia is recommended to continue ensuring that the banks comply with their obligations to identify and verify beneficial ownership.

Availability of banking information in practice

202. During the evaluation period, Tunisia received 80 requests for banking information and responded to them. EOI partners report that the information sent by Tunisia was generally satisfactory. Some delays were nonetheless noted but, as analysed *infra* under element C.5, they are not attributable to the availability of banking information.

Part B: Access to information

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

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

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

204. The 2016 Report found that the Tunisian tax authorities used their internal powers in tax matters for EOI purposes. However, the report also noted the recent entry into force of the Law ending Restrictions on Access to Banking Information under an EOI request from a foreign jurisdiction. Similarly, legal professional privilege could go beyond the scope allowed under the international standard for the exchange of information on request. Therefore, it was recommended that Tunisia should clarify the scope of legal professional privilege. Element B.1 was determined as being in place, but certain aspects of the legal implementation of the element needed improvement.

205. Since 2016, the tax authorities’ powers of access have been strengthened by the legal provisions on the right to information (2016 and 2017 Finance Laws) and the creation of a Tax Investigation and Tax Evasion Team.

206. The tax authorities have an extensive database that they use in order to respond to requests from a foreign country, and, where information is available from third parties, the authorities exercise their right of supervision and right to information. The tax authorities often applied to the banks in Tunisian investigations, and, because of the large number of these procedures, delays could be a frequent occurrence. As a result, a single point of contact system has been introduced in October 2018 in each bank in order

to streamline the process of collecting banking information that is to be exchanged with foreign partners. The sole responsibility of the point of contact is to process, within 20 days, the requests received by the tax authorities for information from a foreign partner. The effects of this new measure are positive, because in practice requests are dealt within eight days from receipt by the bank. But there were numerous delays during the evaluation period. Tunisia is therefore recommended to keep this system going to ensure that banking information is available from banks, in order to allow an effective exchange of information in practice.

207. No legal clarifications of legal professional privilege have been made since the last evaluation. However, in practice, this does not give rise to any major consequences, since lawyers are not an indispensable source of information to the tax authorities – the authorities have other sources for the same information that are accessible to them.

208. The Tax Procedures Code (CDPF) provides for numerous penalties in the event of obstruction of the tax authorities' power to access information. The sanctions were effectively applied during the evaluation period to keepers of information in the few cases of obstruction in domestic matters; there were no cases of obstruction of access to information in respect of EOIR.

209. During the review period, Tunisia received 194 requests for information and, when the information was not already in possession of the tax authorities, the competent authority has been able to access it.

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

Legal framework		
	Underlying factor	Recommendation
Deficiencies identified	The scope of legal professional privilege is not defined in Tunisian law and could go beyond the scope allowed under the international standard on the exchange of information on request.	Tunisia should clarify the scope of legal professional privilege in order to ensure that it is in conformity with the international standard on the exchange of information on request.
Determination: The element is in place.		

Practical implementation of the standard		
	Underlying factor	Recommendation
Deficiencies identified	Delays in obtaining banking information have been noted during the evaluation period. In order to make good this deficiency, a single point of contact has been appointed in each bank. This procedure has recently been introduced.	Tunisia is recommended to ensure that banking information is available from banks within the time limits laid down in law.
Rating: Largely Compliant		

B.1.1. Ownership, identity and banking information

211. The 2016 Report analysed the procedures applied for accessing information generally as well as the more specific rules for accessing banking information. These rules continue to apply; however, practical changes have been made to access to banking information.

Accessing information generally

212. The competent authority for EOI requests received by Tunisia is the Minister for Finance, who has delegated this responsibility to the Director General of Taxation. In operational terms, until 2017, the service responsible for reconciliation and data collection nationally was also responsible for the exchange of information with foreign countries. In 2017, the restructuring of the DGI led to the establishment of the Cross-checking, International Exchange of Information, Programming and Risk Management Unit, which included the Information Exchange Department.

213. Before using its powers of access, the competent authority starts by seeking information in the databases to which it has direct access, and if the information is available from a third party, it sends a note to the inspection body concerned, requesting the help of inspectors. The note contains only information on the person concerned, in particular given name and family name/company name, address and tax identifier, and a summary of the information and documents requested. The inspectors respond based on Articles 8 and 16 of the CDPF by carrying out on-site inspections or requesting the required information from third parties in possession of the information. The right to information applies both in local investigations and in the context of an international request for information. This right to information may be exercised in respect of any kind of information (legal ownership, beneficial ownership, accounts).

214. The tax authorities' internal databases are rich sources of information:
- Taxpayer's tax file containing the articles of association filed by the taxpayer (recorded at the tax office). Also available for consultation are the communications of the various minutes on changes in ownership and share capital (physically archived at the Tax Control Offices or available for consultation in the DGIU IT system under "registered instruments") and all instruments registered in respect of a taxpayer.
 - RAFIC System: Streamlined Accounting and Taxation Measures. All information on the management of taxpayers' files, from creation, amendment and transfer until cessation of activities, then reinstatement (for partnerships) if the company takes up an activity, even if it is different from the initially authorised activity. The system also records all tax returns along with information in relation to the registration of civil acts, notarial acts and judicial proceedings concerning the life of a company. This system provides the authorities with the identity of partners, legal representatives, the legal form of the company, the company's activities and the address of those activities.
 - SADEC System: Decision-Making and Tax Control Assistance System. This system is a tool to assist in scheduling and planning fiscal controls. It provides the controls services with various internal and external databases and access to registered instruments and documents (list of instruments registered by the taxpayer; multicriteria status of registered assets, list of partners by company), employer declarations (summary table containing the total tax withheld at source during a year, salaries, wages, pensions and life annuities paid, sums paid to residents in Tunisia by way of fees, commissions, brokerage, remuneration paid to employees and non-employees in exchange for casual or incidental work outside their normal activity, rent, hotel rents, fees paid to persons subject to the non-personal tax regime, attendance fees, capital gains, remuneration paid in exchange for delivery of services on another person's behalf, investment income, interest from special savings accounts and interest on loans, and amounts paid to persons who are non-resident or non-established in Tunisia by way of fees, rent, commissions, brokerage, royalties, attendance fees, capital gains, securities except for shares and capital gains from the transfer of securities, remuneration paid in exchange for delivery of services on another person's behalf, amounts paid to non-residents established in Tunisia who do not file a statement of existence prior to beginning their activities) and tax returns.
 - AREEF System: Application for Research and Exploitation of Financial Statements, which allows the various units of the DGI (departments dealing with large companies and medium-sized companies, inspection

offices and centre, central directorate) to consult the scanned financial statements filed by taxpayers as attachments to the various tax returns.

- GED System: Electronic Records Management, an electronic filing system for instruments recorded at tax offices having been checked by the services of the Regional Tax Control Centres.

215. The competent authority also has direct access to external databases such as the National Register of Enterprises or the Tunis stock exchange. Access in all cases is guaranteed by agreements concluded between the agencies in question and the DGI that allow access to all information on legal ownership, beneficial ownership, as explained in part A.1.1, and accounting information for legal persons, legal arrangements and partnerships that are required to file their financial statements with the register, along with data on transactions involving shares in SAs other than through a public offering and subject to compulsory registration with the stock exchange.

216. Where a response to an incoming request for information cannot be given using internal or external databases, the competent authority has several means available to it to access the information required. The most important is the right to information which allows the tax authorities to be aware and, where necessary, make copies of records held by third parties (private businesses, authorities, etc.). The right of control is also available for responding to a request for information.

217. The legal framework governing the right to information and the right of control by means of preliminary audit of declarations or a comprehensive audit of the taxpayer's tax affairs has not changed, and the developments in that regard set out in the 2016 Report (paragraphs 168 to 181) still apply.

218. The right to information is the approach most used in order to respond to a request for information if the taxpayer or person referred to in the request is not already the object of a tax affairs audit. It can be exercised on-site, on request or spontaneously (by other authorities).⁵

219. The right to information covers taxpayers and third parties, including those that may not be subject to Tunisian tax, and there are specific rules for banking information. In order to cover all information that may be of use in respect of determining the tax base and performing controls on the taxes, duties and charges payable by third parties, the tax authorities may request the following information:

5. Some public entities have to provide the tax authorities with information on contracts for construction, repair, maintenance, supplies and services and other contracts relating to movable property within 30 days from the date on which the contract is concluded.

- records of accounts, invoices and documents held by the services of the State and local government, publicly owned establishments and businesses, companies and agencies controlled by the State or local government together with establishments, businesses and other legal persons in the private sector and natural persons, within the framework of their powers or that tax law requires them to keep
- instruments, documents, records and evidence in files kept by public officials, keepers of archives and repositories of government securities in the performance of their duties.

220. Where a fiscal control is under way into the entity or the person referred to in a request for information, the file is referred to the service with responsibility for the control for it to look for the information requested during the control. The right of control is exercised either by a procedure for a preliminary audit of declarations, instruments and documents (Article 37 CDPF) or by a comprehensive audit of the taxpayer's tax affairs (articles 38 to 41 CDPF). The information sought may also be obtained through an inspection and seizure procedure (Article 8 CDPF).

221. The procedure for a preliminary audit of declarations, instruments and documents held by the tax authorities is performed using all documents held by the tax authorities, documents filed by third parties pursuant to the tax law in force or documents forwarded to the tax authorities pursuant to their right to information. As part of this procedure, the Tunisian tax authorities can request information from the taxpayer in writing, and the taxpayer has a period of 20 days in which to respond (Article 17 CDPF).

222. A comprehensive audit of the taxpayer's tax affairs is carried out on the basis of the accounts for a taxpayer who is subject to the obligation to keep accounts and in all cases on the basis of information, documents or presumptions of fact or law. In connection with the audit, the tax authorities may request information, clarifications or justifications. When the request is in writing, the taxpayer must reply in writing within a period not exceeding 20 days calculated from the date of notification or direct delivery of the request from the tax authorities (Article 17 CDPF).

223. In practice, for Tunisian taxation, the tax authorities most frequently use the right to information on request and, to a lesser extent, the right to information on site and spontaneous requests for information from other authorities.

Access to banking information

224. The powers of access described above also apply to banking information. The 2016 Report noted the entry into force of the 2016 Finance Law, which introduced a new paragraph in Article 17 of the CDPF with the aim

of enabling the tax authorities to obtain banking information from a financial institution without applying the restrictions⁶ in that article, in particular regardless of the account holder’s status as a taxpayer.

225. This provision was reworded by the 2017 Finance Law, which introduced a new Article 17 bis of the CDPF. That new Article states that banks “... are required to forward to the services of the tax authorities, whenever they so request or from time to time, the information available to them requested by the States with which Tunisia has agreements on the exchange of information and assistance in tax matters, in conformity with each agreement, within 20 days calculated from the date of notification of the request *or* within 30 days of the time limit for the transfer of information abroad in conformity with the agreement or arrangements entered into in the agreement in respect of its application, notwithstanding the conditions relating to the commitment to a preliminary tax audit or comprehensive audit and the prior request to the taxpayer to forward such information.”

226. The financial institutions must, therefore, provide the services of the tax authorities with the information available to them:

- within 20 days calculated from the date of notification of the request
- notwithstanding the commitment to conduct a tax audit and the prior request to the taxpayer to provide such information.

227. At the time of the 2016 Report, the Tunisian authorities had confirmed that the exchange of banking information would occur, in compliance with Article 17 of the CDPF, with jurisdictions covered by the Multilateral Convention and with jurisdictions bound with Tunisia by a bilateral convention, including if Article 26 was not up to date on access to banking information. Tunisia had also confirmed that, if a requesting jurisdiction wished to obtain banking information for periods predating 2016, then that would be possible. In practice, Tunisia dealt with 14 requests received during the period under review containing banking information received before 2016.

228. In practice, the tax authorities have used their right to information for domestic purposes for banking information more than 133 000 times between April 2016 and March 2018, because they do not yet hold banking information in their internal database.

229. In terms of international requests for information, Tunisia received 80 requests for banking information and used its right to information subject

6. The request could be made only to a Tunisian taxpayer, and first had to be made to the taxpayer himself, and if the taxpayer did not comply with that request, the competent authority had to obtain a court order in order to make the request to the banks.

to the requirement of Article 17 bis in each case. However, prior to the 2016 Finance Law, the tax authorities did not have the right to exchange banking information unless there were some domestic tax interests in play. Following the entry into force of the 2016 Finance Law, the competent authority, which had never had to respond to requests for banking information, had to develop new procedures and change its practices. Delays were therefore noted. Since October 2018, a single point of contact, a bank employee, has been appointed within each bank as the point of contact between the EOI Department and the bank from which information was requested. This new practice has made it possible to streamline the procedure and monitor progress in information gathering. Since this practice has been in place, the Tunisian tax administration has used it 170 times. The delays have become shorter, dropping from an average of 34 days to eight days since mid-2019 (for requests received after the evaluation period).

Conclusion

230. Since 2016, the tax authorities most often apply directly to the banks in order to respond to international requests for information, and the new procedure has entailed lengthy delays in obtaining banking information. In order to make good this deficiency, a single point of contact was appointed in each bank. This new procedure has recently been introduced (October 2018). Tunisia is recommended to ensure that banking information is available from banks within the time limits laid down in law.

B.1.2. Accounting records

231. In addition to the information held in the tax authorities' databases as a result of various reporting obligations performed by taxpayers and third parties, the powers to demand information and perform inspections can be used to obtain accounting information.

232. In practice, the competent authority received 136 requests for accounting records and responded to all of them using internal databases and its right to information. The tax authorities issued 2 287 certified reports for failure to forward information requested by the tax authorities pursuant to its right to information for the purpose of local investigations. In the context of requests for information, the information holder has met its obligation to forward information. The information exchange unit has not found any failure to forward accounting records and nor have the peers noted any problems in this respect.

B.1.3. Information gathering where there is no domestic tax interest

233. The 2016 Report stated that the right to information enshrined in Article 17(7) of the CDPF, meant that, for implementation of the right to information in banking matters, a fiscal control of the Tunisian taxpayer

concerned needed to be undertaken. This condition, equivalent to the requirement of a domestic tax interest, has not been required since 1 January 2016 for the processing of international requests for information.

234. There is now no provision in Tunisian law restricting the tax authorities' capacity to implement the broadest possible exchange of information for tax purposes. In practice, during the evaluation period, Tunisia exchanged information on about 20 non-residents who had no tax liability in Tunisia.

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

235. Refusal by a person mentioned in the Article 16 of the CDPF to provide the information and records requested pursuant to the right to information or the right of control may incur a fine of between TND 100 and TND 1 000 (EUR 45.10 to EUR 451) increased by a fine of TND 10 (4.51 EUR) for each record that is not provided or that is provided in an inaccurate or incomplete manner (Article 100 CDPF). A finding that the offence has been committed can be made after an interval of 90 days calculated from the preceding such finding and incurs the same fine.

236. Similarly, financial institutions that fail to fulfil the obligations incumbent upon them to provide banking information may incur a fine of between TND 1 000 and TND 20 000 (EUR 451 to EUR 9 020), increased by a fine of TND 100 (EUR 45.10) for each record that is not provided or that is provided in an inaccurate or incomplete manner (Article 100 bis CDPF). A finding that the offence has been committed can be made after an interval of 30 days calculated from the preceding such finding. The penalty is doubled from the second finding of an offence.

237. In practice, the EOI Department has never availed itself of its sanctioning powers for a refusal by an information holder to supply the information requested. However, for domestic purposes, the tax authorities have issued 2 287 certified reports for refusal to provide information to the tax authorities. The information also needed to be provided so that these certified reports could be addressed. Legal proceedings have been brought in the case of certified reports not in legal form. A total of TND 265 000 (EUR 119 515) has been recovered as a result of these certified reports.

B.1.5. Secrecy provisions

Bank secrecy

238. Bank secrecy is provided for in Article 61 of Law 2016-48 on banks and financial institutions. Bank secrecy may not be relied upon as against the competent authority. The latter may exercise its right to information even in

the absence of an open tax investigation into the person who is the object of the request for information. (See also part B.1.1 above and paragraphs 194 to 198 of the 2016 Report with different legal articles, but the content of which is similar.)

Professional secrecy

Legal professional privilege

239. The 2016 Report noted that the Decree-Law on the Profession of Lawyer did not define the scope of professional secrecy. Article 16 of the CDPF requires professionals to provide the information requested unless there are “legal provisions to the contrary”. Such provisions exist in respect of lawyers: in their case, professional privilege is absolute and could extend beyond the limits allowed in the international standard on the exchange of information on request. For other professionals, the report did not note any legal barriers to the exchange of information.

240. Since the 2016 Report, the scope of legal professional privilege has not been clarified by case law.

241. However, the Article 18 of the VAT Code as amended by the 2018 Finance Law now requires lawyers to provide invoices, receipts, their accounts, records and evidence when acting on a client’s behalf. The Tunisian authorities explain that, because of this change of law, legal professional privilege is losing its teeth in favour of greater transparency in exchanges with the tax authorities.

242. During the on-site visit, the representative of the Tunisian lawyers’ association confirmed that, if the authorities were to make a request for information, most lawyers would comply. However, although lawyers seem increasingly to recognise the limited scope of legal professional privilege, he added that some would prefer to incur a fine rather than comply with such a request.

243. Moreover, the Tunisian authorities also confirmed that, if a taxpayer refused to provide the documents that should, according to law, be in his possession, on grounds that the documents were held by his lawyer, the Tunisian tax authorities could sanction the taxpayer for failure to provide the required documents.

244. In practice, therefore, legal professional privilege has very limited impact for the exchange of information, since the availability of information is rarely provided by lawyers. The lawyer could be the sole source of information if he administers a foreign trust, but the representatives of the profession met during the visit explained that this was not a Tunisian practice.

245. Moreover, Tunisia said it had not experienced any difficulty in obtaining information and records that were held by non-financial professions as part of domestic investigations, including from lawyers. Moreover, where international requests for information are concerned, the authorities have never had to refer to a lawyer because alternative sources of information exist. In particular, the Tunisian authorities had not received any requests relating to foreign trusts.

Professional secrecy of notaries, accountants and auditors

246. In Tunisia, notaries are regarded as public officials and as such are required pursuant to Article 16 of the CDPF to provide tax authority agents with written instruments, records and evidence in files held by them as part of their duties. The provision every three months of waste-books (signed by the notary and the parties, the absence of a signature irrevocably rendering the instrument invalid if the same signatures are not present in the notarial record of original acts) and original acts to the competent Collector of Taxes and the monthly filing with the tax office of the summary of instruments for which they are responsible for collecting registration duties (Article 88) mean that professional secrecy is extremely limited in scope from the tax authorities' viewpoint.

247. Accountants are bound by professional secrecy unless otherwise provided in law. One such instance is set out in Article 16 of the CDPF laying down the right to information. The same obligation is incumbent upon their employees. However, as explained in Part A.1, accountants say that, in practice, they do not own information and do not keep it because, once they have drawn up the accounts, they return the information to their customers. They will therefore rarely be a relevant source of information for the purpose of information exchange.

248. In practice, the tax authorities report that they have not had to exercise their right to information in order to respond to an international request for information because the records held by notaries or accountants (where held by an accountant) are also available directly from the tax authority itself or the commercial register for information on beneficial ownership.

249. The professionals met during the onsite visit confirmed that they responded to requests for information requested for domestic purposes by the tax authorities and that they would do the same for the purposes of an international exchange of information because professional secrecy could not obstruct this.

Conclusion

250. Professionals are not a privileged source of information for the competent authority, even if it would appear that there is nothing in practice that obstructs the tax authorities' right to information in relation to the professional in question, whose interpretation of the limits of professional secrecy are in line with the standard. However, the Law on Legal Professional Privilege that the 2016 Report found to be wanting has not been amended. It is therefore recommended that Tunisia should clarify the scope of legal professional privilege in order to ensure that it is in conformity with the international standard on the exchange of information on request.

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.

251. The 2016 Report found that there is no general prior notification requirement or practice in Tunisian Law, and determined that the rights and safeguards that apply to persons in Tunisia were compatible with effective exchange of information. Nor is there a post-hoc notification procedure in Tunisian law.

252. Tunisian legislation does not provide for an obligation to inform a person subject of an EOI request. Consequently, the person concerned by the request cannot appeal the request for information.

253. Moreover, according to the confidentiality rules (Article 15 CDPF and confidentiality provisions included in the EOI instruments), the holder of the information requested cannot access the EOI request and the related file.

254. In practice, during the evaluation period, Tunisia used its powers of access to obtain information without ever having to inform the persons concerned.

255. The table of determination and rating is as follows:

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

Part C: Exchanging information

256. Sections C.1 to C.5 evaluate the effectiveness of Tunisia’s network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, whether they cover all Tunisia’s relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Tunisia’s network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Tunisia 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.

257. The 2016 Report concluded that Tunisia’s network of EOI mechanisms was “in place”. Tunisia has been party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) since 1 February 2014; it is also party to the Convention on the Prevention of Double Taxation and on establishing rules of Mutual Assistance in Income Tax Matters between the States of the Arab Maghreb Union (Convention of the States of the Arab Maghreb Union).

258. Since the 2016 Report, Tunisia has signed one new bilateral convention and one Protocol amending Article 26 in a bilateral convention previously signed with one partner. Tunisia’s network of EOI mechanisms currently includes 151 partners (61 bilateral agreements including 44 covered by the MAAC).

259. In practice, Tunisia applies its EOI agreements in conformity with the international standard.

260. The table of determinations and rating is as follows:

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

C.1.1. Foreseeably relevant standard

261. The international standard on the exchange of information on request envisages EOIR to the widest possible extent, but does not allow “fishing expeditions”. The balance between these two competing elements lies in the concept of “foreseeable relevance”, as articulated in Article 26(1) of the OECD Model Tax Convention.

262. Most of the treaties signed by Tunisia include the term “necessary”, which in the Commentary on Article 26 of the OECD Model Tax Convention is regarded as having equivalent effects in EOI to the expression “foreseeably relevant”. Tunisia confirms that it adheres to this interpretation, as set out in its procedural handbook. Moreover, in practice, Tunisia has responded to several requests for information that arose from a bilateral convention containing the term “necessary” rather than “foreseeably relevant” and did not impose any restrictive conditions on demonstrating the relevance of the request.

263. Therefore, these treaties and their interpretation can be recognised as in conformity with the standard where foreseeable relevance is concerned.

264. Four treaties restrict the application of EOI subject to the “provisions of the present Convention”.⁷ With the exception of Ethiopia, all the countries bound by these treaties are Parties to the MAAC and therefore have an instrument that allows full EOI. However, one partner has used its bilateral convention instead of the MAAC to request information exchanged by Tunisia. Consequently, although in theory the treaties do not allow for EOI that is not covered by the Convention, this has not been borne out in practice. The Tunisian authorities have confirmed that, on 26 September 2019, they sent a letter through the diplomatic channel proposing a review of its convention with Ethiopia. They have not yet received a reply.

265. The convention with Switzerland still does not include Article 26, but, as that aspect is covered by the MAAC, it does not prevent effective EOI.

266. In practice, of the 194 requests received, Tunisia has never questioned their foreseeable relevance and no peers have commented in that regard.

267. Tunisia’s network of agreements allows group requests, and nothing in the country’s internal legal order would appear to prevent the collection of information for group requests. Tunisia received no group requests during the period under review.

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

268. A number of the bilateral tax conventions entered into by Tunisia do not expressly provide that EOI applies to all persons, regardless of whether

7. Austria, Ethiopia, the Netherlands and the United Kingdom.

they are resident in the requesting or requested jurisdiction. However, EOI does apply to all information relevant to the application of domestic tax legislation, and that legislation applies to both residents and non-residents. The Tunisian authorities confirm that they adhere to that interpretation. In practice, Tunisia received 176 requests originating under one of these conventions and exchanged the requested information. Therefore, under the treaties, EOI may be requested in respect of any person.

269. Finally, four bilateral agreements⁸ entered into by Tunisia state that they apply only to the “taxes referred to in the Convention” and not to the domestic law of the Contracting States. In those cases, the agreements do not apply to all persons. However, this did not constitute a restriction, because all the jurisdictions except Ethiopia are covered by the MAAC. In the 2016 Report, Tunisia was nonetheless recommended to amend its tax convention with Ethiopia. Since then, the Tunisian authorities have contacted the Ethiopian authorities to propose a review.

C.1.3. Obligation to exchange all types of information

270. Only two tax conventions entered into by Tunisia⁹ include provisions equivalent to Article 26(5) of the OECD Model Tax Convention enshrining the principle that all types of information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity must be exchanged. However, in this respect too, Tunisia applies its treaties in conformity with the international standard and exchanges banking information even where the EOI instrument does not include the paragraph 5 of the Article 26 of the OECD Model Tax Convention. Of the 61 jurisdictions that have a tax convention with Tunisia, 17¹⁰ are not party to the Multilateral Convention.

271. During the evaluation period, the Tunisian tax authorities were able to obtain banking information from bank establishments for EOI purposes for international partners on 80 occasions.

272. The 2016 Report noted that the Tunisian authorities confirmed that they would exchange banking information in respect of periods predating 1 January 2016, when the rules relating to access to banking information changed in Tunisia (see section B1). During the evaluation period, such exchanges occurred on 14 occasions.

8. Austria, Ethiopia, Mauritius and the Netherlands.

9. Tax conventions signed with Germany and Singapore.

10. Algeria, Chad, Congo, Côte d’Ivoire, Egypt, Ethiopia, Guinea, Iran, Iraq, Jordan, Libya, Mali, Sudan, Syria, Togo, Viet Nam and Yemen.

C.1.4. Absence of domestic tax interest

273. The 2016 Report noted that none of the bilateral agreements entered into by Tunisia contain the equivalent of Article 26(4) of the OECD Model Tax Convention describing the concept of domestic tax interest. Since the 2016 Report, Tunisia has signed two tax conventions which include Article 26(4).¹¹ However, even without that paragraph, Tunisia is currently able to exchange information with its partners without reference to a domestic tax interest in all circumstances.

274. This was confirmed in practice when Tunisia exchanged information on non-residents who had no tax obligation whatever in relation to Tunisia on 20 occasions during the evaluation period. Peers have not raised any issues in this regard.

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

275. All EOI mechanisms entered into by Tunisia provide for EOI for both civil and criminal tax purposes and none of those mechanisms restricts EOI in criminal matters in the event of dual criminality (which provides that assistance can be provided only if the matter under examination (and giving rise to the request for information) would constitute a criminal matter in the requested jurisdiction if it had taken place in that jurisdiction).

276. In practice, Tunisia received 192 requests concerning civil offences and has exchanged the requested information. Peers have not raised any issues on this point. In two cases, the request concerned a matter that constituted a criminal offence in the requesting jurisdiction, but not in Tunisia. The information was exchanged.

C.1.7. Provide information in specific form requested

277. In some circumstances, a Contracting State may need to receive information in a particular form in order to satisfy the requirements relating to the production of evidence or other legal obligations. There are no restrictions in the EOI mechanisms entered into by Tunisia that would prevent it from providing information in the form requested, provided that it was in conformity with its administrative practices. Tunisia's administrative practices do not include any restriction in respect of the form of the information to be exchanged, and no request received by Tunisia required information to be received in a particular form.

11. Tax conventions signed with Germany and Singapore.

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

278. The 2016 Report stated that seven conventions that had been signed were not in force. Six¹² of those conventions are still not in force, but Tunisia has done everything in its power to achieve that goal.

279. Tunisia has ratified four of these instruments.¹³ Moreover, at the request of the Ministry of Finance, the Ministry of Foreign Affairs has, on several occasions, sent correspondence via diplomatic channels to the jurisdictions in question in order to encourage them to ratify or to exchange instruments of ratification so that the conventions in question can enter into force.

280. The convention with Chad was signed in 2012 but has not yet been ratified by Tunisia because it was signed in French only, without an Arabic version, and that fact constitutes an impediment to ratification. To that end, the Ministry of Foreign Affairs proposed signing the convention again, in both Arabic and French, via the diplomatic channel. No response has been received from Chad.

Bilateral or regional EOI instruments

Total number of EOI mechanisms, including bilateral, multilateral and regional mechanisms	151
In force	132
Compliant	120
Non-Compliant	12
Signed but not yet in force	19
Compliant	19
Non-Compliant	0
Including – bilateral mechanisms (DTCs/TIEAs) not included in multilateral or regional mechanisms and to the standard ¹⁴	17
In force	12
Compliant	0
Non-Compliant	12
Signed but not yet in force	5
Compliant	5
Non-Compliant	0

12. Conventions signed with Chad, Congo, Gabon, Guinea, Iraq and Togo.

13. Conventions with Congo, Gabon, Guinea and Togo.

14. The Convention of the States of the Arab Maghreb Union is not regarded as in conformity with the international standards because it is not consistent with the latest version of Article 26 of the OECD Model Tax Convention.

281. Once in force, Tunisia has no need to take any further measure to give effect to a treaty or agreement.

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

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

282. Tunisia has a vast network of EOI agreements including 61 bilateral agreements, one multilateral agreement, namely the Multilateral Convention, and one regional agreement – the Convention of the States of the Arab Maghreb Union (to which Algeria, Libya, Mauritania and Morocco are parties). Today, Tunisia's network of EOI agreements covers 151 jurisdictions.

283. Tunisia stated that its chief economic partners were France, Italy and Germany. Tunisia's network of EOI agreements covers most OECD member countries and EU Member States, and its agreements with them comply with the standard.

284. The Tunisian authorities explained that they declined requests to negotiate EOI agreements instead of double taxation conventions if the partners were already covered by the MAAC. The partners were notified of this approach via the diplomatic channel. This is not contrary to the international standard.

285. Tunisia should continue to enter into EOI agreements with any new relevant partner who makes a request to that end (see Annex 1).

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

Legal 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.

287. The 2016 Report found that the applicable treaty provisions and statutory rules that apply to tax authority agents with access to treaty information regarding confidentiality were in accordance with the international standard. Element C.3 was therefore determined to be "in place". Since the 2016 Report, there have been no changes in the rules regarding confidentiality.

288. In practice, the Tunisian authorities have introduced procedures to ensure that incoming and outgoing requests, as well as all the associated information, remain confidential in conformity with the standard.

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

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

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

Confidentiality in EOI instruments and in Tunisian law

290. Tunisia’s EOI instruments ensure confidentiality of the information exchanged, in conformity with the international standard.

291. The Multilateral Convention and Tunisia’s tax conventions establish that the information obtained will be kept secret under the same conditions as those established for information obtained pursuant to domestic law and will be provided only to the persons or authorities that assess or collect tax.

292. Tunisian domestic law contains provisions to ensure the confidentiality of the information exchanged. To that end, Article 15 of the CDPF states:

Any person called upon by reason of his duties or powers to be involved in tax assessment, collection, controls or litigation is bound by professional secrecy ...

The tax authority agents may issue information or copies of files they hold only to the taxpayer himself in so far as they concern his tax affairs or to the persons from whom the tax payment could be claimed instead of the taxpayer.

The services with responsibility for collecting the tax and the tax authority services may issue copies of the registered instruments or extracts from the register related to registration formalities only to the contracting parties or to their successors. In other cases, such copies and extracts may be issued only by order of the competent court.

293. The Tunisian authorities has confirmed that Article 15 of the CDPF covers the exchange of information missions carried out by the tax officials.

294. Tunisian law also provides for adequate sanctions under Article 254 of the Criminal Code – up to six months’ imprisonment and a fine of TND 120 (EUR 54) applies to any person who breaches the requirement of professional secrecy provided for in Article 15 of the CDPF.

295. Since 1 January 2017, the penalty has been multiplied fivefold in the event of disclosure of the information referred to in Article 17 CDPF and obtained pursuant to international agreements on EOI and administrative assistance in tax matters (Article 102 CDPF).

296. This requirement is capable of being raised against a public agent during or after termination of his appointment. Similarly, all staff must sign a non-disclosure undertaking that is valid during and after their appointment.

297. In practice, in order to ensure compliance, measures have been implemented such as withdrawal of access to the SADEC and RAFIC databases when agents’ official duties end, the validity of work ID cards until retirement, and finally an internal memo describing handover procedures in the event of retirement or change of post. Article 83 of Law 83-112 provides that obligations of professional secrecy continue to apply to former agents.

298. The standard, as amended in 2016, clarifies that although it remains the rule that information exchanged may not be used for purposes other than tax purposes, an exception applies, in accordance with the EOI instrument, where the supplying jurisdiction authorises the use of such information for non-tax purposes and where this use complies with their respective laws. That exception is provided for in the Multilateral Convention.

299. Exceptions to the obligation of professional secrecy allow the tax authorities to exchange information internally with other administrative bodies of the State such as the judicial authorities and those with AML/CFT responsibilities. Information received from a foreign competent authority may be used for a purpose other than a tax purpose such as the suppression of financial crimes and offences, subject to compliance with the requirements of the international legal instrument, including the authorisation of the foreign jurisdiction that provided the information. The authorisation of the foreign competent authority must be obtained before any information is communicated to non-tax authorities, regardless of any domestic mechanisms that allow for the communication to other authorities of information held by the DGI.

300. In practice, during the evaluation period, Tunisia did not request authorisation from foreign jurisdictions in order to use information for a purpose other than a tax purpose (AML or judicial purpose). However, it received two requests from partners to that end and granted authorisation.

301. The Tunisian authorities confirm that, should the case arise, before forwarding information received for other purposes, they would follow the procedure laid down in the treaties and request authorisation from the jurisdiction that had provided the information.

C.3.2. Confidentiality of other information

302. The confidentiality provisions in Tunisia’s EOI instruments and domestic law do not draw a distinction between information received in response to requests and information in the requests themselves. All other information, such as background documents, communications between the requesting and the requested authorities and within the tax authorities, are treated confidentially.

303. In practice, if the taxpayer or an holder of information must be contacted, the Tunisian tax services will not disclose the letter of EOI request from the foreign partner but only the minimum information for allowing them to provide the requested information.

Confidentiality in practice

304. Since March 2019, the tax authorities have moved into premises that provide a satisfactory level of security. The entire building is fitted with surveillance cameras. All DGI staff enter the premises using either a smart badge or fingerprint. The secure zones are protected by badge readers.

305. The Information Exchange Unit has a whole storey to itself. Only the staff of that unit are allowed access to the storey. Visitors to the Information Exchange Unit must be accompanied by an authorised person. Files on exchanges of information are held in lockable metal cabinets. Documents associated with EOI are classified as “Confidential”. Documents being processed by case officers are kept in their offices. The information received from an EOI partner is transferred to the relevant tax audit service through electronic message with encrypted attachments or through regular mails. The rules on the use and confidentiality of exchanged information are described in the internal guidance on EOI and reiterated when the information is transferred to the relevant service. The documents received from foreign partners are not “labelled” as exchanged information. However, the Tunisian authorities have indicated that the transmission of this information to non-tax authorities requires, in all cases, an analysis at the level of the central tax administration. This includes a review by the EOI Unit which can identify the cases where a prior authorisation from the supplying jurisdiction is required before the disclosure of the information to a Tunisian non-tax authority.

306. Several seminars with auditors have taken place, and regional centres where auditors are responsible for collecting information have been supplied with armoured cabinets.

307. Agents in the Information Exchange Unit and the Head of Unit undertook training in IT security in November 2016, although an induction into professional life, ethics and professional security is more generally integrated into the DGI training plan as a module that must be taken every year.

308. Security is also provided in respect of IT because all requests are processed using dedicated software since July 2019. The system was created by internal services to facilitate the processing, monitoring and control of requests for information. It makes for secure, paperless communication of information and statistical analysis of requests.

309. Before the software was implemented, requests were processed on an Excel file that could be accessed by members of the Information Exchange Unit with a unique password. The information was scanned and kept in a database.

310. Confidentiality policy is at the heart of the DGI's concerns. A special unit on IT and physical security was set up. A security audit of the DGI IT service is scheduled and a data security policy has been signed by the DG. A security committee is responsible for monitoring security and the IT system in order to ensure compliance with time limits and progress through the various stages of the project in line with the roadmap drawn up to that end.

311. In practice, the Tunisian authorities have never encountered an instance of non-compliance with confidentiality of exchanged information.

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.

312. In addition to the Multilateral Convention, all the double tax conventions (DTCs) concluded by Tunisia contain a provision equivalent to the exception provided for in Article 26(3) of the OECD Model Tax Convention which allows a State to refuse to exchange certain types of information, including information which would disclose any commercial, business, industrial or professional secret or trade process. However, the term “professional secrecy” is not defined in the tax conventions and, therefore, this term would derive its meaning from the domestic law of Tunisia.

313. As noted in part B.1.5 of this report, Article 16 of the CDPF required professionals to communicate requested information, barring “legal provisions to the contrary”. The scope of legal professional privilege is not defined

in Tunisian law and could go beyond the scope allowed under the international standard on the exchange of information on request. In particular, a lawyer could be one of the only sources in relation to any foreign trusts administered by him.

314. However, Tunisia has broadened, in the context of the 2018 Finance Law, its access powers to the accounting information held by lawyers. Moreover, in practice, lawyers are not an usual source of information because the tax authorities have a very extensive internal database, access to very extensive databases held by other government agencies, and most stock companies have a bank account in Tunisia.

315. In practice, Tunisia’s partners did not raise any issue in relation with the application of the rights and safeguards of taxpayers and third parties in Tunisia.

316. Consequently, the recommendation included in the 2016 Report is deleted under element C4 and it is only maintained under the element B.1. Therefore, the determination of element C4 is upgraded from “needs improvement” to “in place”.

317. The table of determinations and rating is as follows:

Legal framework
Determination: The element is in place.
Practical implementation of the standard
Rating: Compliant

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.

318. Tunisia received 194 requests for information, the bulk of them from two main partners. Tunisia responded to all the requests, but rarely processed them within 90 days, and, more than half the time, it took longer than 180 days. There are several reasons for this: first, the end of banking secrecy necessitated organisational adjustments and practical procedures in order to obtain banking information. A focus on providing the requesting jurisdiction with a high-quality, exhaustive response also takes time. During the evaluation period, the Information Exchange Unit had other tasks in addition to information exchange; and, finally, the number of requests rose, but there was no corresponding rise in the human resources necessary to process the incoming requests effectively. Tunisia is recommended to ensure that the resources required to deal with the incoming requests are adequate so that the requests can be processed in a timely manner.

319. Additionally, where responses cannot be provided within 90 days, Tunisia rarely sends progress reports to its partners. Tunisia is recommended to ensure that status updates for requests that cannot be dealt within 90 days are provided to the requesting jurisdictions in all cases.

320. Tunisia also sent 110 requests. Peer feedback on the quality of the requests sent is positive.

321. The table of determination and rating is as follows:

Legal framework		
This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.		
Practical implementation of the standard		
	Underlying factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	The Information Exchange Unit had not been granted sufficient resources to be able to respond effectively to requests for information falling to it in addition to the other tasks for which it was responsible.	Tunisia is recommended to ensure that the resources required to deal with the incoming requests remain adequate so that the requests can be processed in a timely manner.
	Tunisia had provided status updates for only 22 of the 170 requests that had not been processed within 90 days.	Tunisia is recommended to ensure that status updates for requests that cannot be dealt within 90 days are provided to the requesting jurisdictions in all cases.
Rating: Largely Compliant		

C.5.1. Timeliness of responses to requests for information

322. During the evaluation period (1 April 2015-31 March 2018), Tunisia received 194 requests for information. The requests related to (i) ownership information (81) and/or (ii) accounting information (136), (iii) banking information (80) and (iv) other types of information (169). Tunisia's most important partners for the period studied (in view of the number of requests received and/or sent by Tunisia) were France, Belgium, Italy, Spain, Germany and Norway (for incoming requests) and Germany, France and Italy (for outgoing requests).

323. The table below summarises the number of requests that Tunisia responded to within 90 days, 180 days, one year or more than one year.

Response time statistics

		2015-16		2016-17		2017-18		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E]	59	100	63	100	72	100	194	100
Full response: ≤ 90 days		13	22	6	10	5	7	24	12
≤ 180 days (cumulative)		33	56	34	54	25	35	92	47
≤ 1 year (cumulative)	[A]	46	78	43	68	65	90	154	79
> 1 year	[B]	13	22	20	32	7	10	40	21
Declined for valid reasons		0	0	0	0	1	1	1	<1
Status update provided within 90 days (for responses provided > 90 days)		6	13	6	10	10	15	22	13
Requests withdrawn by requesting jurisdiction	[C]	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested	[D]	0	0	0	0	0	0	0	0
Requests still pending at date of review	[E]	0	0	0	0	0	0	0	0

Notes: a. Tunisia generally considers one case as one request. A single case may be broken down into one or more requests:

- based on the number of recipients (investigating departments) to which it will be distributed (for requests received);
- and/or based on the number of persons to be investigated (for requests sent).

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.

324. Tunisia explained that requests that are not fully dealt with within 180 days are typically requests about banking information and are chiefly requests received during the period 2015-16, in other words before the deletion, under the 2016 Finance Law, of the restrictive conditions established in Article 17 of the CDPF (see section B.1.1). Despite the fact that those requests were made prior to the entry into force of that law, the competent authority exercised its new powers of access immediately in respect of requests that were still pending at the time: it sent reminders to various banks and succeeded in collecting the information requested, which was then provided to its partners in 14 cases.

325. However, the entry into force of this Article has not improved the time for the treatment of the requests. The Tunisian authorities explain that this is due to the time taken to set the procedure up given that the competent authority had never previously had access to this type of information. Although the introduction in October 2018 of a single point of contact appointed by the banks has helped to reduce time taken, this new practice is very recent and not enough time has elapsed to assess its effectiveness in reducing the time taken to process requests for banking information. However, it would appear that staffing issues could explain some of the delays (see section C.5.2).

326. During the same period, Tunisia never sought clarification from its partners. This means that Tunisia’s relatively long processing times are due to internal reasons rather than the quality of the request *per se*. Peers confirmed the delays in receiving the requested information. A peer particularly noted that in two cases, the information requested was provided two years after the sending of the request.

Communication with the requesting jurisdiction

327. Of the 170 requests that had not been processed within 90 days, Tunisia had provided status updates for only 22 of them, i.e. just 12.9%. Tunisia therefore does not provide its partners as a matter of course with a status update on their requests. Peer input raised this point. Nevertheless, since 2019, Tunisia has made an effort to inform five of its partners of the status of their requests. Although welcome, it is late in coming, and its impact on the quality of EOI processing is minimal, given that it is not automatic. Tunisia stated that the introduction of the new software system to monitor requests would make it possible to integrate a management module to provide automatic status updates to requesting jurisdictions.

328. Moreover, Tunisia has changed its practice since the end of the assessed period by sending partial answers as soon as possible. Peers confirmed this new practice.

329. Peer input was that communication with the competent authority was otherwise good.

330. Tunisia is recommended to ensure that status updates for requests that cannot be dealt within the 90 days are provided to the requesting jurisdictions in all cases.

C.5.2. Organisation and resources

Recent establishment of a dedicated EOI team

331. The 2016 Report explained that almost all tax conventions and EOI agreements designate the Minister for Finance or his authorised representative as the competent authority. The “authorised representative” for incoming requests is the Director General of Taxation at the DGI. It is envisaged that a decree will add to the list of authorised representatives able to act as a competent authority. Generally, requests for information, whether based on a tax convention, or on a regional or multilateral instrument, are all received by the Director General.

332. Before 2017, the DGI did not have an international EOI service. A service with responsibility for reconciliation and data collection nationally

was assigned the task of EOI with other countries. EOI was not the only task that the agents had to perform, and this explains some of the delays.

333. In 2017, the DGI was restructured and a Cross-checking, International EOI, Programming and Risk Management Unit was set up with two sub-directorates, including one for International Co-operation in EOI. The sub-directorate provides services in the fields of co-operation and EOI with different jurisdictions, the collection of tax data from the various ministries and national bodies, and co-ordination with DGI services concerning the collection and exchange of information for domestic tax investigation purposes.

334. A decree concerning the establishment of a structure devoted solely to EOI in international matters was published on 10 June 2019 (Decree No. 2019-491). The team with responsibility for EOI initially comprised an inspector general of financial services (director), a chief inspector of financial services (assistant director), five central inspectors (including two heads of service) and one [ordinary] inspector. The Tunisian authorities report that since the setting up of this Unit, the staff numbers of the EOI Unit has grown from 8 to 14.

Training and resources

335. The staff of the Information Exchange Unit have received training in Tunisia and internationally. In Tunisia, training on IT security and an awareness-raising seminar entitled *Réussir l'évaluation de la Tunisie par le Forum mondial sur la transparence et l'échange de renseignements à des fins fiscales* (Successful completion by Tunisia of the evaluation by The Global Forum on Transparency and Exchange of Information for Tax Purposes) were held in 2016 and 2017 in Tunis. A total of 383 officials from the regional centres also received training in EOI. Internationally, agents took a course on “International EOI Techniques and Transparency in Tax Matters” in 2017 and 2018 (OECD Paris) and took part in two working visits on legislative and operational aspects of EOI in 2018 (French Tax Administration and Belgian Tax Administration). Two seminars were also held in co-operation with the Global Forum on the topic “Understanding and using EOI for Tax Purposes within the Framework of International Tax Controls” and “Beneficial Ownership”.

336. Agents from the EOI Unit who are to perform international administrative assistance, whether by drafting a request for information to a foreign partner or searching for information requested by partners, are provided with a handbook setting out the procedures to follow at all stages of the exchange process. It explains, among other things, the requirements of fiscal relevance and exhaustion of domestic means. Another part deals with processing foreign requests and the time limits within which Tunisia is required to respond.

Finally, the guide sets out the obligations incumbent on agents with respect to confidentiality, especially in the context of EOI in international matters.

337. Turning to technical resources, the Information Exchange Unit has been using the request management system since 2019; previously, it used Excel spreadsheets and other IT materials to process and store requests (computers, photocopier/scanner and paper shredder).

338. The fact that the Information Exchange Unit did not have sufficient resources to enable it to perform all the tasks assigned to it was one of the reasons for the delays in processing information requests. The number of agents in the unit almost doubled between the end of the evaluation period and the on-site visit. Moreover, since the creation of the EOI Unit in June 2019, the number of officials dedicated to EOI has grown to 14. Although this is encouraging, Tunisia is recommended to ensure that the resources required to deal with the incoming requests remain adequate so that the requests can be processed in a timely manner.

Incoming requests

339. Once an incoming request is received at the Unit, the Head of Unit (or delegated official(s)) is in charge of validating the request by ensuring that:

- an instrument exists for EOI with the requesting country
- the information requested concerns the taxes and years covered by that instrument
- the information requested is deemed foreseeably relevant for a tax control, investigation or inquiry
- the information is sufficient to identify the taxpayer or the group of taxpayers by name or otherwise
- the years in respect of which the information is requested are stated
- the request has been signed by the foreign competent authority.

340. If the request is validated, it is allocated to an EOIR official. The official then sends an acknowledgement of receipt to the requesting jurisdiction and registers the request by logging the information on the persons referred to, the type of information, and whether this information is available internally. The process of collecting the information then begins.

Procedure followed by the case officer to obtain information

341. Where the information requested is held by the tax authorities, the case officer will trawl the internal and external databases to which he has access (see section B.1). Even if the requested information is often already held by the tax authorities, the time taken for the Information Exchange Unit

to process the request is most often more than 90 days. This is because most requests involved several types of information, some of which were not held by the tax authorities. The Tunisian authorities did not make do with partial responses and therefore waited until they had all information before sending a response. However, Tunisia has changed its practice towards the end of the review period by sending partial answers as soon as possible.

342. Where the requested information is not held by the DGI, the EOIR officer sends an internal request to the relevant tax control office (regional centres), for example the Large Companies Directorate, the Medium-Sized Companies Directorate, the National Controls and Tax Investigation Unit, the Tax Investigation and Tax Evasion Team, or the Tax Control Centre. The office has 20 days to return the information. In practice, a copy of the EOI request is never provided to the tax control office: only the information requested is mentioned in the internal request. Where the information is not supplied within 20 days, an automatic reminder is generated. In the event of a partial response, a second reminder is sent after 50 days.

343. Where the information requested is held by or under the control of the taxpayer or the person or entity who is the subject of the request, the auditors implement the most appropriate procedures for collecting the information (right to information, tax control, etc.). The person in question has 20 days in which to respond.

344. For banking information, the case officer writes directly to the single point of contact using the contact details supplied by the banks; that person has 20 days to supply the information. The letter contains the legal reference suggesting that the information is requested in order to respond to a request for information.

345. In many cases, requests for banking information include only the account holder's name and date of birth. This requires greater time and effort to investigate because Tunisia contacts all 25 banks in order to establish whether the person concerned has accounts with more than one bank. Even though the single point of contact has resulted in quicker response times by the banks, the competent authority notes that requests of this type serve to prolong the time taken. However, the requirement in the new Finance Law of 2019 for companies and natural persons to list bank account details on tax returns will provide the competent authority with a source of information that will reduce the time taken.

Verification of the information gathered

346. The control services and the EOI department compare the information obtained to the data available on the IT system or from on-site visits in order to ensure its veracity.

Outgoing requests

347. The tax authority agents must identify situations in which they should seek administrative assistance. During tax audits, exchanges of information make it possible to ensure the accuracy of the information supplied by the taxpayer or to collect information that could not be obtained during tax audits. Before performing the EOI, all domestic means of collecting information must have been exhausted. If, despite the domestic searches, the information has not been obtained or if the information obtained requires refining or confirmation, or if it can be demonstrated that searches to that end may significantly compromise ongoing investigations, such as the most serious cases of fraud where the use of such means would risk loss of evidence, the EOI may then be instigated.

348. To that end, the auditors are provided with an EOI Handbook designed especially for outgoing requests.

349. The stages in the process are as follows:

1. The EOI Unit receives a draft request for information from a tax control service; the auditor fills in the outgoing request form (files may be attached) and sends it to the head of the EOI Unit.
2. The request may be sent directly by the verification office or via the hierarchical framework at the regional tax control centre.
3. The head of the EOI Unit allocates the request to a case officer.
4. The head of the EOI Unit (or his delegates) or the case officer (following validation by the head of the EOI Unit) may e-mail a request for clarification to the tax control service concerned.
5. Once validated by the head of the EOI Unit and signed by the Director General of Taxation, the request is sent by the head of the EOI Unit or by the case officer to the foreign competent authority concerned.

350. The case officer and the tax control service involved in the request receive an e-mail notification and in-programme alert. For countries where French is not an official language, requests must at least be drafted in English by the officials of the EOI Unit (if not in the language of the requested jurisdiction). The use of templates ensures that the requests sent are complete and meet the foreseeable relevance criteria.

351. The information that must be included in the requests includes the identity of the persons concerned (including family and given names, company name, legal form, address, registered office, activities, company purpose, commercial register number, passport, tax reference number and date of birth) and a description of the facts, the objectives pursued, the information and documents requested, and the legal framework within which the request has been made.

352. During the evaluation period, Tunisia sent 110 requests for information to its partners. One partner sent five requests for clarification, but overall, Tunisia's EOI partners were satisfied with the quality of requests received from Tunisia. In the five cases concerned, the clarifications related to the tax and the taxable periods covered by the request, in particular in respect of the rules governing the entry into force of the EOI instrument. Following the clarifications provided by Tunisia, the requests were validated by the partner.

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

353. Exchange of information is not subject to unreasonable, disproportionate or unduly restrictive conditions.

Annex 1: List of in-text recommendations

Issues may have arisen that have not had, nor are likely in the current circumstances to have, more than a negligible impact on transparency or 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 are listed in this annex for ease of reference.

- **Element A.1:** The new law on the National Register of Enterprises vests the Centre for the National Register of Enterprises with direct powers to lay down sanctions. However, the law is still very new, and it is therefore recommended that Tunisia should ensure that companies that fail to comply with the legal obligations incumbent upon them to report and retain ownership information are sanctioned effectively (paragraph 74).
- **Elements A.1 and A.3:** It is possible for banks and financial establishments to take simplified measures when the risk level is lower. This means that beneficial ownership information may not always be up to date where the risk is low. Tunisia is therefore recommended to ensure that beneficial ownership information is up to date even for low-risk customers (see paragraphs 94 and 195).
- **Element A.1:** The professions are only beginning to implement their oversight programmes, except for the OECT, whose programme is already under way. Tunisia must ensure that the professions are duly performing their obligations as regards beneficial ownership (see paragraph 132).
- **Element A.1:** The Tunisian authorities confirm that, in view of the general definition of the beneficial owner of a legal arrangement, there would be an obligation to look beyond the legal person in order to identify the natural person behind it. However, there is still no guidance to confirm this interpretation. Tunisia must therefore

ensure that companies are informed of their legal obligations and how to perform them in practice (paragraph 144).

- **Element A.2:** No clear obligations are laid down in respect of the trust itself or a non-professional trustee. Tunisia must ensure that accounting information is available on all trusts, including those administered by non-professionals (paragraph 170).
- **Element C.2:** Tunisia must continue to enter into EOI agreements with any new relevant partner who makes a request to that end (paragraph 285).

Annex 2: List of EOI agreements signed by Tunisia

Bilateral EOI instruments

List of bilateral international agreements on the exchange of information signed by Tunisia at 6 January 2020.

	EOI partner	Type of agreement	Signature	Entry into force
1	Algeria	DTC	23 July 1990	1 January 1994
2	Austria	DTC	23 June 1977	5 August 1978
3	Belgium	DTC	7 October 2004	5 June 2009
4	Burkina Faso	DTC	15 April 2003	11 April 2013
5	Cameroon	DTC	26 March 1999	1 June 2006
6	Canada	DTC	10 February 1982	4 December 1984
7	Chad	DTC	12 May 2012	
8	China	DTC	16 April 2002	23 September 2003
9	Congo	DTC	4 October 2005	
10	Côte d'Ivoire	DTC	14 May 1999	24 November 2015
11	Czech Republic	DTC	14 March 1990	25 October 1991
12	Denmark	DTC	5 February 1981	28 May 1981
13	Egypt	DTC	8 December 1989	2 January 1991
14	Ethiopia	DTC	23 January 2003	17 June 2007
15	France	DTC	28 May 1973	1 April 1975
16	Gabon	DTC	13 February 1986	
17	Germany	DTC	8 February 2018	16 November 2019
18	Greece	DTC	31 October 1992	29 September 2010
19	Guinea	DTC	15 January 1993	
20	Hungary	DTC	22 October 1992	19 July 1997
21	Indonesia	DTC	13 May 1992	12 April 1993

	EOI partner	Type of agreement	Signature	Entry into force
22	Iran	DTC	16 July 2001	14 July 2005
23	Iraq	DTC	25 June 2001	
24	Italy	DTC	16 May 1979	17 September 1981
25	Jordan	DTC	14 February 1988	1 January 1990
26	Korea	DTC	27 September 1988	25 November 1989
27	Kuwait	DTC	18 April 2000	20 March 2002
28	Lebanon	DTC	24 June 1998	3 June 2000
29	Libya	DTC	23 July 1990	1 January 1994
30	Luxembourg	DTC	27 March 1996	18 October 1999
		Protocol	8 July 2014	30 November 2016
31	Mali	DTC	28 April 2000	20 November 2002
32	Malta	DTC	31 May 2000	31 December 2001
33	Mauritania	DTC	23 July 1990	1 January 1994
34	Mauritius	DTC	12 February 2008	28 November 2008
35	Morocco	DTC	23 July 1990	1 January 1994
36	Netherlands	DTC	16 May 1995	15 December 1995
37	Norway	DTC	31 July 1978	3 January 1980
38	Oman	DTC	16 November 1997	22 April 1998
39	Pakistan	DTC	18 April 1997	5 August 1997
40	Poland	DTC	30 March 1993	15 November 1993
41	Portugal	DTC	24 February 1999	21 August 2000
42	Qatar	DTC	8 March 1997	1 January 1999
43	Romania	DTC	23 September 1987	19 January 1989
44	Saudi Arabia	DTC	18 July 2010	1 April 2013
45	Senegal	DTC	17 May 1984	25 May 1985
46	Serbia	DTC	11 April 2012	3 June 2013
47	Singapore	DTC	27 February 2018	17 December 2019
48	Slovak Republic	DTC	14 March 1990	25 October 1991
49	South Africa	DTC	2 February 1999	10 December 1999
50	Spain	DTC	12 July 1982	14 February 1987
51	Sudan	DTC	8 October 2003	11 January 2007
52	Sweden	DTC	6 September 1960, amended 7 May 1981	19 April 1983
53	Switzerland	DTC	10 February 1994	29 April 1995

	EOI partner	Type of agreement	Signature	Entry into force
54	Syria	DTC	22 June 1998	1 January 2001
55	Togo	DTC	11 February 1987	
56	Turkey	DTC	2 October 1986	28 December 1987
57	United Arab Emirates	DTC	10 April 1996	27 May 1997
58	United Kingdom	DTC	15 December 1982	20 January 1984
59	United States	DTC	17 June 1985	26 December 1990
60	Viet Nam	DTC	13 April 2010	6 March 2013
61	Yemen	DTC	8 March 1998	27 September 2000

Multilateral Convention

The Multilateral 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 (Multilateral Convention).¹⁵ 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 1988 Multilateral Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The amended Multilateral Convention was opened for signature on 1 June 2011.

Tunisia signed the amended Multilateral Convention on 16 July 2012 and deposited its instrument of ratification on 30 October 2013. The amended Multilateral Convention entered into force for Tunisia on 1 February 2014.

As at 6 January 2020, the amended 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, the British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United

15. The amendments to the 1988 Convention were framed as two separate instruments with the same purpose. The amended Convention incorporates the amendments into a consolidated text, and the Protocol amending the 1988 Convention sets out the amendments separately.

Kingdom), Chile, China (People’s Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,¹⁶ Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Faroe Islands (extension by Denmark), Finland, 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, Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), North Macedonia, Malaysia, Malta, Isle of Man (extension by the United Kingdom), Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Morocco, Nauru, the Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, 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, the United Arab Emirates, the United Kingdom, Ukraine, Uruguay and Vanuatu.

In addition, the following jurisdictions have also signed the amended Convention although it is not yet in force for them: Armenia, Benin, Bosnia and Herzegovina, Burkina Faso, Cabo Verde, Gabon, Kenya, Liberia, Mauritania, Mongolia, Montenegro, Oman, Paraguay, Philippines and the United States (the 1988 Convention entered in force on 1 April 1995; the Amending Protocol was signed on 27 April 2010).

16. 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.

Convention of the States of the Arab Maghreb Union

The Convention to prevent Double Taxation and lay down rules governing mutual assistance in income tax matters between the States of the Arab Maghreb Union (Convention of the States of the Arab Maghreb Union) was developed by the Arab Maghreb Union. The Convention was signed on 23 July 1990 and ratified on 14 July 1993. It entered into force on 1 January 1994 in respect of the five following countries: Algeria, Libya, Morocco, Mauritania and Tunisia.

Article 26 of the Convention of the States of the Arab Maghreb Union, which contains provisions concerning the exchange of information between the Parties to the Convention, is not consistent with the latest version of Article 26 of the OECD Model Tax Convention. In particular, it omits Article 26(4) and 26(5) thereof.

Annex 3: Methodology for the review

This review is based on the 2016 Terms of Reference, conducted in accordance with the 2016 Methodology for Peer Reviews and Non-Member Reviews, as approved in October 2015 and the 2016-23 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 6 January 2020, Tunisia's EOIR practice in respect of EOI requests made and received during the three-year period from 1 April 2015 to 31 March 2018, Tunisia's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Tunisia's authorities during the on-site visit that took place from 15-18 April 2019 in Tunis.

List of laws, regulations and other materials received

- Code on Tax Rights and Procedures (CDPF)
- Tax Code on Revenue of Natural Persons and Companies (CIRPPIS)
- VAT Code
- Commercial Companies Code (CSC)
- Commercial Code
- Criminal Code
- Code on Collective Investment Schemes
- Exchanges Code
- Organic Law No. 26-2015 of 7 August 2015 on Countering Terrorism and Suppressing Money-Laundering (AML/CFT Law), as amended by Organic Law No. 2019-9 of 23 January 2019
- Law 1995-44 of 2 May 1995 on the commercial register modified by law 2005-96 of 18 October 2005 and by law 2010-15 of 14 April 2010

Law 52-2018 of 5 February 2019 on the National Register of Enterprises

Law No. 2016-48 of 11 July 2016 on banks and financial establishments

Law. 2000-35 of 21 March 2000 on paperless securities

Law 94-41 of 7 March 1994 on Foreign Trade

Governmental Decree No. 54-2019 of 28 January 2019 on the identification and verification of beneficial owners

Decree-Law No. 2011-88 of 24 September 2011 on the organisation of associations

Decree 2019-491 of 10 June 2019 on the structure in charge of EOI

Authorities interviewed during on-site visit

Ministry of Finance

Directorate General of Taxation

Central Bank of Tunisia

Order of Lawyers

Order of Notaries

Order of Tunisian Accountants

Tunisian Financial Analysis Commission

National Register of Enterprises

Bankers' Association

Current and previous reviews

This report provides the outcomes of the Phase 2 Review of Tunisia's implementation of the EOIR standard conducted by the Global Forum. Tunisia previously underwent an EOIR peer review in 2016 conducted in line with the 2010 ToR.

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

Reviews of Tunisia

Review	Assessment team	Period under review	Legal framework as at	Date of adoption by the Global Forum
Round 1, Phase 1	Ms Aurore Arcambal, Legal Adviser, Ministry of Finance, Seychelles; Mr Romain Perret, Public Finance Inspector at the Tax Legislation Directorate, Ministry of Finance, France, and Ms Séverine Baranger from the Global Forum Secretariat	N/A	January 2016	March 2016
Round 2	Mr Alexandre Taymans, legal expert at the Finances Federal Public Service, Belgium; Mr Joseph Balikuddembe, Supervisor on Exchange of Information at the Uganda Revenue Authority, Uganda; Ms Aurore Arcambal and Ms Carine Kokar from the Global Forum Secretariat	1 April 2015 to 31 March 2018	6 January 2020	March 2020

Annex 4: Tunisia’s response to the report¹⁷

First of all, Tunisia would like to thank the assessment team and the Global Forum Secretariat for the quality of the report, which perfectly reflects Tunisia’s legal system and the state of play in terms of transparency. Tunisia would also like to thank the members of the Peer Review Group for their constructive comments, which were taken into account to improve the accuracy and completeness of the report.

Tunisia agrees with all the ratings and takes due note of the recommendations issued by the Global Forum, in particular the recommendation concerning information on the status update of the requests. Tunisia is also committed to maintaining the quality and improving the speed of responses to incoming requests.

Furthermore, Tunisia, which is recommended to define the scope of professional secrecy of lawyers in Tunisian law, will spare no effort to clarify the scope of this professional secrecy in order to comply with the international standard of exchange of information on request.

Finally, Tunisia states that the exchange of information will remain a priority in its tax policy and practice. Consequently, it undertakes to take the necessary measures to follow up favourably on the recommendations made by the Global Forum.

17. This Annex presents the jurisdiction’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 TUNISIA 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 Tunisia.



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