GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF
INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

TOGO

2023 (Second Round, Phase 1)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Togo 2023 (Second Round, Phase 1)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

OECD
BETTER POLICIES FOR BETTER LIVES

This peer review report was approved by the Peer Review Group of the Global Forum on Transparency and Exchange of Information for Tax Purposes on 28 February 2023 and adopted by the Global Forum members on 27 March 2023. The report was prepared for publication by the Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

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Please cite this publication as:
OECD (2023), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Togo 2023 (Second Round, Phase 1): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, https://doi.org/10.1787/9e90f5f4-en.

ISBN 978-92-64-38599-3 (print)
ISBN 978-92-64-43491-2 (pdf)

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

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

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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

2016 Assessment Criteria Note	Note on the assessment criteria, as amended in 2021
2016 TOR	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
AUDCG	OHADA Uniform Act on General Commercial Law (*Acte uniforme de l’OHADA sur le droit commercial général*)
AUDCIF	OHADA Uniform Act on Accounting Law and Financial Reporting (*Acte uniforme de l’OHADA sur le droit comptable et l’information financière*)
AUDSCGIE	OHADA Uniform Act on Commercial Companies and Economic Interest Grouping (*Acte uniforme de l’OHADA relatif au droit des sociétés commerciales et du groupement d’intérêt économique*)
AUPC	OHADA Uniform Act on Insolvency Procedures (*Acte uniforme de l’OHADA sur les procédures collectives*)
AUSC	Uniform Act on Co-operatives
BCEAO	Central Bank of West African States
CENTIF	National Financial Intelligence Processing Unit (*Cellule nationale de traitement des informations financières*)
CDD	Customer Due Diligence
CFE	Centre for Business Formalities
CGI	General Tax Code (*Code général des impôts*)

DTC	Double Taxation Convention
ECOWAS	Economic Community of West African States
EIG	Economic interest group
EOI	Exchange of information
EOIR	Exchange of Information on Request
EUR	Euro
FI	Financial Institution
GDP	Gross domestic product
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
LPF	Tax Procedures Code (*Livre des procédures fiscales*)
MANPROCI	Manual of Tax Procedures of the Tax Commissioner Office
Methodology	2016 methodology for peer reviews and non-member reviews, as amended in 2020 and 2021
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
OHADA	Organisation for the Harmonisation of Business Law in Africa
OTR	Togolese Revenue Office
RCCM	Trade and Personal Property Credit Register (*Registre du commerce et du crédit mobilier*)
SA	Public limited company (Société anonyme)
SARL	Limited liability company (*Société à responsabilité limitée*)
SARLU	Single member Limited liability company
SAS	Simplified joint stock company (*Société par actions simplifiée*)
SASU	Single member simplified joint-stock company
SC	Co-operative Societies *(Société co-opérative)*
SCS	Limited partnership (*Société en commandite simple*)
SEP	Joint venture (*Société en participation*)

SNC	General partnership (*Société en nom collectif*)
SYSCOHADA	Organisation for the Harmonisation of Business Law in Africa accounting system
TIN	Tax Identification Number (Numéro d’Identifiant Fiscal)
UER	Information Exchange Unit (*Unité d’échange de renseignements*)
USD	United States Dollar
WAEMU	West African Economic and Monetary Union
WAMU	West African Monetary Union
XOF	West African CFA franc

Executive summary

1. This report analyses the implementation of the standard of transparency and exchange of information on request (the standard) in Togo on the second round of reviews conducted by the Global Forum. As Togo joined the Global Forum in 2016, no assessment of Togo was conducted under the first round of reviews. Therefore, this report is the first assessment of Togo.

2. Considering that Togo has a limited practice of exchange of information on request (EOIR), and in accordance with the Methodology for the Second Round of Peer Review, as amended in 2021 (the Methodology), this report assesses only the adequacy of Togo's existing legal framework as of 17 January 2023 (Phase 1). The assessment of the practical implementation of this legal framework will be conducted at a later stage (Phase 2 review) and launched in June 2026 at the latest (see Annex 3).

3. This report concludes that Togo has a legal and regulatory framework that broadly ensures the availability of, access to and exchange of relevant information for tax purposes, but that this framework requires improvement in several areas.

Findings of the Second Round Phase 1 Report

Element		Second Round Report (2023)
A.1	Availability of ownership and identity information	In place
A.2	Availability of accounting information	In place
A.3	Availability of banking information	Needs improvement
B.1	Access to information	In place
B.2	Rights and Safeguards	In place
C.1	EOIR Mechanisms	Needs improvement
C.2	Network of EOIR Mechanisms	In place
C.3	Confidentiality	In place
C.4	Rights and safeguards	In place
C.5	Quality and timeliness of responses	Not applicable

Note: The three-scale determinations for the legal and regulatory framework are: In place, In place but needs improvement, Not in place. (For the Phase 2 review, the four-scale ratings for the legal and regulatory framework and its implementation in practice are Compliant, Largely Compliant, Partially Compliant and Non-compliant.)

Transparency

4. Togolese company, accounting and tax laws contain obligations that provide for, in most cases, the availability of information on the identity and legal ownership, as well as the availability of accounting information of Togolese entities, in particular due to the compulsory information to be included in the articles of association of companies, registration in the Trade and Personal Property Credit Register (RCCM) and with the tax administration and the keeping of a register of shareholders or partners at the level of the entities. The Togolese legal framework also ensures the availability of this information for the foreign relevant entities and legal arrangements.

5. Information on beneficial owners must be kept by entities and legal arrangements. These entities and legal arrangements must also transmit this information to the tax administration, which will have to set up and maintain a central register of beneficial owners on this basis. Beneficial ownership information is also available with AML-obliged persons, where any such person is engaged in a business relationship with the relevant entity or legal arrangement. However, some gaps have been identified in these AML provisions. In terms of banking information, the AML law also contains an obligation for banks to keep details of the transactions of their clients.

Key recommendations

6. With regard to the retention of information, the Togolese legal and regulatory framework does not ensure that beneficial ownership information of bank accounts is kept after the liquidation or cessation of activity of a bank.

7. In Togo, beneficial ownership information is first available under the tax law, which requires the relevant entities and legal arrangements to keep a register of their beneficial owners and transmit it to the tax authorities. In addition, AML-obliged persons must identify the beneficial owners of their customers, including when their customers are foreign entities or legal arrangements. This provides, in particular, for the availability of banking information. However, there is no obligation for the relevant entities and legal arrangements to use the services of an AML-obliged person. In addition, the AML law does not contain any obligation to update information after a change or any frequency for updating beneficial ownership information. Therefore, although tax and AML legislation allows for the availability of beneficial owner information for most relevant entities, this information may not always be up to date for banking information.

8. It is therefore recommended that Togo address these shortcomings.

Exchange of information

9. Togo has an extensive EOI network through a range of bilateral, regional and multilateral instruments. However, only 15 of the 152 EOI relationships are in force. Ratification of the Multilateral Convention by Togo would enable it to have at least 146 EOI relationships in force.

10. Togo does, however, participate in the exchange of information in practice, although it has limited experience in this area. Togo has sent 3 requests for information and received 10 requests from its partners. In preparation for this review, Togo indicated that these requests, both incoming and outgoing, were particularly easy to process. A peer input received for this review indicates that the peer is generally satisfied with co-operation with Togo but notes that in one case where banking information was requested, the information was not provided. The assessment of the EOI in practice is not covered by this report and will be the subject of a subsequent Phase 2 review.

Key recommendations

11. Togo has not ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters signed in 2020. The absence of entry into force of the Multilateral Convention makes the network of information exchange instruments largely ineffective as it is limited to 15 partners. Togo must therefore ensure that its EOI instruments are ratified and enter into force as soon as possible.

Next steps

12. This report assesses Togo's legal and regulatory framework for transparency and exchange of information for tax purposes (Phase 1 review). Togo is rated as "in place" for elements A.1, A.2, B.1, B.2, C.2, C.3 and C.4 as "in place but needs improvement" for elements A.3 and C.1. The rating of each element and the overall rating will be assigned at the completion of the Phase 2 review.

13. This report was approved at the Peer Review Group of the Global Forum on 28 February 2023 and adopted by the Global Forum on 27 March 2023. A follow-up report on the steps undertaken by Togo to address the recommendations made in this report should be provided to the Peer Review Group by 30 June 2024 and annually thereafter, in accordance with the procedure set out under the 2016 Methodology as amended in 2021.

Summary of determinations, ratings and recommendations

Determinations and ratings	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place		
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place but needs improvement	In the event of the liquidation of a bank, or the cessation of activity of a foreign bank operating in Togo, the Togolese legal framework does not contain a requirement for the availability of beneficial ownership information of bank accounts after such liquidation or cessation of activity.	Togo must ensure that beneficial ownership information of bank accounts is kept for at least five years, including in the event that a bank has ceased to exist or a foreign bank has ceased operations in Togo.

Determinations and ratings	Factors underlying recommendations	Recommendations
	Under the Anti-Money Laundering Law and tax law, banks must identify the beneficial owners of all accounts. However, the legal and regulatory framework does not clearly contain an obligation to update this information within a reasonable period of time in the event of a change and does not provide for any specified frequency for updating such information.	Togo must ensure that the information on the beneficial owners of bank accounts is up to date in accordance with the standard.
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place but needs improvement	Togo has not ratified the Multilateral Convention, signed in 2020, although this ratification would increase the number of exchange relationships in force from 15 to 146. In addition, a bilateral convention signed in 1987 has still not been ratified by Togo.	Togo must ensure that its EOI instruments are ratified and enter into force as soon as possible.

Determinations and ratings	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	

Overview of Togo

14. This overview about Togo serves as context for understanding the analysis in the main body of the report.

15. Togo is a West African country with a population of approximately 8.5 million. Its capital is Lome, which is also the country's largest city. Its currency is the African Financial Community franc (XOF), common to the members of the West African Monetary Union (WAMU) and issued by the Central Bank of West African States (BCEAO).

16. At the economic level, the agricultural sector accounts for 18% of Togo's gross domestic product (GDP); the secondary sector, which is largely based on the manufacture of food products, construction and the production and distribution of water, electricity and gas, accounts for 24% of GDP; while the tertiary sector, centred on trade, port, airport and financial activities, contributes almost half of GDP (48%). The informal sector remains largely predominant, accounting for more than 50% of the value added of the various economic sectors.

Legal system

17. Togo has a civil law system in which the Constitution takes precedence over international law, which is itself superior to domestic law. National laws have a higher normative value than domestic regulations and administrative acts. All the EOI instruments to which Togo is party rank as international law.

18. Executive power is exercised by the President of the Republic and the Government (Title IV, Constitution). Legislative power is exercised by the National Assembly, which passes laws (Title III, Constitution). The system of justice is based on the separation of judicial and administrative proceedings. Tax disputes relating to direct taxes and VAT are administrative proceedings, whereas disputes relating to other indirect taxes are judicial proceedings. (Article 119 of the Constitution). Finally, the Constitutional Court judges the constitutionality of the law (Title VI, Constitution).

19. Togo is a member of several regional organisations with normative powers, including in the areas of taxation, accounting and company law. It is a member of the Organisation for the Harmonisation of Business Law in Africa (OHADA), which has 17 member States and within which "uniform acts" are adopted, in particular in the areas of general commercial law, company law, accounting law, as well as law relating to securities and guarantees, collective procedures and co-operative societies. These OHADA uniform acts are directly applicable in each country's domestic law and have a higher normative value than laws adopted at national level. The judicial system for OHADA law includes a Commercial Court, the Commercial Chamber of the Court of Appeal and the OHADA Common Court of Justice and Arbitration, based in Abidjan, Côte d'Ivoire. Several OHADA uniform acts, analysed in this report, ensure the availability of relevant information.

20. Togo is also a member of the Economic Community of West African States (ECOWAS), which has 15 member countries, and the West African Economic and Monetary Union (WAEMU), which comprises 8 member countries. Both organisations adopt regulations and directives guiding the economic, fiscal and customs policies of the member countries. A regulation in this context is a law of general application, binding in its entirety and directly applicable in any member State of WAEMU or ECOWAS, whereas a directive is binding on States as to the result to be achieved but lets them the choice of the means to achieve it. The WAEMU Regulation and the ECOWAS Supplementary Act, mentioned in Annex 2, allow for EOI between respectively the 8 WAEMU member states and the 15 ECOWAS member states, in accordance with the standard. Togo is also a member of WAMU, which has the same membership as WAEMU and is responsible for monetary policy and banking and financial regulation in its member States.

Tax system

21. The main general legal provisions on taxation are contained in the General Tax Code (*Code général des impôts*, CGI) and the Tax Procedures Code (*Livre des procedures fiscales*, LPF). These legal provisions may be specified, in particular with regard to the modalities of application, by regulatory provisions (decrees or orders).

22. The Togolese tax system is declarative and self-liquidating, meaning that taxes established by law are declared and payable spontaneously by taxpayers. Taxes include direct taxes, notably individual income tax and corporate income tax, and indirect taxes, notably value added tax.

23. Except if otherwise provided for by Double taxation conventions (DTC), individual income tax covers all individuals, Togolese or foreign,

whose tax domicile is in Togo,[1] on all their income, Togolese or foreign. It is also payable by persons who are not domiciled for tax purposes in Togo on their Togolese-source income or if they have one or more dwellings in Togo (Article 2, CGI). Dividends paid by Togolese companies to foreign shareholders are taxed through a withholding tax (Article 79, CGI).

24. Corporate income tax applies to profits made by companies operating in Togo, i.e. entities whose registered office, place of effective management or digital platform is located in Togo as well as non-resident entities with a permanent establishment in Togo, subject to the application of DTCs (Article 95, CGI).

25. Any individual, legal entity or arrangement that undertakes a commercial activity or any other activity, including non-profit activity, likely to give rise to tax obligations must register with the tax authorities as soon as the activity or business is set up (Article 7, LPF).

26. Tax administration is carried out by the Togolese Revenue Office (OTR). The function of competent authority for the EOI is delegated to the Commissioner General of Taxes, who relies for this function on the Information Exchange Unit (UER). This unit is located within the Investigation, Cross-checking and Information Sharing Division, which is itself part of the Tax Audit Directorate. The UER is also responsible for international assistance in the recovery of tax claims.

Financial services sector

27. The Togolese banking sector is governed by the regulations, instructions and directives issued by the WAEMU and the Central Bank of West African States (BCEAO), which is based in Dakar, Senegal. As at 31 March 2022, this sector comprises 14 banks, including 1 state-owned bank, 3 financial institutions of a banking nature[2] and 8 insurance companies. The WAMU Banking Commission, supported by the BCEAO, supervises the banking system. Banking activities are governed by Act No. 2009-019 of 7 September 2009 (Banking Act) and are subject to prior authorisation.

1. The natural persons who have their tax domicile in Togo are the persons having their permanent home or place of residence in Togo, the persons exercising a professional activity in Togo, the persons having their centre of their economic interests in Togo as well as the Government employees exercising their mission in another country, if there are not liable to individual income tax in this country (Article 3, CGI).
2. According to the Banking Act of 2009, a financial institution with a banking nature is entitled to carry out only banking operations for which it has been authorised, whereas a bank is entitled to carry out any banking operation (receipt of funds from the public, credit operation, provision and management of means of payment, etc).

28. The microfinance sector is also subject to WAMU and BCEAO regulations, but member states' Ministries of Finance can grant operating licenses and carry out supervision of decentralised financial systems if outstanding loans do not exceed USD 4 million (EUR 3.2 million). As of 31 March 2022, the microfinance sector comprises 75 decentralised financial systems, with cumulative net assets of XOF 327 671 000 (approximately EUR 500 000).

29. The *Global Financial Centre Index 2022* does not identify any international, regional or national financial centres in Togo.

Anti-money laundering framework

30. Uniform Act No. 2018-004 of 4 May 2018 on the fight against money laundering and terrorist financing in WAMU Member States (AML Act) is the reference text in this area. In particular, it provides for the due diligence obligations to be carried out by AML-obliged persons and the conditions to be met prior to entering into a business relationship, as well as the organisation of the oversight functions.

31. Togo's AML system was subject to a mutual evaluation by the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) in 2022. As a result of this evaluation, Togo was considered "partially compliant" with respect to recommendations 10 (Financial institutions – customer due diligence), 22 (designated non-financial businesses and professions – customer due diligence), 24 (transparency and beneficial ownership of legal persons) and 25 (transparency and beneficial ownership of legal arrangements). The effectiveness of immediate outcome 5 (legal persons and legal arrangements) was considered low.

Recent developments

32. Togo has amended its tax law in February 2022[3] in order to comply with the standard and in particular to ensure the availability of beneficial ownership information with the legal entities and arrangements. These new legal provisions are described in this report. The recent changes in the tax law also require the establishment of a central register of beneficial owners with the tax administration but Togo is still working on the setting up of this register. The Togolese authorities estimate that three years are needed for this register to be effectively implemented but that the reporting obligation on beneficial ownership information will be effective once the tax administration makes the specific forms available, i.e. from 2024.

3. Order No. 025/MEF/SG/OTR/CG of 21 February 2022, described in this report.

Part A: Availability of information

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

A.1. Legal and beneficial ownership and identity information

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

34. Legal and beneficial ownership and identity information on legal persons and legal arrangements is generally available due to obligations under company law, tax law and AML law.

35. All relevant legal entities must register with the Trade and Personal Property Credit Register (RCCM) or the Register of Co-operative Societies. At that time, they must provide their articles of association, which include the identification details of their founding members. They must also keep a register of their associates or shareholders, which must be updated in case of change. The general partnerships and the economic interest grouping must also provide the full legal ownership information in the RCCM registration form and must update this information in the event of a change. The tax law also provides for the availability and updating of legal ownership information at the level of legal entities and legal arrangements, including foreign entities and legal arrangements. It also provides for the obligation to provide this information to the tax authorities through the annual tax return.

36. Togolese companies are no longer authorised to issue bearer shares since 1997 and all these shares should have been converted into registered shares in 2016. Although no measures have been implemented to ensure this conversion process, the risk that the potential holders of unconverted bearer shares that could claim their rights attached to these shares is limited.

37. With regard to information on beneficial owners, the tax law has been amended in February 2022 to require entities and legal arrangements to keep a register of their beneficial owners and to transmit this information to the tax authorities, which are responsible for maintaining a central register of beneficial owners. Although the central register is not yet set up in practice, the new provisions of the tax law provide for the availability of information on beneficial owners in accordance with the standard. The AML law also provides for the obligation of taxable persons to identify the beneficial owners of their customers, but this legislation also contains deficiencies, in particular regarding the updating of information.

38. The table below presents the findings on this element.

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the legislation of Togo in relation to the availability of ownership information.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

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

39. The creation of companies in Togo and their main obligations are essentially governed by OHADA law, in particular by the Uniform Act on General Commercial Law (AUDCG) and the Uniform Act on Commercial Companies and Economic Interest Grouping (AUDSCGIE).

40. Togolese companies are classified as either commercial (determined by their form or purpose) and non-trading companies (*sociétés civiles*). The AUDSCGIE provides for seven types of entities: three types of companies with share capital (see below in A.1.1), three types of partnerships (see A.1.3) and the economic interest group (see A.1.5). In addition, the form of co-operative societies (see A.1.5) is provided for by the Uniform Act on Co-operative Societies (AUSC). The civil law concepts of *sociétés de capitaux* and *sociétés de personnes* do not exactly correspond to the concepts of “companies” and “partnerships” as found in Anglo-Saxon law.

41. The AUDSCGIE provides for the following types of commercial companies with share capital:

- The public limited company (*société anonyme*, SA) in which the shareholders’ liability for the company’s debts is limited to the amount of their contributions. The minimum amount of share capital of an

SA is XOF 10 million (EUR 15 240). Shareholders' rights are represented by shares. A public limited company may issue shares for public subscription. It is managed either by a board of directors or by a managing director. An SA is a single member company (*société anonyme unipersonnelle*, SAU) if it has only one shareholder. As of 31 December 2022, 1 050 SA were registered in Togo.

- The simplified joint-stock company (SAS) comprises one or more partners and its articles of association provide for the free organisation and operation of the company, subject to compliance with the binding rules of the AUDSCGIE. As with the SAs, the partners of an SAS are only liable for the company's debts up to the amount of their contributions and their rights are represented by shares. An SAS cannot issue shares for public subscription. The SAS is a single member company (SASU) if it has only one partner. As of 31 December 2022, 450 SAS were registered in Togo.
- The limited liability company (*société à responsabilité limitée*, SARL) in which the partners' liability for the company's debts is limited to the amount of their contributions. The minimum amount of share capital for an SARL is XOF 1 million (EUR 1 524). The rights of partners are represented by quotas – *parts sociales* – (all registered) and the nominal value of a share cannot be less than XOF 5 000 (EUR 7.6). The quotas are transferable but not tradable. An SARL is managed by one or more natural persons (partners or not). The SARL is a single member company (SARLU) if it has only one partner. As of 31 December 2022, 29 839 SARL were registered in Togo.

42. Foreign companies may carry out their economic activity in Togo through branch offices or representative (also known as liaison) offices. These structures of the foreign companies do not have a distinct legal personality. A branch office carries out, with a management autonomy, a full cycle of operations in Togo, whereas a representative or liaison office does not have management autonomy and carries out preparatory or auxiliary activities (Articles 116 and 120-1, AUDSCGIE).

Legal Ownership and Identity Information Requirements

43. Obligations on identity and legal ownership of companies are provided for mainly by commercial and tax laws.

44. The following table provides a summary of the legal requirements to maintain legal ownership information in respect of companies.

Companies covered by legislation regulating legal ownership information[4]

Type	Company law	Tax law	AML law
Public limited company – SA	All	All	Some
Simplified joint-stock company – SAS	All	All	Some
Limited liability company – SARL	All	All	Some
Foreign companies (tax resident)	Some	All	Some

Company Law requirements

45. The articles of association of commercial companies, which may be drawn up in a notarised deed or by private deed if they guarantee the same level of authenticity as a notarised deed, must include several mandatory statements (Article 13, AUDSCGIE), including:

- the form of the company, its name and, where appropriate, its acronym, the nature and the area of its activity (corporate purpose) as well as its duration
- its registered office (which must be located in Togo)[5]
- the identity (full name or company name) of the investors, whether providing contributions in cash or in kind with, for each of them, the amount (or, for contributions in kind, the nature and valuation) of each contribution, and the number and value of the company shares given in return
- the identity of the beneficiaries of specific benefits and the nature of these benefits
- the amount of share capital and the number and value of shares issued, distinguishing, where appropriate, between the different categories of shares created
- the clauses relating to the allocation of the result, the constitution of reserves and the allocation of the liquidation surplus
- the operating procedures of the company.

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4. The table shows each type of entity and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” means that the legislation, whether or not it meets the standard, contains requirements on the availability of ownership information for every entity of this type. “Some” means that an entity will be covered by these requirements if certain conditions are met.
5. In accordance with Article 1 of the AUDSCGIE, the provisions of this act are applied when a company’s registered office is located in Togo.

46. The identity of the investors in cash or in kind thus makes it possible to identify the founding shareholders or partners in the articles of association of commercial companies.

47. Companies[6] must apply for registration within one month of their incorporation, at the registry of the court or the competent body in the State in which their registered office or principal place of business is located (Article 46, AUDCG). Companies having their registered office in Togo shall therefore be registered in Togo. This registration is carried out in the Trade and Personal Property Credit Register (RCCM) and confers on the legal entity the status of trader as well as legal personality (Articles 97 and 98, AUDSCGIE). A company is incorporated when its articles of association are signed or, where applicable, when they are adopted by the constituent general meeting, but its existence cannot be relied upon against third parties before its registration (Article 101, AUDSCGIE).

48. The application for registration in the RCCM is made using a form or by electronic means. The application is signed by either the applicant or the applicant's agent. In the latter case, the agent must provide proof of identity and be in possession of a power of attorney signed by the applicant (Article 39, AUDCG).[7] Pursuant to Article 46 of the AUDCG, the application for registration of the legal entity must contain the articles of association described above, and must indicate, among other things, the following information:

- the form of the legal entity and its name (or company name or designation, as the case may be) and its acronym or logo
- the activity or activities carried out
- where applicable, the amount of the share capital with an indication of the amount of cash contributions and the valuation of contributions in kind

6. In accordance with article 35 of the AUDCG, the RCCM receives applications for registration from natural persons having the status of trader, commercial entities, non-trading companies with commercial purpose, economic interest groupings, branches of foreign companies, all groups having legal personality, any natural person carrying out a professional activity requiring registration with the RCCM, and any public establishment having an economic activity and enjoying legal and financial autonomy. Article 120-4 of the AUDSCGIE also requires the registration with the RCCM of the representative offices of foreign legal entities.
7. If the agent is a lawyer, a notary, a bailiff or a trustee, he is however exempted from the production of a power of attorney for the registration formalities because he has a tacit mandate due to his profession. This does not affect the availability of the applicant's information since he is named in the documents filed for registration.

- the address of the registered office and, where appropriate, the address of the principal place of business and of any other places of business
- the duration of the company or legal entity as set out in its articles of association or founding instrument
- the full name, date and place of birth, and address of:
  - the managers, directors, administrators or partners having general authority to bind the legal entity or group
  - partners being indefinitely and personally liable for the company's debts
  - auditors, when their appointment is provided for in the AUDSCGIE.

49. Article 47 of the AUDCG also requires that the following supporting documents be included with the application:

- a certified copy of the articles of association or the founding act
- the declaration of compliance[8] or the notarised declaration of subscription and payment
- a certified list of the managers, directors, administrators or partners being indefinitely and personally liable or having the power to bind the company or legal entity
- a declaration on honour signed by the applicant, stating that the applicant is not subject to any prohibitions on carrying on a commercial activity. This declaration on honour shall be supplemented within 75 days of registration by an extract from the criminal record or similar document
- where applicable, a prior authorisation to undertake the activity.

50. The AUDCG does not provide for a specific time period for the retention of information contained in the RCCM, but the Togolese authorities indicated that in practice, the RCCM retains indefinitely the information relating to companies that have been registered or have ceased their activity (for the purposes of informing third parties).

51. Consequently, information on the identity of the founding shareholders or partners of companies is communicated to the RCCM at the time of registration through the transmission of a copy of the company's articles

8. In accordance with Article 73 of the AUDSCGIE, the declaration of compliance is a declaration signed by the founders, managers, directors and administrators in which they list all the operations carried out to create the company and certify that this creation was made in compliance with the provisions of the AUDSCGIE.

of association. As this information is not included in the registration application form, it is not entered in the registers of the RCCM but the company's articles of association are kept indefinitely by the authority responsible for maintaining the RCCM, i.e. by the clerk of the commercial court.

52. In the event of a change requiring a correction or an addition to the information submitted to the RCCM in the registration form, this update must take place within 30 days of the change (Article 52, AUDCG). Nevertheless, there is no obligation to inform the RCCM in case of a change in the articles of association which would not affect the information provided in the registration form, in particular in case of changes of partners or shareholders, except in case of transfer of quotas of a SARL which requires the update of the information with the RCCM to make the transfer effective against third parties. The updated information on the legal owners is however available at the level of the relevant companies.

53. Changes of ownership are governed by different rules for SAs and SASs on the one hand and SARLs on the other. The transfer of ownership of shares of SAs and SASs requires the registration of the shares in the owner's share-account (i.e. the account on which transactions related to the shares are carried out) of the purchaser (Article 744-1 AUDSCGIE). The rights attached to the shares cannot be exercised by the purchaser before this transfer of ownership. This registration is made at the date agreed between the parties and notified to the issuing company, which is required to maintain an up-to-date register of shareholders and their registered shares (Articles 746-1 and 746-2 AUDSCGIE). The register contains, in particular, the following information for every operation in which shares are transferred, converted, pledged or held in escrow:

- the date of the operation
- the full name and address of the former and new holders of the shares, in the event of a transfer
- the full name and address of the holder of the shares, in the event of conversion of bearer shares into registered shares
- the nominal value and number of shares transferred or converted.

54. This register must be drawn up by the company. The auditor's report submitted to the annual ordinary general meeting (mandatory for all SAs and SASs) notes the existence of the registers and gives an opinion on the quality of record-keeping. A declaration by the senior managers attesting that the records have been properly kept is also attached to this report. In the event of absence or non-compliance of the register, the auditor may initiate a warning procedure by requesting explanations from the chairman of the board of directors, the chief executive officer or the managing director of the company (Article 153, AUDSCGIE).

55. In the case of a transfer of quotas in an SARL, the transfer can only be valid with regard to the SARL under one of the following conditions (Article 317, AUDSCGIE): (i) the transfer is notified to the company by a bailiff or by any other means that establishes its actual receipt by the company, (ii) the transfer is accepted by the company in a notarised deed, or (iii) the original of the transfer deed is filed at the company's registered office. In order for the transfer to be effective against third parties, the articles of association of the SARL must also be amended and the changes communicated to the RCCM.

56. Under the tax law, entities must keep this information, which may be subject to a right to information by the tax authorities (see part B.1), for at least 10 years from the date on which the documents or records were prepared (Article 261, LPF). This period of retention applies to all information that the entities are legally required to keep, even though the record-keeping requirement is in a law other than tax law.

57. A legal entity can be dissolved either by agreement of its members or following a judicial liquidation. A judicial liquidation, regulated by the Uniform Act of OHADA on insolvency procedure (AUPC), is usually initiated when the company faces a situation of financial difficulties or insolvency. The opening of liquidation proceedings, whether judicial or by agreement of the members of the entity, requires the appointment of a liquidator (Article 206, AUDSCGIE) responsible for the provisional management of the entity until the liquidation of the assets. The shares evidencing the rights of the legal owners must be handed over to the liquidator (Article 57, AUPC). When a legal entity is dissolved, the liquidator must apply to the RCCM to have it struck off the register. This request must be made within one month of the closure of the liquidation operations. The striking off is then recorded in the RCCM and entails the loss of the rights resulting from the registration (Articles 57 and 58, AUDCG). The legal personality of the company subsists during the liquidation and until the publication of the closure of the liquidation operations (Article 205, AUDSCGIE).

58. To be "re-domiciled" abroad, a company registered in Togo must first be struck off the RCCM, i.e. dissolved (Article 51, AUDCG).

59. Company law requires the retention of documents maintained by the legal entities after the dissolution of that person at the level of its liquidator. The liquidator must keep the information obtained during the liquidation process for at least 5 years in accordance with the commercial law (Article 46, AUPC). In addition, the tax law requires the entities to provide annually to the tax administration the up-to-date information on their legal owners (see below).

Tax law requirements

60. Under the tax law, any individual or legal entity or arrangement that undertakes a commercial activity or any other activity that may give rise to tax obligations must register with the tax authorities as the activity or business is established (Article 7, LPF). At the time of this registration, entities must provide a copy of their articles of association that contain the legal ownership information. A tax identification number (TIN) is assigned to the entity following this registration.

61. Under the tax provisions relating to the annual income tax return (Articles 49 et seq., LPF), entities must provide an annual statement of the remuneration of shareholders or partners and profit shares (Article 50, LPF) and, for entities subject to corporate income tax, a statement indicating the profits distributed to partners or shareholders (Article 51, LPF). Although it is not clearly stated that the identity of the legal owners must appear on these statements, the form for completing the annual tax return provides a box for their identification (TIN, full name, nationality and allocation of capital held). The Togolese authorities have indicated that this information must be provided by all entities, including in the absence of profit distribution or allocation. The annual tax return would be assessed as not comprehensive if not all legal owners are identified in the box. The annual tax return therefore provides the tax authorities with up-to-date information on the legal owners of the entities.

62. Moreover, major changes in the operation of the company, in particular the increase, reduction or redemption of capital, the total or partial paying up of shares, the issue, redemption or repayment of loans represented by negotiable shares, the replacement of one or more directors or managers or, in companies whose capital is not divided into shares, of one or more partners, must be declared to the tax authorities within 15 days, accompanied by the amending act (Article 12, LPF). This provision ensures that information on the owners of SARL, which are companies whose capital is not divided into shares, will be updated with the tax authorities.

63. In addition, Article 280(3) of the LPF provides for an obligation for all entities and legal arrangements to hold information on the identity of their associates and legal owners during any subscription or modification of shares or quotas or during any purchase of goods and services. This provision is completed by the order of 21 February 2022 (order on beneficial owners) but it does not specify the exact information that must be kept by the entities on their legal owners. The Togolese authorities indicated that this provision should be understood as requiring entities to keep the identity (full name or company name) of the legal owners, their number of shares and the corresponding amount of capital. They also clarified that the notion of “associates” covered suppliers of goods and services to the

entity. Although this tax provision provides for the availability and updating of information on the legal owners of Togolese entities as well as foreign entities subject to tax law in Togo, its implementation in practice, including the detail of information to be kept, will be analysed in the Phase 2 review (see Annex 1).

64. All the information held by the entities themselves can be subject to a right to information by the tax authorities. Consequently, the tax law provides that this information must be kept for a minimum of ten years from the date on which the documents or records were drawn up (Article 261, LPF). If the entity is in a process of liquidation, the records held by the entity are deemed necessary for the provisional management of this entity and are handed over to the liquidator who kept it for at least 5 years (see paragraphs 57 and 59).

Anti-money laundering law requirements

65. Article 18 of the AML law requires AML-obliged persons to identify their customer (and, where applicable, their beneficial owner) before entering into a business relationship with that customer. Article 28, which applies only to financial institutions, specifies that the identification of a legal entity, or of a branch or representative office of a foreign company, involves obtaining and verifying information on the name of the company, the address of its registered office, the identity and powers of its partners and directors, and proof of its legal constitution (including by presenting an extract from the RCCM not older than three months ago).

66. Therefore, a financial institution must collect identity and legal ownership information of its client, including the identity of its partners and managers. The Togolese authorities have indicated that they interpret this provision as covering the identification of legal owners of all entities, including the identification of shareholders of SA and SAS.

67. The AML law also contains an obligation for all AML-obliged persons to identify the beneficial owners of their customers. This obligation is analysed below in the section on availability of beneficial ownership information. The appropriate identification of these beneficial owners must rely on legal ownership information. However, there may be cases where the identification of beneficial owners does not require the identification of all shareholders of the entity. For instance, if the threshold for determining control by ownership is 25% and one person clearly holds more than 75% of the shares, then the identification of other shareholders, who hold a small stake in the company, may be omitted in practice. Finally, it is not mandatory for the relevant legal persons to use the services of a financial institution or of any other AML-obliged person.

68. Therefore, the AML law can be a supplementary source of information on the identity and legal ownership of companies if they have a business relationship with a financial institution in Togo. However, this source is not privileged by Togolese authorities to obtain this information.

Foreign companies

69. Under tax law, foreign companies with a permanent establishment or place of effective management in Togo are subject to corporate income tax in Togo (Article 95, CGI). They must also appoint a representative in Togo to apply their tax obligations and pay their taxes. In practice, foreign companies carry out their activities through branches, representative or liaison offices or subsidiaries.

70. Subsidiaries are incorporated under Togolese law and in the form of a Togolese company. They are therefore subject to the same registration and record-keeping obligations as other Togolese companies.

71. The obligation to register with the RCCM and the tax administration also covers foreign companies with a branch, representative office or liaison office in Togo (Articles 199 and 120-4 AUDSCGIE and article 7, LPF). The information and documents to be provided for this registration are identical to those required for legal persons incorporated in Togo. Consequently, the information relating to the shareholders and partners of foreign companies may be available on the articles of association that the company must provide at the time of its registration. However, the provision and update of the names of the legal owners of the company on the articles of association will then depend on the legal requirements provided for in the law of the jurisdiction of incorporation of this company.

72. However, the foreign company must comply with the tax requirements, including the requirement to provide annually to the tax administration, through the annual tax return, the list of legal owners. It must also hold the information on the identity of its associates and legal owners during any subscription or modification of shares or quotas or during any purchase of goods and services. (Article 280(3), LPF). These tax provisions provide for the availability of up-to-date information on the legal owners of foreign companies.

73. In cases where a foreign company uses the services of an AML-obliged person, information on the identity and legal ownership of that person may also be available in some cases.

Nominees and agents

74. Togolese law does not contain specific provisions relating to the Anglo-Saxon concept of nominee. The AUDSCGIE nevertheless refers to the concept of agent (*mandataire*), who can act in the name and on behalf of the principal. When a SARL is incorporated, the partners must all participate in the constitutive act in person or through an agent, provided that the latter has a special power of attorney (Article 315 AUDSCGIE). Otherwise, the company is void. In relation to SAs, Article 396 of the AUDSCGIE provides that "the articles of association shall be signed by all the subscribers, in person or by an agent specially authorised for this purpose, after a certificate attesting to the deposit of funds has been drawn up". In such cases, the identity of the principal must be clearly specified in the document authorising the agent and in the articles of association signed on his or her behalf by the agent. Agents may not enter their own name in the articles of association. The same conditions apply to an SAS insofar as Article 853-3 of the AUDSCGIE specifies that, with a few exceptions, the rules concerning an SA are applicable to an SAS. These rules therefore make it possible to identify, in all cases, the legal owners in the articles of association of the company concerned.

75. The legal owners are also identified in the register of registered shares as provided for in Articles 746-1 and 746-2 of the AUDSCGIE. As at the time of incorporation of the company, in the event of a transfer, the name of the agent may not appear in the register in place of that of the new shareholder.

Legal ownership information in practice and oversight

76. Entities are required to register via the Center for Business Formalities (*Centre des Formalités des Entreprises* – CFE).[9] The CFE operates as a one-stop shop where all formalities for the creation, modification and dissolution of companies are carried out. This one-stop shop brings together the RCCM, the Togolese Revenue Office (OTR), the National Social Security Fund (CNSS) and the Labour Directorate. The CFE is responsible for receiving and processing all applications for the creation, extension, transfer, modification, cessation of activities and dissolution. It is also responsible for issuing a unique business creation card that includes the RCCM registration number, the TIN and the CNSS employer number.

77. The obligations under company law are supervised by the clerk of the Commercial Court, who can initiate legal proceedings for sanctions in case of non-compliance. Any person required to carry out one of the

9. The CFE was created by decree no. 2000-091/PR establishing the Centre for Business Formalities in the customs territory.

formalities of registration with the RCCM and who fails to do so or carries out a formality by fraud, shall be punished with imprisonment of 6 months to 3 years and a fine of XOF 100 000 to XOF 500 000 (EUR 52 to EUR 762) or with one of these two penalties (Article 1157, Criminal Code).

78. In addition, the issuance of shares by a SA before its registration with the RCCM is an offence carrying a penalty of imprisonment of 6 months to 3 years and a fine of XOF 200 000 to XOF 2 million (EUR 305 to EUR 3 050) for the chairman, managing director, chief executive officer or deputy chief executive officer of the company (Articles 1103 and 1104, Criminal Code).

79. At the level of the tax administration, the registration division is responsible for ensuring compliance with registration obligations. Failure to register for tax purposes is punishable by a fine of XOF 50 000 (EUR 76 – Article 124, LPF).

80. A 2019 OTR circular[10] also provides for procedures and best practices to deal with the situations of non-compliant or inactive taxpayers. The purpose of this circular is, among other things, to ensure that entities that do not comply with tax requirements do not continue to enjoy the benefits of customs legislation. According to this circular, a taxpayer is considered inactive when its location could not be confirmed by the tax authorities after its registration and the allocation of its TIN. The department in charge of tax research and investigation has three months to investigate the inactive taxpayer. If these investigations do not lead to the location of the taxpayer, the taxpayer's TIN is deactivated. This deactivation of the TIN will have the effect of excluding the taxpayer from the list of service providers of public administrations and bodies, thus limiting the exercise of its activity in Togo. If a taxpayer wishes to reactivate its TIN, it must send a written request to the OTR. The reactivation will take place if the taxpayer's situation is regularised, i.e. it provides its actual location, updated phone contacts, missing tax returns and pays its tax debts or puts in place a plan to settle the arrears. The Togolese authorities have not mentioned any other supervisory activity carried out in the event that the entity becomes inactive during its existence. The monitoring of inactive companies in Togo and whether it ensures the availability of legal ownership information will be analysed during the Phase 2 review (see Annex 1).

81. The tax law provides for sanctions for failures related to the annual tax return. If a taxpayer failed to submit an annual tax return on time, a sanction of XOF 25 000 to XOF 150 000 (EUR 38 to EUR 228), depending on the turnover of the taxpayer, can be applied (article 113, LPF). If the taxpayer failed to provide all the relevant information, or submitted inaccurate

10. Circular no. 020-2019/OTR/CI relating to the procedures of management of the directory of active taxpayers of the OTR.

information in the annual tax return, a penalty of XOF 10 000 (EUR 8) per failure and a penalty amounted to 20% of the taxes due can be applied (articles 114 and 117, LPF).

82. The AML enforcement and supervisory powers are described below (see paragraphs 121 and 122).

83. The practical implementation of the enforcement measures and supervisory powers regarding the availability of legal ownership information will be assessed during the Phase 2 review.

Availability of legal ownership information in EOI practice

84. The implementation of the legal and regulatory framework and the availability of legal ownership information of companies in the EOI practice will be assessed during the Phase 2 review.

Availability of beneficial ownership information

85. The standard requires that information on the beneficial owners of companies be available in addition to information on the legal owners. In Togo, this aspect of the standard is provided for by the tax law, which has been amended in February 2022 to require all Togolese entities to hold information on their beneficial owners and to report this information to the tax authorities, and in a complementary (but partial) manner by anti-money laundering legislation (AML law). These legal regimes are discussed below.

Companies covered by legislation regulating beneficial ownership information

Type	Company law	Tax law	AML law
Public limited company – SA	None	All	All
Simplified joint-stock company – SAS	None	All	Some
Limited liability company – SARL	None	All	Some
Foreign companies (tax resident)[11]	None	All	All

Tax law requirements

86. Tax law provides for an obligation for all entities, including foreign companies, to hold information on their legal and beneficial owners

11. Where a foreign company has a sufficient nexus, then the availability of beneficial ownership information is required to the extent the company has a relationship with an AML-obligated service provider that is relevant for the purposes of EOIR. (Terms of Reference A.1.1 Footnote 9).

(Article 280(3), LPF). This obligation was introduced in 2021 but it has been specified only in 2022, by order No. 025/MEF/SG/OTR/CG of 21 February 2022 (order on beneficial owners). All entities and legal arrangements must obtain and keep, in a specific register, adequate, accurate and up-to-date information on their beneficial owners as well as information on the reasons of identification of the beneficial owners and the supporting documents (Article 7, order on beneficial owners). The register of beneficial owners may be physical or electronic.

87. In addition, all AML-obliged professionals, including notaries, lawyers and accountants, as well as financial institutions, including insurance companies, must keep, in a register, adequate, accurate and up-to-date information on the beneficial owners of their clients (Articles 4, 5 and 6, order on beneficial owners). Professionals must request and hold this information during the formalities relating to the creation, modification and liquidation of the client entity as well as for each service or intervention (Article 4, Order on beneficial owners). Financial institutions must request and hold this information when opening, transforming, and closing accounts, as well as during any foreign exchange transaction, movement of funds, or settlement of any kind with an institution or person located outside Togo.

88. In accordance with the standard, companies whose shares are admitted to trading on a regulated market in Togo or in another State imposing equivalent obligations are not subject to this obligation and must only register the name of the regulated market on which their shares are admitted to trading (Article 12, order on beneficial ownership).

89. The order on beneficial owners contains the following definition of beneficial owners (Article 2(2)), which is consistent with the standard:

> *beneficial owner(s)*: the natural person(s) who ultimately own(s) or control(s) a customer and/or the natural person on whose behalf a transaction is carried out. This also includes natural persons who ultimately exercise effective control over a legal person or legal arrangement.

90. Although this definition refers only to the "customer", it applies both to the obligations of legal entities and arrangements themselves and to those of professionals. The modalities of identification of the beneficial owner (Article 3(1)) clarify this definition:

> In the case of an entity or company, the following are considered to be beneficial owners:
>
> 1.1. natural persons who ultimately hold directly or indirectly a controlling interest. In the case of companies, natural persons who ultimately hold directly or indirectly 25% or

more of the capital or voting rights are deemed to have a controlling interest.

1.2. natural persons who control, by any other means, *de facto* or *de jure*, the legal person, if none of the natural persons mentioned in point (1) is identified as beneficial owner, or where there are doubts as to the beneficial ownership of the persons identified under point (1).

1.3. the relevant natural person who holds the position of senior manager, where none of the natural persons mentioned in points (1) and (2) is identified.

91. These modalities contain all the relevant steps to identify beneficial owners and follow the "cascade" approach, i.e. each step is applied if no beneficial owner is identified in the previous step or if doubts remain. This approach is consistent with the standard. These procedures do not clearly contemplate the identification of beneficial owners with a joint controlling interest, but the Togolese authorities consider that the terms "ultimately directly or indirectly" cover such a situation of joint controlling interest. As this interpretation is not clearly formalised in a document for entities, legal arrangements and professionals, its application in practice will be analysed during the Phase 2 review (see Annex 1).

92. The information to be included in the register of beneficial owners, for each beneficial owner, is (Article 11):

- full name, date and place of birth
- nationality, Togolese national identity card number or, for foreigners, passport number, date and place of issue and expiry date
- country of residence
- the Togolese or foreign tax identification number
- the exact private address or the exact professional address in Togo or abroad
- the type of control exercised, including, where applicable, the nature and extent of the interests held.

93. The order lists all the supporting documents that entities and legal arrangements must keep (Article 19), including, for each beneficial owner, a copy of an identity document, proof of residence that is less than three months old, proof of control and the nature and extent of the interests held in the entity.

94. Beneficial owners of entities, as well as entities and legal arrangements holding directly or indirectly a participation in a relevant entity,

must provide them with the information necessary to fulfil their obligations (Article 9). The Togolese authorities have indicated that this provision requires that the beneficial owners and other persons in the chain of ownership provide information to the entity spontaneously in the event of a change as well as in response to a request from the entity. In case of failure to comply with this obligation, the entity can inform the tax administration, which will then apply the relevant sanctions against the legal owners and/or beneficial owners (see paragraph 119).

95. The register of beneficial owners and supporting documents must be kept in Togo by entities for ten years from the last transaction or the date on which the information was recorded or updated (Article 15). In case of cessation or suspension of activities or sale of the entity or legal arrangements' business, the register of beneficial owners and supporting documents held by the entity of the legal arrangement must be filed with the tax authorities and the RCCM within 15 days. The information on the beneficial owners is then available from the tax authorities or the RCCM for 10 years even after the company has ceased to exist (article 24). The same ten-year retention period applies to the records of beneficial owners kept by financial professionals and institutions, starting from the date of termination of the business relationship or closure of the account.

96. In addition to the obligation to keep a register of beneficial owners at their level, entities, companies and legal arrangements must declare to the tax authorities and to the RCCM the information relating to their beneficial owners (Article 17, order on beneficial owners). They must make this declaration:

- at the time of filing the declaration of existence with the tax authorities, if the entity is subject to this obligation
- within one month of their incorporation for other entities and legal arrangements
- with the annual tax return, even if the entity is tax-exempted
- within one month after the entity or legal arrangement becomes aware, or should have become aware, of the event that makes it necessary to amend the information on its beneficial owners.

97. This requirement ensures that the information reported on beneficial owners is updated whenever there is a change and at least once a year.

98. The tax authorities are responsible for verifying the declarations of beneficial owners. If a declaration is incomplete, does not comply with the legal provisions or does not correspond to the supporting documents, they must reject the declaration and the entity has 15 days to rectify the situation by completing or amending its declaration or by providing the required

supporting documents (Articles 22 and 23, order on beneficial owners). The Togolese authorities explain that the tax administration will inform the RCCM of the findings of the verification and the entity should regularise its situation with these two authorities.

99. On the basis of the information declared, the tax authorities must keep a central register of beneficial owners, the establishment and operation of which should be determined by a decision of the General Commissioner of the OTR and which should contain the information referred to in paragraph 92. This information, as well as the related supporting documents, shall be kept in the central register of beneficial owners for at least ten years following the year in which the entity, company or legal structure is removed from the tax register or the RCCM (Article 24).

100. This central register of beneficial owners shall be accessible by (Article 26):

- public authorities and administrations[12] in the exercise of their missions
- any person who can prove an interest, within the limits of the information concerning the full name, nationality, date and place of birth, country of residence, address of the beneficial owner and the type of control exercised.

101. Entities and legal arrangements had until 21 May 2022 to comply with these new obligations. Although the obligation of the entities and legal arrangements to keep a register of beneficial owners has been effective since that date, the central register of beneficial owners is not yet operational and the technical modalities for the reporting of beneficial ownership information by entities are under development.

102. Therefore, the legal and regulatory framework of Togo in tax matters ensures the availability of beneficial ownership information. However, this legal framework has been put in place recently and is not yet fully operational. The implementation of these tax provisions on the availability of information on beneficial owners of companies will therefore be particularly analysed during the Phase 2 review (see Annex 1).

Anti-Money Laundering Law requirements

103. Law No. 2018-004 of 4 May 2018 on the fight against money laundering and terrorist financing in WAMU member states (the AML law) complements the obligations of the tax law, although it is less comprehensive.

12. The order on beneficial owners defines public authorities and administrations as including the tax administration, the CENTIF, the WAMU Banking Commission and the judiciary administration (Article 2(1)).

104. The AML law sets out a number of obligations for AML-obliged persons, including:

- to identify their customers and the beneficial owners of their customers and verify the identification details on the basis of any reliable written documentation before the start of the business relationship (Article 18)
- to keep documents relating to the identity of their customers and beneficial owners for 10 years after the end of the business relationship (Article 35)
- to report suspicious transactions by their clients to the National Financial Intelligence Processing Unit (CENTIF) (Article 79)
- to have an internal AML standards monitoring programme (Article 25)
- to regularly train their staff on AML rules (Article 23)
- to assess the risks associated with their clients (Article 11).

105. AML-obliged persons are defined in Articles 5 and 6 of the AML law and include, inter alia, financial institutions (FIs) and their business introducers, trusts and company service providers, real estate companies and agents, external auditors and accountants, tax advisors, lawyers, notaries, bailiffs and other independent legal professionals. The AML law is not as comprehensive a source of information on beneficial owners as the tax law because its scope does not cover all relevant entities and legal arrangements. Indeed, there is no obligation for all companies to use the services provided by an AML-obliged persons. In particular, legal entities are not required to open a bank account in Togo. SAs, and SASs meeting some conditions (see paragraph 187), on the other hand, must use the services of auditors to prepare the annual report presented to their general meeting.

106. In accordance with Articles 56 and 57 of the AML law, only FIs may rely on a third party for the implementation of their due diligence obligations, including for the identification of their customers and beneficial owners, without being relieved of their ultimate responsibility for compliance with these obligations. The use of a third party for the implementation of due diligence obligations may be made under the following cumulative conditions, which are consistent with the standard:

- The third party is an FI or an AML-obliged person located or having its head office in Togo or a person belonging to an equivalent category under foreign law and located in a third jurisdiction imposing equivalent AML obligations.

- The FI has access to the information collected by the third party. According to Article 58 of the AML law, the third party must provide the FI without delay with information on the identity of the customer and the beneficial owner as well as information on the purpose and nature of the business relationship. It shall also, on request, provide the FI with copies of documents identifying the customer and the beneficial owner, as well as any document relevant to the performance of these diligences. An agreement may be signed between the third party and the FI to specify the terms and conditions for the transmission of the information thus collected and the control of the due diligence carried out.

107. The AML law defines the concept of beneficial owner as follows (Article 1(12)):

> the natural person(s) who ultimately own(s) or control(s) a customer and/or the natural person on whose behalf a transaction is carried out. This definition shall also include persons who ultimately exercise effective control over a legal person or arrangement […];
>
> – where the client […] is a company, the beneficial owner of the transaction shall mean the natural person or persons who either hold, directly or indirectly, more than 25% of the capital or voting rights of the company, or who exercise, by any other means, a power of control over the management, administrative or executive bodies of the company or over the general meeting of its members; […]

108. According to this definition, AML-obliged persons must simultaneously identify the individuals who have direct or indirect control of the company through ownership of the capital or voting rights or through any other means. This definition and the simultaneous approach to identifying beneficial owners is in line with the standard because it identifies as many people as the "cascade" approach, if not more. The notion of control by any other means refers to "a power of control over the management, administrative or executive bodies of the company or over the general meeting of its members". Although this precision is not included in the standard, it does not seem to be contrary to the standard insofar as the control of a company is carried out in principle by these bodies or meetings. On the other hand, this definition does not clearly contemplate the identification of beneficial owners who jointly hold a controlling interest or who jointly exercise control by any other means. However, the Togolese authorities consider that the terms "directly or indirectly" cover such a joint controlling situation. As this interpretation is not clearly formalised in a document for AML-obliged persons,

its application in practice will be analysed during the Phase 2 review (see Annex 1).

109. Although the definition of "beneficial owner" in the AML law is different from the definition in the tax law, both definitions are in line with the standard and generally allow the identification of the same natural persons.[13] Therefore, the risk of confusion in the application of these definitions by AML-obliged persons appears limited. The interaction of these two definitions in the implementation of the beneficial owner identification requirements will be assessed during the Phase 2 review (see Annex 1).

110. On the other hand, if no natural person meets the definition of a company's beneficial owner, the AML law does not provide for the identification of a relevant natural person who holds the position of principal manager as required by the standard. This information may be available in the RCCM when the senior manager is a natural person (see paragraph 48).[14] In addition, AML-obliged persons are also covered by the obligation to keep a register of the beneficial owners of their customers under the tax law, which provides for the identification of the relevant natural person holding the position of senior manager. Therefore, if no beneficial owner meets the definition of the AML legislation, the identity of the natural person who holds the position of senior manager in the company is available under the tax law.

111. Article 18 of the AML law also requires AML-obliged persons to verify the identity of the customer or the beneficial owner before the start of the business relationship by presenting any reliable written document. If the risk of money laundering or terrorist financing appears to be low, the identity of the customer and the beneficial owner may nevertheless be verified either before or during the establishment of the business relationship, which is not contrary to the standard. In addition, the AML law provides guidance to AML-obliged persons on how to assess money laundering and terrorist financing risks.[15]

13. The identification of beneficial owners may be broader under the AML law due to the "simultaneous" approach, but the "cascading" approach under the tax law is also consistent with the standard. The concept of "control by any other means" is also formulated differently in the tax and AML legislation, but ultimately covers the same persons.
14. Only SARL are obliged to appoint a natural person as manager. Other companies may appoint legal persons, including foreign legal persons, as managers.
15. Article 11 of the AML Law contains the basic guidelines for the AML-obliged person to identify and assess the risk to which it is exposed (including customer type risk). This provision states that the risk factors to be taken into account are customers, countries or geographical areas, products/services, operations or distribution channels. It also states that the measures taken to identify and assess risks must be proportionate to the nature, size and volume of the activities of the persons

112. The identification details that must be collected by AML-obliged persons on natural persons, including the beneficial owners of their customers, include the full name, date and place of birth and the address of the main residence of these persons. Verification of the identity of a natural person by means of reliable written documents requires, *inter alia*, the presentation of a valid original official identity document (Article 27).

113. AML-obliged persons must update information on the beneficial owners of their customers throughout the business relationship (Article 19). The updating of this information must be carried out in accordance with the objectives of assessing the risk of money laundering and terrorist financing and of monitoring in accordance with this risk. The BCEAO instruction to financial institutions[16] also states that their internal procedures must provide for the due diligence to be carried out, particularly with regard to setting deadlines for verifying the identity of customers and updating the relevant information (Article 5). However, the Togolese AML legal and regulatory framework does not clearly contain an obligation to update this information within a reasonable timeframe in the event of a change and does not indicate any specified frequency to update this information, which does not ensure the availability of up-to-date beneficial ownership information as required by the standard.

114. The retention period for customer identification documents of FIs is 10 years from the closure of the accounts or the termination of the business relationship (Article 35). There is no specific retention period for other AML-obliged persons. In addition, if the AML-obliged person ceases its activity, the Togolese legal framework does not ensure the retention and availability of this information.

115. The AML law does not expressly require that information and documents relating to beneficial owners be kept in the territory of Togo. However, AML-obliged persons are obliged to present such information or documents in response to a request from the public authorities. They must therefore ensure that they have access to the information to comply with this obligation to transmit it to the authorities. If they fail to do so, the penalties described below in paragraph 122 may be applied.

subject to the AML Law. According to the same provision, the AML-obliged person must have policies, procedures and internal controls, in particular with regard to customer due diligence requirements, in order to effectively mitigate and manage risks. Article 25 of the AML Law provides more details to financial institutions on the internal controls and procedures to be implemented.

16. Instruction no. 007-09-2017 on the modalities of application by financial institutions of the uniform law on the fight against money laundering and terrorist financing in WAMU member states.

116. In conclusion, the tax law contains obligations ensuring the availability of information on the beneficial owners of legal entities created in Togo as well as foreign companies with a sufficient link to Togo. Persons subject to the AML law must also identify the beneficial owners of their clients, but several deficiencies have been identified (see paragraphs 105, 113 and 114). Togo must therefore ensure, under the AML law, the availability of beneficial ownership information in all cases for relevant companies (see Annex 1). In addition, since tax obligations also apply to AML-obliged persons for the identification of beneficial owners, the interaction between these obligations and the AML obligations in practice will be analysed during the Phase 2 review (see Annex 1).

Beneficial ownership information – Enforcement measures and oversight

117. The control of compliance with the obligations set forth in the order on beneficial owners is carried out by the tax administration, which may use all the powers vested in it by the CGI or the LPF (Article 25), in particular its powers of tax audit. In addition, any authority or public administration other than the tax administration that finds breaches of the legal provisions relating to beneficial owners must inform the tax administration within 15 days of the date of their finding.

118. Regarding the obligation of entities to declare information on their beneficial owners to the tax authorities or to the RCCM, if the tax authorities reject the declaration and the entity does not regularise its situation, the tax authorities shall notify the entity or legal arrangement by letter of its refusal to declare. This refusal to declare constitutes an infringement of the provisions of the right to information and is punishable by a fine of XOF 2 million (EUR 3 050). The fine is increased to XOF 4 million (EUR 6 100) at the end of a seven-day formal notice. In addition, for companies distributing dividends, a fine equal to the amount of dividends paid annually, with a minimum of XOF 2 million (EUR 3 050) and a maximum of XOF 20 million (EUR 30 500), is applied to an entity in case of failure to declare information on beneficial owners (Article 123, LPF).

119. The legal owners and senior managers of entities and legal arrangements are jointly and severally liable for the availability and maintenance of the register of beneficial owners and for the annual declaration of information on beneficial owners (Article 280, LPF). In addition, the same penalties, multiplied by five, apply to the beneficial owners of entities that have not complied with their obligation to provide the relevant information to the entities in accordance with article 9 of the order on beneficial owners (see paragraph 94).

120. Any person having access to the information in the central register of beneficial owners and all AML-obliged persons are also obliged to inform the tax authorities as soon as they become aware of the existence of erroneous data or the absence of all or part of the data in the central register of beneficial owners, or the absence of an entry, amendment or deletion. This information must be provided within 30 days following the finding of non-compliance.

121. With regard to the supervision of AML law, the supervisory authorities of the AML-obliged persons include:

- the WAMU Banking Commission and the BCEAO for banks and other FIs
- the Regional Insurance Control Commission and the National Insurance Directorate for insurance companies
- the professional orders (self-regulatory bodies) for the other regulated professions (Togolese Bar Association, National Order of accountants and Chamber of Notaries).

122. If an AML-obliged person seriously fails to comply with its AML obligations, its supervisory authority may take disciplinary action (Article 112, AML law). In addition, any person who intentionally or unintentionally participates in or facilitates the commission of money laundering offences may be punished by imprisonment of 6 months to 2 years and/or a fine of XOF 100 000 to XOF 1.5 million (EUR 152 to EUR 2 300 – Article 116, AML law).

123. The practical implementation of enforcement and supervisory measures of the legal requirements regarding the availability of beneficial ownership information will be assessed during the Phase 2 review.

Availability of beneficial ownership information in EOI practice

124. The implementation of the legal and regulatory framework and the availability of beneficial ownership information in EOI practice will be assessed in the Phase 2 review.

A.1.2. Bearer shares

125. Article 745 of the AUDSCGIE states that shares shall take the form of bearer shares or registered shares, whether they are issued in consideration of contributions in kind or contributions in cash. The exclusively registered form may however be imposed by the company's articles of association or by other provisions of the AUDSCGIE. Only SAs and SASs may issue shares. SARLs only issue quotas (*parts sociales*), which are registered shares.

126. The Togolese legal framework nevertheless makes it possible to identify the owners of all shares authorised for issuance since 1997. Indeed, the general regulation on the organisation, operation and supervision of the WAMU regional financial market has provided, since 1997, that all new shares issued by entities must be dematerialised and kept at the Central Depository/Settlement Bank[17] (Article 111). In addition, article 744-1 of the AUDSCGIE states that "shares, regardless of their form, must be registered in an account in the name of their owner. They are transmitted by transfer from account to account. The transfer of ownership of shares results from the registration of the shares in the purchaser's shares account". Thus, all shares must be dematerialised and their owners identifiable. A share can only be transferred from one account to another and therefore any physical transfer of a bearer share would be void. Article 744-1 was adopted in 2014 and a transitional period had been provided until 5 May 2016 to allow the dematerialisation of all shares (Article 919). In addition, article 748-1, also adopted in 2014, specifies that shares that cannot be traded on a stock exchange or traded by a central depository must necessarily be in registered form. No specific measure has been provided for in Togolese domestic law to ensure the dematerialisation process of shares. A draft decree defining the practical details of the dematerialisation is currently being studied.

127. The Togolese authorities have indicated that they are not aware of any company having issued bearer shares but since no specific monitoring or enforcement measures have been implemented, there is no certainty on this aspect. However, considering that the Togolese legal framework has provided for the dematerialisation of the shares since 1997, the risk that a potential holder of an unconverted bearer share still in circulation that could claim the rights attached to that bearer share, appears limited. The follow-up activities carried out by the Togolese authorities to ensure the absence of bearer shares still in circulation will be assessed during the Phase 2 review (see Annex 1).

A.1.3. Partnerships

Types of partnerships

128. The AUDSCGIE provides for three types of partnerships:

- The general partnership (*Société en nom collectif*, SNC) is an entity in which all the partners are traders and are indefinitely and jointly liable for the partnership's debts (Article 270, AUDSCGIE). As at 31 December 2022, 2 SNC were registered in Togo.

17. In the WAEMU region, the regional central depository for bearer shares is the Central Depository/Settlement Bank which is one of the organs of the Regional Securities Exchange (Bourse régionale des valeurs mobilière).

- A limited partnership (*Société en commandite simple*, SCS) is a partnership in which one or more "general" partners coexist and are indefinitely and jointly liable for the partnership's debts, and one or more "limited" partners are liable for the partnership's debts up to the limit of their contributions (article 293, AUDSCGIE). As at 31 December 2022, no SCS were registered in Togo.
- The joint venture (*Société en participation*, SEP) is a structure that does not have legal personality and is not registered with the RCCM. Its existence is therefore not made public. The relationship between its partners is governed by the rules applicable to SNCs, unless the partners agree otherwise (Article 862, AUDSCGIE). Each partner remains the owner of the assets placed at the disposal of the structure. The creation of an SEP is provided for in Articles 854 et seq. of the AUDSCGIE. The SEPs must be registered with the tax authorities before starting their activity, although their profits are taxable at the level of each partner. Since joint ventures do not have their own assets and their partners remain liable to third parties, SEPs are not considered relevant for the purposes of this report.

129. The common feature of partnerships is that their share capital is divided into quotas (*parts sociales*), the assignment or transfer of which generally requires the consent of the other partners with some exceptions for SCS (see paragraph 133).

Identity information

130. The articles of association of partnerships, which fall within the category of commercial entities, must contain the same mandatory information as the articles of association of companies (see paragraph 45). This mandatory information includes the identity of the investors in cash or in kind and thus make it possible to identify the founding partners in the articles of association of partnerships.

131. In the event of changes in the partners, the updated information is available at the partnership level. In the case of SNCs, the quotas can only be transferred with the unanimous consent of the partners. If there is no unanimous consent, the transfer cannot take place, but the articles of association may provide for a redemption procedure to allow the withdrawal of the transferring partner (Article 274, AUDSCGIE). The transfer of shares must be recorded in writing (Article 275, AUDSCGIE). The transfer is valid only after one of the following formalities has been completed:

- The transfer is served on the partnership by a bailiff.
- The partnership accepts the transfer in a notarised deed.

- An original copy of the deed of transfer is deposited at the registered office in return for a certificate of receipt from the manager.

132. The transfer of quotas may not be relied upon against third parties until one of these formalities has taken place and the transfer has been made public in the RCCM.

133. In the case of SCSs, the transfer of shares must also be recorded in writing. It may be relied upon against the partnership and third parties under the same conditions as transfers of shares in SNCs (Article 297, AUSCGIE). In principle, quotas can only be transferred with the consent of the partners but the SCS can derogate to this rule its articles of association in a limited number of cases (Article 296 AUSCGIE).[18]

134. In addition, SNCs and SCSs are registered with the RCCM under the same conditions as companies (see paragraphs 47 to 50). Thus, as indicated in paragraph 48, the information that the partnership must provide, at the time of its registration with the RCCM, and update in case of changes, includes (article 46, AUDCG):

- the amount of the share capital with an indication of the amount of cash contributions and the valuation of contributions in kind
- the full name, date and place of birth, and domicile of the partners who are indefinitely and personally liable for the partnership's debts
- the full name, date and place of birth and domicile of the managers, directors or partners having general authority to bind the legal person or grouping.

135. Since all the partners of SNCs and the general partners of SCSs are indefinitely and jointly liable for the partnership's debts, their identity will therefore be communicated in the registration form provided to the RCCM. In addition, in the event of a change requiring a correction or addition to the information communicated in the registration form to the RCCM, this information must be updated within 30 days of the change (Article 52, AUDCG). The information relating to the limited partners of SCSs will also be available from the RCCM through the communication of the articles of association at the time of registration, and updated at the time of the filing

18. For SCS, consent must be unanimous except in the following cases, if specified in the article of association of the partnership: the shares of the limited partners are freely transferable between partners, the shares of the limited partners may be transferred to third parties to the partnership with the consent of all the general partners and the majority in number and capital of the limited partners, and finally a general partner may transfer part of his shares to a limited partner or to a third party to the company with the consent of all the general partners and the majority in number and capital of the limited partners.

of the formality in the event of a transfer of shares (see paragraphs 131 and 132). Information on the partners of partnerships is therefore available indefinitely from the RCCM.

136. In addition, SNCs and SCSs are required to register with the tax authorities in order to obtain their TIN (see paragraph 60) and must provide, on this occasion, their articles of association containing the identity of their partners. In the event of a change of partner, the information must be updated with the tax authorities within 15 days of this change (Article 12, LPF – see paragraph 62). The partnerships are also subject to the obligation to submit an annual tax return containing the information on their partners (see paragraph 61). These obligations ensure that information on the partners of partnerships will be kept up to date with the tax authorities, which will retain this information, even after the partnership has ceased to exist.

137. Partnerships are also covered by the obligation of Article 280(3) of the LPF which provides for an obligation for all entities to hold information on their legal owners and beneficial owners (see paragraph 63).

138. All the information held by the entities themselves on their partners may be subject to a right to information by the tax authorities. Although no specific format is provided for the keeping of this information, the tax law provides that this information must be kept for a minimum of ten years from the date on which the documents or records were drawn up (Article 261, LPF). In addition, the liquidation procedure described in paragraph 57 applies to partnerships and information held by these entities will therefore be available, after dissolution, at the level of the liquidator.

139. In addition, foreign partnerships carrying out their economic activity through branches or representative or liaison offices are subject to the formalities for registration with the RCCM and the tax administration, as described in paragraphs 60 and 71). Although foreign partnerships must provide their articles of association at the time of registration, the mention of the names of the partners of the partnership on its articles of association will depend on the requirements of the law of the jurisdiction of incorporation of the partnership. Nevertheless, the tax law requires the availability of up-to-date information on the partners of foreign partnerships through the obligation to provide annually this information to the tax administration and to hold information on the identity of their associates and partners during any subscription or modification of shares or quotas or during any purchase of goods and services (article 280(3), LPF).

Beneficial ownership information

140. Partnerships created in Togo and foreign partnerships that are taxable in Togo[19] are covered by the obligation to hold information on their partners and beneficial owners (article 280(3), LPF), as specified in the order on beneficial owners (see paragraphs 86 to 101). They must therefore obtain and keep, in a register of beneficial owners, adequate, accurate and up-to-date information on their beneficial owners as well as information on the methods used to determine the beneficial owners and the supporting documents relating thereto. They must also provide this register to the tax authorities and the RCCM.

141. In addition, the obligation for AML-obliged persons to identify their customers and the beneficial owners of their customers (Article 18, AML law) applies under the same conditions, regardless of whether the customer is a company or a partnership. These AML-obliged persons must also keep a register of the beneficial owners of their customers in accordance with the tax law (see paragraph 87).

142. The definition of beneficial owner included in the AML law is applicable to both companies and partnerships. However, as for all entities other than companies, the determination of the beneficial owners of partnerships must take into account the specificities of their different forms and structures.[20] With respect to partnerships in Togo, Article 3(1) of the order on beneficial owners refers to "natural persons who ultimately hold directly or indirectly a controlling interest". The application of a specific threshold of ownership (of more than 25%) of shares or voting rights for the determination of the beneficial owner is only provided for in the case of companies. Indeed, all partners of SNCs and all general partners of SCSs are indefinitely and jointly liable for the partnership's debts, regardless of the amount of their contribution to the partnership. In addition, certain major partnership decisions, such as the transfer of quotas, require in principle the unanimous consent of all partners. This is a fundamental difference from companies, where shareholders are generally liable for the amount of their capital contribution and decisions are made by a majority of voting rights. By not applying the 25% threshold to partnerships, the definition takes into account these specificities.

143. Therefore, the modalities for identifying the beneficial owners of partnerships, as provided for in the tax provisions, are in line with the

19. The foreign partnerships that carry on business in Togo are considered taxable in Togo and only foreign partnerships taxable in Togo can have income, deductions or credits for tax purposes in Togo. Therefore, only foreign partnerships that are taxable in Togo are relevant for the purpose of this report.
20. See paragraphs 16 and 17 of the FATF Interpretative Note to Recommendation 24.

standard by referring to a controlling interest without specifying a specific threshold. Furthermore, the definition of beneficial owner contained in the AML law seems appropriate for the identification of beneficial owners of partnerships since, as indicated in paragraph 108, the conditions of control by ownership and control by other means are verified simultaneously at the first stage of this identification.

Oversight and enforcement

144. The legal mechanisms for making identity information available for partnerships are the same as those discussed in section A.1.1. Accordingly, the enforcement powers applicable for the availability of legal ownership information (paragraphs 76 to 82) and beneficial ownership information (paragraphs 117 to 122) also apply when these obligations relate to partnerships. The mechanism for identifying inactive companies described in paragraph 80 is also applicable to partnerships.

145. The practical implementation of enforcement and supervisory measures regarding the availability of identity and beneficial ownership information of partnerships will be assessed during the Phase 2 review.

Availability of partnership information in EOI practice

146. The implementation of the legal and regulatory framework and the availability of partnership information in EOI practice will be assessed in the Phase 2 review.

A.1.4. Trusts

147. The constitution of trusts or *fiducies* is not provided for by Togolese law or by OHADA law. However, nothing prevents a Togolese resident from acting as a trustee of a foreign trust.

Requirements to maintain identity information in relation to trusts and implementation in practice

148. Under the beneficial ownership tax provisions, legal arrangements have the same obligation as entities to obtain and maintain in a register of beneficial owners adequate, accurate and up-to-date information on their beneficial owners. They are also subject to the obligation to report this information to the tax authorities and to the RCCM. This information should also be available in the central register of beneficial owners which will be maintained by the tax authorities (see paragraphs 86 to 101). The tax authorities are not aware of the existence of foreign trusts administered in Togo and to date, they have not received any information on beneficial owners of foreign trusts.

149. In addition, the obligation for AML-obliged persons to identify their customers and the beneficial owners of their customers (Article 18, AML law) applies in case the customer is a legal arrangement. These AML-obliged persons must also keep a register of the beneficial owners of their customers, including legal arrangements, in accordance with the tax law (see paragraph 87).

150. The concept of legal arrangements, as defined in the order on beneficial owners, includes trusts, *fiducies* and other similar legal arrangements under Togolese or foreign law (Article 2(3)). Although the tax provisions do not clearly indicate the triggering event for the requirements of foreign legal arrangements, the Togolese authorities have indicated that they are subject to tax obligations from the date their trustee, whether professional or non-professional, is resident in Togo or when they are managed or administered in Togo. The implementation of this interpretation in practice and of the beneficial owner requirements for foreign legal arrangements will be assessed during the Phase 2 review (see Annex 1).

151. According to the identification of beneficial owners, all the following natural persons are considered to be beneficial owners of legal arrangements (Article 3(2) and (3)):

- the settlor(s)
- the administrator(s) or trustee(s)
- the protector, if any
- the beneficiary or beneficiaries[21]
- and any other natural person exercising, directly or indirectly, *de facto* or *de jure*, ultimate effective control over the trust.

152. If any of the above functions are performed by a legal person or other legal arrangement, the order on beneficial owners ensures the "look through" obligation by specifying that the beneficial owners of this legal person or arrangement must be identified as the beneficial owner of the *trust*. These procedures for identifying the beneficial owners of legal arrangements are consistent with the standard.

153. The information relating to the beneficial owners to be entered in the register as well as that to be provided to the tax authorities and the

21. With regard to beneficiaries, the Beneficial Owners Order specifies that where the natural person(s) who will be the beneficiaries of the *trust* has not yet been designated, the class or classes of persons in whose main interest the legal arrangement has been constituted or operates must be identified so that the identity of the beneficiary or beneficiaries can be established at the time of payment of the benefits or at the time when the beneficiary or beneficiaries intend to exercise the rights acquired (Article 3(2)).

RCCM is the same as that relating to the beneficial owners of entities (see paragraph 92).

154. The order on beneficial owners also requires that natural persons who are trustee of legal arrangements, whether under Togolese or foreign law, register with the tax authorities within one month of starting their activity (Article 18). They must also apply for deregistration within one month of ceasing their activity. Although these obligations only relate to natural persons, the Togolese authorities have indicated that trustee-legal persons must also register with the tax administration under Article 7 of the LPF (see paragraph 60).

155. With regard to the obligations of AML-obliged persons, as described in paragraph 104, they apply in the case of a customer that is a trust or similar legal arrangement. In this case, Article 1(12) of the AML law defines the concept of beneficial owner as follows:

> the natural person(s) who ultimately own(s) or control(s) a customer and/or the natural person on whose behalf a transaction is carried out. This definition shall also include persons who ultimately exercise effective control over a legal person or arrangement […] ;
>
> - […] where the customer is acting in the context of a *fiducie* or other comparable legal arrangement governed by foreign law, the beneficial owner of the transaction shall mean the natural person or persons who satisfy one of the following conditions:
> - They are entitled, by virtue of a legal instrument which designates them as such, to become rights holders owning at least 25% […] of the property transferred to a *fiducie* or any other comparable legal arrangement governed by foreign law.
> - They belong to a group in whose primary interest […] the *fiducie* or other comparable legal arrangement under foreign law has been constituted or has become effective, where the natural persons who are the beneficiaries of the *fiducie* or other legal arrangement have not yet been designated.
> - They hold rights to at least 25% of the property […] of the *fiducie* or other comparable legal arrangement under foreign law.
> - They have the status of settlor, trustee or beneficiary, according to the laws and regulations in force.

156. These conditions for identifying the beneficial owners of trusts or *fiducies* apply simultaneously. The first and third positions are carried out by applying a threshold of holding or participation of at least 25% in the trust. The application of such a threshold is not provided for in the standard but can be considered as complementary to the last condition of this definition, which does provide for the identification of all persons having the capacity of settlor, trustee or beneficiary. However, it is specified that such persons will be identified if they have that capacity "in accordance with applicable laws and regulations". This aspect may pose difficulties of implementation in Togo insofar as no specific regulations are provided for trusts. In addition, the identification of the protector is not covered by this condition, whereas the standard requires the identification of all the trustees, settlors, beneficiaries and, where applicable, protectors of the trust. The implementation of the definition of beneficial owners of trusts or *fiducies*, as provided for in the AML law, will therefore be assessed during the Phase 2 review (see Annex 1).

157. Furthermore, there is no obligation for a foreign trust to use the services of an AML-obliged person and there is no specific frequency for updating information on beneficial owners (see paragraph 113).

Oversight and enforcement

158. The legal mechanisms that enable the availability of beneficial ownership information for legal arrangements are broadly the same as those discussed in section A.1.1. Accordingly, the enforcement and sanctioning powers applicable for the availability of beneficial ownership information (paragraphs 121 and 122) also apply where these obligations relate to legal arrangements. In addition, failure by natural persons who are trustees of foreign trusts to comply with their obligation to register with the tax authorities is punishable by a fine of XOF 50 000 (EUR 76 – Article 124, LPF).

159. The practical implementation of enforcement and supervisory measures regarding the availability of beneficial ownership information for legal arrangements will be assessed during the Phase 2 review.

Availability of trust or fiducies information in EOI practice

160. The implementation of the legal and regulatory framework and the availability of information on legal arrangements in EOI practice will be assessed during the Phase 2 review.

A.1.5. Foundations

161. Togolese legislation does not provide for any particular form for foundations. They must be constituted in the form of an association, the constitution of which is provided for by a law of 1 July 1901. According to this law, associations always have a non-profit and/or public interest purpose. Their constitution requires the issuance of a receipt by the Ministry of Territorial Administration. Their beneficiaries or categories of beneficiaries are identifiable. The income generated by the association's activities is intended for the operation of the association and is not intended to be distributed to the association's members or founders. In the event of dissolution, their assets are transferred to associations pursuing the same objectives. Therefore, associations are not relevant for the exchange of information for tax purposes.

Other relevant entities and arrangements

Co-operative society

162. Article 4 of the OHADA Uniform Act on the Law of Co-operative Societies (AUSC) defines a co-operative society (*Société coopérative* – SC) as an autonomous grouping of persons united voluntarily to meet their common economic, social and cultural needs and aspirations, through a collectively owned and managed enterprise where power is exercised democratically and in accordance with co-operative principles. The SCs can hold assets and generate profit to be distributed to the persons forming the societies. As of 31 December 2022, 188 SCs were registered in Togo.

163. A co-operative society is composed of co-operators who participate effectively and according to co-operative principles in the activities of the society and receive quotas in representation of their contributions (Article 8, AUSC). Natural or legal persons may be co-operators (Article 7, AUSC). Decisions are taken at a general meeting and each member has one vote, regardless of the size of his or her shareholding in the SC (Articles 102 and 103, AUSC).

164. The articles of association of the SC shall include, *inter alia*, the full name and address of each initiator, the identity of the contributors in cash and, for each of them, the amount of the contributions, the number and value of the quotas handed over in consideration of each contribution as well as the identity of the contributors in kind and, for each of them, the nature and valuation of the contribution made, the number and value of the quotas handed over in consideration of each contribution, the status of the property or shares contributed where their value exceeds that of the required contributions (article 18, AUSC).

165. An application for membership of the SC is made in writing by the applicant. Membership is then ratified by the general meeting and the status of co-operator is established by a document issued by the society's administrative body and containing, in particular, the identity of the co-operator (Article 10, AUSC). In addition, each co-operative society must keep, at its registered office, a register of members indicating, in particular, for each member, the surname, first name and identity document reference, the address, the profession, the number of subscribed quotas and the number of paid-up quotas (Article 9 AUSC).

166. SCs are registered in the Register of Co-operative Societies (Article 74, AUSC) which is managed by the clerk of the commercial court, like the RCCM. The application for registration must contain, inter alia, the identity and address of the directors with general authority to bind the SC and must be accompanied by the society's articles of association (Articles 75 and 76, AUSC). Subsequent changes requiring the correction or addition of information entered in the Register of Co-operative Societies must be notified by the company within 30 days of such changes. Any amendment concerning, inter alia, the articles of association of the SC must also be entered in the Register of Co-operative Societies (Article 80, AUSC). The information on the co-operative members of the SCs held by the Register of Co-operative Societies is therefore updated in the event of a change.

167. The AUSC does not provide for a specific time limit for the retention of information contained in the Register of Co-operative Societies, but the Togolese authorities indicated that in practice the Register retains it indefinitely. Information on co-operative societies that have ceased to exist is also kept indefinitely for the purpose of informing third parties.

168. SCs are subject to corporate income tax and must therefore register with the tax authorities under the conditions described in paragraph 60. They must also submit annually the tax return which must contain the identity of the persons receiving the distributed profit. Consequently, the tax administration has the up-to-date information on the co-operators of SCs.

169. With regard to information on beneficial owners, SCs are subject to the tax obligations to keep a register of beneficial owners and to provide this information to the tax authorities and to the RCCM. The AML obligations, as described in section A.1.1, also apply. Although, under the rules of operation of SCs, the value of the co-operator's vote in a general meeting decision is not correlated to the amount of his shareholding in the SC, the "cascade" identification methodology provided for in the tax law is still relevant and compliant with the standard for this type of company because it refers only to a controlling interest (as the 25% threshold applies only to companies with share capital). As described in paragraph 95, beneficial ownership information is retained for at least 10 years and is available with the tax authorities and the RCCM after the SC has ceased to exist.

Economic interest grouping

170. The exclusive purpose of an economic interest grouping (EIG) is to implement, for a specific period, all means likely to facilitate or develop the economic activity of its members, to improve or increase the results of this activity (Article 869, AUDSCGIE). It may be formed by contract by several natural or legal persons. On the other hand, an EIG does not, as such, give rise to the making and sharing of profits. The rights of the members cannot be represented by negotiable shares and the members are liable for the EIG's debts out of their own assets (articles 870 and 873, AUDSCGIE). An EIG may be formed without capital (article 869, AUDSCGIE). As at 31 December 2022, 54 EIG were registered in Togo.

171. The EIG contract shall include, in particular, the name, business name or corporate name, legal form, address of domicile or registered office and, where applicable, the registration number in the RCCM of each of the members of the EIG (article 876, AUDSCGIE). In addition, the EIG must be registered with the RCCM under the same conditions as other companies, attaching a copy of its contract. Consequently, the identity of the members of EIGs is also available from the RCCM. In addition, the application form for registration of an EIG must indicate, in particular, the full names, date and place of birth, and residence address of the managers, directors or partners with general power to bind the legal person or grouping. In the case of EIGs, all the members shall be held indefinitely and personally liable for the EIG's debts and must therefore be reported on the registration form. In the event of a change in the composition of the members of the EIG, this change must be mentioned in the RCCM (Article 52, AUDCG). The RCCM keeps this information indefinitely, including after the EIG has ceased to exist.

172. EIGs are subject to corporate income tax and must therefore register with the tax authorities, under the conditions described in paragraph 60.

173. With regard to information on beneficial owners, EIGs are subject to the tax obligations to keep a register of beneficial owners and to provide this information to the tax authorities and the RCCM. The AML obligations, as described under section A.1.1, also apply. As for partnerships and co-operative societies, the first step of the determination of beneficial owners under the tax provisions, related to control by ownership, is relevant for EIGs as it does not refer to a specific holding threshold (as the 25% threshold applies only to companies with share capital) but to a "controlling interest". As described in paragraph 95, beneficial ownership information is retained for at least 10 years and is available with the tax authorities and the RCCM after the EIG has ceased to exist.

Non-trading company

174. Non-trading companies are non-commercial companies engaged in civil activities. As at 31 December 2022, 378 non-trading companies were registered in Togo. They are generally non-trading real estate companies whose purpose is to take ownership of real estate acquired or passed on by partners, thereby facilitating the management and transfer of immovable assets. Non-trading companies can also enable several persons to engage jointly in a regulated non-commercial professional activity, such as a lawyer, accountant or physician.

175. Insofar as a non-trading real estate company engages in real estate speculation and profit seeking, it is considered having a commercial purpose and is therefore subject to the law governing commercial companies. It is subject to the same registration (Article 35, AUDCG) and record keeping obligations as companies, as described in section A.1.1.

176. Other non-trading companies, including non-trading real estate companies without commercial purpose, are not subject to commercial law and are not required to register with the RCCM. They are nonetheless subject to the tax obligations, including the obligation to register and the obligation to provide annually the up-to-date information on their legal owners. Up-to-date legal ownership information is therefore available with the tax administration, including if the company has ceased to exist. In addition, non-trading companies are subject to the tax obligations to keep a register of beneficial owners and to communicate this information to the tax authorities and the RCCM. The AML obligations, as described under section A.1.1, also apply. As non-trading companies are not companies with share capital, to which the 25% threshold applies, the first step in determining beneficial ownership will be by reference to a "controlling interest". As described in paragraph 95, the beneficial owner information is kept for at least ten years and is available to the tax authorities and the RCCM after the non-trading company has ceased to exist.

A.2. Accounting records

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

177. All relevant entities, as well as trustees of legal arrangements, are required to maintain accounting records, including the underlying documentation, in accordance with OHADA accounting and commercial law and tax law. These obligations include producing annual financial statements as well as keeping of records the operations of these entities to be traced. The accounting information must be kept for ten years and, in the event that an entity ceases to exist, are handed over to the liquidator.

178. The table below presents the findings on this element:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the legislation of Togo in relation to the availability of accounting information.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

A.2.1. General requirements

179. The general requirements regarding the availability of accounting information are mainly provided for by OHADA accounting and company law and tax law, analysed below.

Accounting and Company Law

180. The OHADA Uniform Act on Accounting Law and Financial Reporting (AUDCIF) provides for accounting requirements for all legal entities in Togo, i.e. all entities subject to the provisions of the AUDCG (all commercial companies), the AUDSCGIE (SA, SARL, SAS, SNC, SCS, SEP and EIG) and the AUSC (co-operative societies). More generally, they apply to entities producing market or non-market goods and services, if they are regularly engaged in a principal or ancillary economic activity, irrespective of whether or not financial gain is derived from that activity (Article 2, AUDCIF). They also cover foreign legal entities that are resident in Togo for tax purposes and foreign partnerships operating in Togo.

181. The accounting requirements under the AUDCIF include (Article 19, AUDCIF):

- recording accounting transactions during the financial period chronologically in a day book
- keeping a ledger in which all the transactions during the financial period are recorded in accordance with the principle of double-entry bookkeeping
- maintaining the accounts balance which, at the end of the period, shows for each account the debit or credit balance at the start and end of the period, as well as the aggregate debit and credit movements during the financial period
- keeping an annual accounts book in which the balance sheet, income statement, cash flow statement and annex notes are transcribed.

182. Legal entities must also produce annual summary financial statements describing in an accurate and reliable manner the transactions, events and circumstances of the accounting period to give a true and fair picture of the assets, financial situation and results of the entity (Article 8, AUDCIF). They include (Article 29, AUDCIF):

- the balance sheet, which describes separately the assets and liabilities that make up the entity's net worth
- the income statement, which summarises the revenue and expenses, thus showing the interim results and the net profit or loss for the financial period
- the cash flow statement, which shows the cash inflow and outflow for the financial period
- the annex notes, which supplement and clarify the information provided by the other elements of the financial statements.

183. The accounting system of each entity must meet the requirements of accuracy, reliability and transparency inherent in the recording, presentation, auditing and disclosure of the information processed (Article 3, AUDCIF). The aforementioned accounting records must also (Article 17, AUDCIF):

- be kept in French (the official language of Togo)
- use the double-entry bookkeeping method (entries are posted in at least two accounts)
- record transactions chronologically
- support entries with dated and classified documents.

184. In accordance with Article 5 of the AUDCIF, the accounting system of entities must be based on the OHADA General Accounting Plan and on the accounting system for consolidated accounts (OHADA Accounting System – SYSCOHADA). The application of the SYSCOHADA implies in particular that (Article 6, AUDCIF):

- The entity complies with the rules and procedures in force by applying them in good faith.
- The persons responsible for accounting set up and implement internal audit procedures necessary to obtain the information they should typically have of the reality and significance of events, transactions and circumstances relating to the entity's activity.
- Information is presented and communicated clearly with no attempt to disguise the reality.

185. All records, documents and accounting information must be kept by the entity for at least ten years (Article 24, AUDCIF).

186. The production of financial statements is mandatory for all entities, but their presentation may be simplified (using a "Minimal cash-basis system") depending on the turnover achieved during the financial period concerned,[22] with the preparation of a balance sheet, a statement of income and explanatory notes (Article 28, AUDCIF).

187. The summary financial statements of SA must be sent to an auditor for certification before the general meeting responsible for approving these statements (Article 140, AUDSCGIE). SASs have the same obligation if they meet some conditions[23] (Article 853-13, AUDSCGIE). If an SARL has engaged an auditor, it must also submit certified summary financial statements.

188. In addition, the financial statements must be communicated annually to the RCCM, within one month of their approval (Article 269, AUDSCGIE). The RCCM keeps this information indefinitely, even after the company has been terminated, for the purpose of informing third parties.

189. Commercial and accounting legislation does not expressly require entities to keep their accounting records in Togo. However, these entities are required to provide them, upon request from the tax authorities, in particular in application of the right to information. If they fail to do so, the tax authorities may apply the measures and penalties described in paragraphs 200 and 201. The effectiveness of the Togolese system to ensure that the accounting information are effectively available in Togo will be assessed during the Phase 2 review (Annex 1).

Tax Law

190. The tax law provides that entities must attach to their annual tax return the financial statements as well as the list of their customers and providers and the annual statement of the remuneration of legal owners and of the shares of company profits (Article 50, LPF). As taxpayers, foreign entities operating in Togo through a branch or a representative or liaison

22. The thresholds retained by Article 13 of the AUDCIF are XOF 60 million (EUR 91 380) for trading entities, XOF 40 million (EUR 60 920) for craft enterprises and XOF 30 million (EUR 45 690) for enterprises providing services.
23. SASs are required to appoint an auditor if they meet at least two of the following three conditions: the total balance sheet exceeds XOF 125 000 000 (EUR 190 000), the turnover exceeds XOF 250 000 000 (EUR 380 000) and the number of employees exceeds 50.

office as well as Togolese non-trading companies are also subject to this obligation.

191. In addition to the AUDCIF obligations, entities subject to value added tax must also keep regular and complete accounts according to the normal SYSCOHADA system, including at least a general ledger, a journal book, an inventory book, a subsidiary sales or income journal and a subsidiary purchase or expenditure journal (Article 61, LPF).

192. These tax obligations ensure that some accounting information, including financial statements, is available to the tax authorities.

193. As stated in paragraph 64, the minimum retention period for records potentially subject to right to information is 10 years from the date the information was generated or the record was created. The right to information may cover all accounting information held by the entity concerned.

Trusts

194. There is no specific legal requirement for a foreign legal arrangement (such as a *trust*) to keep accounting information relating to their activities managed or administered in Togo. On the other hand, the trustee is subject to the accounting requirements of the AUDCIF since this activity is an economic activity covered by Article 2 of the AUDCIF. The obligation for the trustee to keep accounts thus ensures the availability of accounting information relating to this legal structure, as each accounting operation must be supported by details of its origin, its allocation, its content and by references to the relevant supporting documents (Article 17(5)). Moreover, the information presented in the financial statements must provide an adequate, fair, clear, accurate and complete description of the operations (Article 9). This implies, in particular, that the accounts relating to the trust are clearly distinct from those relating to the operations of the trustee. In addition, if the trustee is a FI subject to AML obligations, it must keep records of the transactions it has carried out within the framework of the trust, including books of account and business correspondence (Article 35, AML law). This information is kept for ten years after the transaction has been carried out.

195. However, it is not certain that in practice non-professional trustees, that are not otherwise covered by the accounting requirements, effectively apply the provisions of the AUDCIF. Compliance with these accounting requirements by non-professional trustees and the assessment of the materiality of the risk of an EOI request relating to a *trust* administered by a non-professional trustee will be analysed during the Phase 2 review (see Annex 1).

A.2.2. Underlying documentation

196. The accounting system of the entities must respect, at minimum, certain reliability and security requirements, among which supporting written entries with dated receipts that are filed in a specific order, deemed to have probative value and bear a reference number corresponding to their record in the accounting system (Article 17(3), AUDCIF). These documents include purchase and sales invoices, contracts and other relevant documents. As with accounting records, the underlying documentation must be retained for 10 years by the entity (see paragraph 185). If the entity ceases to exist, the Togolese legal framework provides for an obligation for the liquidator to retain the accounting documents (see below).

Companies that ceased to exist and retention period

197. The Togolese legal and regulatory framework provides for an obligation to retain records and documents, including accounting records, held by an entity after that entity has ceased to exist. The information constituting the financial statements must be provided annually to the RCCM and to the tax authorities (see paragraphs 188 and 190), which retain them indefinitely, even after the entity has been terminated.

198. However, the underlying documentation is only available at the entity level (see above). In the event of the liquidation of an entity, the liquidator is responsible for the provisional management of the entity (Article 53, AUPC) and the entity must provide the liquidator with its accounting books (Article 55, AUPC). The liquidator must also request from the entity all elements not resulting from the accounting books, necessary for the determination of all taxes due for the years not covered by the statute of limitation, i.e. for the last three years (Article 65, AUPC). The Togolese authorities assure that these provisions imply that all accounting records, including the underlying documentation, held by the entity are transmitted to the liquidator as they are necessary for the liquidation proceedings and the provisional management of the entity. As the legal and regulatory framework does not clearly mention all the underlying accounting documentation as part of the information to be provided to the liquidator, the practical implementation of these provisions relating to the liquidation proceedings and their impact on the availability of the underlying accounting documentation of the liquidated entities will be analysed during the Phase 2 review (see Annex 1).

Oversight and enforcement of requirements to maintain accounting records

199. Managers of entities that failed to keep the inventory or to produce the annual financial statements, the management report and, where applicable, the balance sheet, as well as those who have knowingly prepared and submitted financial statements that do not accurately reflect the assets, the financial situation and the results of the financial period, are liable to imprisonment for a period of between 1 month and 2 years and/or a fine of between XOF 200 000 and XOF 1 000 000 (EUR 305 and EUR 1 524).[24] In addition, corporate officers who knowingly publish or present to shareholders or associates, with a view to concealing the true situation of the company, summary financial statements that do not give a true and fair view of the operations of the financial year, the financial situation and the assets of the company, as well as those who fail to file the financial statements of the entity at the end of the stipulated time period, incur a criminal sanction of XOF 1 to 6 million (EUR 1 524 to 9 200).[25] In addition, a person that produces improperly kept accounts cannot invoke them as evidence (Article 68, AUDCIF).

200. The tax fine provided for in the event of failure to reply to the right to information or of incomplete annual tax return, of XOF 2 million (EUR 3 050) or XOF 4 million (EUR 6 100) after a seven-day formal notice, is also applicable in the event of failure to keep accounting documents or their destruction before the prescribed deadlines.

201. The tax authorities verify that companies comply with their accounting obligations through their tax audit activities conducted annually on samples of selected companies. In addition, in case of failure to submit accounting information, the tax administration may proceed, following a formal notice, to a taxation on an estimate based which puts the burden of proof on the taxpayer.

202. The practical implementation as well as enforcement and supervisory measures regarding the availability of accounting information will be assessed during the Phase 2 review.

Availability of accounting information in EOIR practice

203. The implementation of the legal framework and the availability of accounting information in EOI practice will be assessed during the Phase 2 review.

24. Article 111 of the AUDCIF and Articles 1138 and 1140 of the Penal Code.
25. Article 890 of the AUDSCGIE and article 1109 of Criminal Code.

A.3. Banking information

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

204. The accounting, tax and AML laws broadly ensure the availability of information on the holders of bank accounts in Togo and the transactions carried out on these accounts. Nevertheless, in the event of the liquidation of a bank, or the cessation of activity of a foreign bank operating in Togo, the Togolese legal framework does not contain a requirement for the availability of beneficial ownership information of bank accounts after such liquidation or cessation of activity.

205. Information on the beneficial owners of accounts is also kept and verified by banks as part of their AML obligations. However, issues are identified with regard to the updating of information on the beneficial owners of accounts.

206. The table below presents the findings on this element:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
In the event of the liquidation of a bank, or the cessation of activity of a foreign bank operating in Togo, the Togolese legal framework does not contain a requirement for the availability of beneficial ownership information of bank accounts after such liquidation or cessation of activity.	Togo must ensure that beneficial ownership information of bank accounts is kept for at least five years, including in the event that a bank has ceased to exist or a foreign bank has ceased operations in Togo.
Under the Anti-Money Laundering Law and tax law, banks must identify the beneficial owners of all accounts. However, the legal and regulatory framework does not clearly contain an obligation to update this information within a reasonable period of time in the event of a change and does not provide for any specified frequency for updating such information.	Togo must ensure that the information on the beneficial owners of bank accounts is up to date in accordance with the standard.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

A.3.1. Record-keeping requirements

207. The Togolese banking sector is governed by the regulations, instructions and directives issued by the WAEMU and the Central Bank of West African States (BCEAO). Banking activities are subject to authorisation and licensing. Applications for authorisation are addressed to the Minister of Finance and filed with the BCEAO, which examines them. The latter verifies whether the legal entities applying for authorisation meet the conditions and obligations laid down in the banking regulations. In particular, it examines the company's programme of activities and the technical and financial resources that it plans to implement, as well as its ability to achieve its development objectives under conditions that are compatible with the proper functioning of the banking system and adequate customer protection (Article 15 of the WAMU framework law on banking regulation).

Availability of banking information

208. In accordance with Articles 2 and 3 of the framework law on banking regulation, the operations that banks may carry out are the receipt of funds from the public, credit operations and the provision of overdraft facilities as well as management of means of payment.

209. Banks must keep accounting records of these transactions, including the underlying documentation, under the same conditions as those described in section A.2, except that banks do not apply SYSCOHADA but the WAMU Banking Accounting Plan, which takes into account the specificities of banking activities (Article 5, AUDCIF). In addition, the AML law prohibits the opening of anonymous accounts or accounts under fictitious names (Article 20).

210. Moreover, the AML law requires FIs to keep receipts and documents relating to the identity of their regular or occasional customers for a period of ten years following the closure of their accounts or the termination of the relationship. They must also keep records of transactions, including account books and business correspondence, for ten years following the transaction (Article 35, AML law).

Beneficial ownership information on account holders

211. The standard requires that beneficial ownership information be available for all accounts.

212. Banks, in the same way as other AML-obliged persons, are subject to the obligation to identify the beneficial owners of their customers (Article 18, AML law). This obligation is discussed in sections A.1.1 for companies, A.1.3 for partnerships, A.1.4 for *trusts* and A.1.5 for other relevant

entities. Financial institutions also have a tax obligation to keep a register containing adequate, accurate and up-to-date information on the beneficial owners of their customers, when opening, transforming and closing accounts (Article 5, order on beneficial owners).

213. With respect to companies, partnerships and other relevant entities, the AML law can ensure the availability of information on the beneficial owners of bank accounts in Togo. However, although banks must update information on the beneficial owners of their customers throughout the business relationship (Article 19) and that the internal procedures of financial institutions must provide for due diligence, including setting deadlines for verifying the identity of customers and updating the related information,[26] the Togolese AML legal framework does not clearly contain an obligation to update this information within a reasonable period of time in the event of a change and does not provide for any specified frequency for updating such information. Although tax law requires the retention of a register containing up-to-date information on beneficial owners, it does not require the updating of this information at every change or on a periodic basis. **It is therefore recommended that Togo ensures that the information on the beneficial owners of bank accounts is up-to-date in accordance with the standard**.

214. In the event that no natural person meets the definition of an entity's beneficial owner, the AML law does not provide for the identification of a relevant natural person who holds the position of principal manager as required by the standard. This information is available for entities registered in the RCCM when they have designated a natural person as manager (see paragraph 48). In addition, FIs are also covered by the obligation to keep a register of the beneficial owners of their customers under the tax law, which provides for the identification of the relevant natural person in the position of senior manager. Therefore, in case no person meets the definition of beneficial owners of the AML law, the identity of the natural person who holds the position of senior manager in the company is available through the tax requirements.

215. For trusts, the AML law also allows for the identification of their beneficial owners, as the definition of beneficial owner for this type of structure provides for the identification of all persons who are settlors, trustees or beneficiaries of the trust. The same definition applies to any other similar legal arrangement under foreign law, such as a foreign foundation. However, it is specified that such persons will be identified if they have such

26. Article 5 of Instruction no. 007-09-2017 on the modalities of application by financial institutions of the uniform law on the fight against money laundering and terrorist financing in WAMU member states.

capacity "in accordance with the laws and regulations in force", which may pose difficulties in Togo as no specific regulations are provided for trusts or *fiducies* (see paragraphs 155 and 156). The implementation of the definition of beneficial owners of trusts or *fiducies*, as provided for in the AML law, will therefore be analysed during the Phase 2 review (see Annex 1).

216. Article 18 of the AML law also obliges AML-obliged persons to verify the identification details of the customer or the beneficial owners on the basis of any reliable written document. The identification details that must be collected by AML-obliged persons on natural persons, including the beneficial owners of their customers, include the full name, date and place of birth and principal place of residence of these persons. Verification of the identity of a natural person by means of reliable written documents requires the presentation of a valid, original and official identity document.

217. In addition, as described in paragraph 106 banks may use third parties to carry out their due diligence obligations, including the identification of the beneficial owners of their customers, subject to compliance with legal requirements consistent with the standard (Articles 56 and 57).

218. The retention period for bank customer identification documents is ten years from the closing of accounts or the termination of the business relationship (Article 35, AML law and Article 261, LPF). If a bank ceases to exist or, in the case of a foreign bank, ceases to operate in Togo, the rules for the liquidation of entities apply (Article 84, framework law on banking regulation). The liquidator must also submit to the Ministry of Finance and to the Banking Commission of the BCEAO a report on the progress of the liquidation operations at least every three months, as well as a detailed report at the end of the liquidation. It must also keep the documents submitted during the liquidation procedure for five years from the closing of the accounts (Article 98, framework law on banking regulation). Although the Togolese authorities interpret these provisions as allowing for the availability of all information held by the banks under the liquidation proceedings at the level of the liquidator, the legal framework does not clearly provide that information the beneficial owners of bank accounts will be transmitted to the liquidator. Therefore, it is **recommended that Togo ensure that banking information is kept for at least five years, including in the event that a bank has ceased to exist or a foreign bank has ceased operations in Togo**.

Oversight and enforcement

219. The enforcement powers described in Section A.1.1 (paragraphs 121 and 122) apply in the context of the supervision of due diligence requirements of banks and in the event of non-compliance with these

obligations. Supervision of the implementation by banks of their AML obligations is carried out by the WAMU Banking Commission and the BCEAO.

220. In addition, the BCEAO instruction for financial institutions[27] details the internal procedures and internal audit arrangements that FIs must implement in order to ensure compliance with AML provisions. This instruction also sets out the procedures for monitoring and sanctions by the supervisory authority.

221. The practical implementation and enforcement and supervisory measures regarding the availability of banking information will be assessed in the Phase 2 review.

Availability of banking information in EOI practice

222. The implementation of the legal and regulatory framework and the availability of banking information in EOI practice will be assessed during the Phase 2 review.

27. Instruction no. 007-09-2017 on the modalities of application by financial institutions of the uniform law on the fight against money laundering and terrorist financing in WAMU member states.

Part B: Access to information

223. 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).

224. The powers of the Togolese tax authorities to obtain the information requested by an EOI partner are based mainly on the information directly available in internal databases and on the right to information (*droit de communication*), which allows them to obtain information held by third parties, including bank information and beneficial ownership information. The right to information may be exercised to obtain information from the person who is the subject of the EOI request or from a third party. Appropriate sanctions may be applied in the event of failure to provide the requested information and professional secrecy can be waived under the right to information.

225. The table below presents the findings on this element:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the legislation of Togo in relation to access powers of the competent authority.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

B.1.1. Ownership, identity and banking information

226. In Togo, the competent authority for EOI for tax purposes is the Minister of Economy and Finance, who has delegated this competence to the Commissioner General of the Togolese Revenue Office. The latter relies on the Information Exchange Unit (UER) which was set up in 2019. The UER is in particular responsible for soliciting the relevant tax departments to gather the information requested in the framework of the exchange of information.

Accessing information generally

227. Several types of information are directly available to the tax authorities through databases, notably the E-TAX database containing the identification elements of taxpayers and their tax situation and the SYDONIA database containing information on imports and exports by companies.

228. In cases where the requested information is not held by the tax authorities, the tax authorities have several access powers. It will thus mainly exercise the right to information (Articles 258 to 280 of the Tax Procedures Code – LPF) according to which they may, for purposes of assessment, control or collection of taxes, have access to and, if necessary, copy information and documents held by the taxpayer or by third parties. In addition, the LPF expressly states that the right to information can be used to obtain information under an EOI agreement (Article 258(2), LPF), which covers bilateral, regional and multilateral agreements. The Togolese authorities have also confirmed that the right to information can be exercised for civil or criminal tax purposes.

229. The right to information can be exercised by correspondence or onsite. When it is exercised onsite, the tax administration must send a notice of visit specifying the nature of the documents that must be made available (article 258(3), LPF).

230. In principle, the scope of the right to information is not limited, either in terms of the persons who can be contacted or the documents or information that can be obtained. The order on beneficial owners (Article 25) also specifies that the tax authorities can obtain, within 7 days, information and documents relating to beneficial owners held by the relevant entities and legal arrangements as well as by AML-obliged persons.

231. However, this right to information procedure does not allow the tax authorities to obtain documents classified as “defence secrets”, medical files and documents relating to the secrecy of industrial processes (Article 259, LPF). These limitations to the right to information do not appear to be contrary to the standard which allows a requested jurisdiction not to exchange

information in certain cases, in particular if its disclosure may be prejudicial to public policy, which would be the case for the communication of information classified as "defence secret", or to industrial secrecy, which covers industrial processes (see Element C.4).

232. In addition to the right to information, the access powers of the tax administration include the following procedures:

- The right of tax investigation (Articles 310 to 313, LPF) is an administrative procedure carried out unannounced and which allows the tax authorities to investigate breaches of invoicing obligations of the Value Added Tax. The LPF expressly provides that this procedure may be implemented in response to a request for information from a foreign partner (Article 258, paragraph 2), including, according to the Togolese authorities, for EOI requests related to taxes other than Value Added Tax. The interpretation of the Togolese authorities on the applicability of the right of tax investigation in the context of EOI request on direct taxes will be assessed during the Phase 2 review (Annex 1).
- The rights of search and investigation (Articles 223 et seq., LPF) make it possible to gather information in residential premises used for professional purposes by taxpayers.
- The right of tax audit allows for the inspection of tax declarations and obligations as well as the acts and documents used for the assessment of taxes, duties, fees and charges.

Accessing legal and beneficial ownership information

233. In order to obtain information on the legal ownership of entities, the OTR relies mainly on the information already available in the RCCM. For beneficial ownership information, it will also rely on the central register of beneficial owners, once this register is operational, and on the information and documents collected annually by the tax administration. The tax authorities can also obtain this information from any person holding it, including AML-obliged persons, by exercising their right to information. This right to information is reinforced by the order on beneficial owners which also obliges financial institutions to make their registers of beneficial owners available for consultation when exercising the right to information.

234. In addition, the OTR and CENTIF concluded an agreement in August 2015 providing for the obligation of CENTIF to communicate to the OTR, on its own initiative or upon request, any information relating to both AML and tax fraud and avoidance in its possession (Article 4 of the agreement).

235. The combination of the access powers of CENTIF and the provisions of the agreement between CENTIF and OTR would therefore allow OTR to rely on CENTIF to obtain, if necessary, the information held by AML-obliged persons.[28] However, the provisions of this agreement do not appear to be fully compatible with CENTIF's confidentiality obligation, which limits the use of the information collected to AML purposes (Article 65, AML Act). The Togolese authorities confirmed that the agreement between the OTR and CENTIF will therefore not be a relevant basis for obtaining beneficial ownership information to reply to an EOI request.

Accessing banking information

236. The tax administration can obtain information held by banks and financial institutions, including bank account statements and information on the beneficial owners of bank accounts, by exercising its right to information, which expressly covers banks (Article 275, LPF and order on beneficial owners). The average time for obtaining bank information from a bank is seven days. Banks are also obliged to inform the tax authorities spontaneously of the opening or closing of bank accounts, mentioning the identity of their holders.

237. The OTR can also request information, through the right to information, from the BCEAO or the WAMU Banking Commission, to which banking secrecy cannot be invoked.

238. In order to be quickly processed by the Togolese competent authority, requests for bank information must include information identifying the bank account (account number) or its holder (surname, first name, address of the holder) and the relevant bank or banks. In practice, Togo considers that the bank account number is sufficient to identify the person concerned. If the number is complete (IBAN) and makes it possible to identify the bank concerned, a right to information is sent to the bank to collect the requested information on the bank account. If the number transmitted does not allow the bank to be identified, the right to information is addressed to the central agencies of all banks established in Togo.

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28. CENTIF has the power to access information on beneficial owners. Documents relating to identification requirements must be disclosed, upon request, by the persons subject to them, to the judicial authorities, to State agents responsible for detecting money-laundering and terrorist financing offences, acting under a judicial mandate, to the supervisory authorities (i.e. the AML supervisory authorities) and to CENTIF (Article 36, AML Act). CENTIF may also request the disclosure of any documents within the time limits it sets (Article 70, AML Law). In addition, it may ask taxpayers and any natural or legal person to provide information in their possession that could be used to enhance suspicious transaction reports (Article 60(3), AML Act).

B.1.2. Accounting records

239. Accounting information is, for the most part, directly available within the tax administration due to the annual requirement for entities to provide their financial statements and other accounting information as part of their tax return and to the RCCM (see paragraphs 188 and 190). For any other accounting information not already available to the OTR, the tax administration can use its right to information to obtain it from the relevant entity or individual entrepreneur or from the trustee of the legal arrangement.

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

240. The Togolese tax administration can access the requested information even though it does not need it for internal tax purposes. The LPF expressly states that the right to information can be used to obtain information under an EOI agreement. Moreover, when exercising its right to information, the Togolese tax authorities do not have to justify to the holder of the information its interest in obtaining it. In practice, the requests for information received generally involve a taxpayer resident in Togo.

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

241. Refusal or any failure to provide the information requested by the tax authorities within the framework of their right to information is recorded in a report and punishable by a fine of XOF 2 million (EUR 3 050). The fine is increased to XOF 4 million (EUR 6 100) at the end of a seven-day formal notice (Article 123, LPF). If, after these sanctions, the holder of the information still fails to provide it, he may be ordered by the court to make the information available to the tax authority, independently of the fines. Complaints are presented and judged according to the same rules as those applicable to the taxes for the assessment of which the information was requested. Where the right to information is exercised in response to an EOI request, the tax referred to in the request will be used as a reference.

242. In addition, the refusal of an AML-obliged person to provide the information requested by CENTIF is punishable by a fine of XOF 50 000 to XOF 750 000 (EUR 76 to EUR 1 143) – Article 118, AML Act.

243. The tax authorities have the right to visit the taxpayer’s premises to investigate tax offences (Article 223, LPF) and the power to search and seize (Articles 224 and 225, LPF). The visits thus carried out must be authorised by the Tax Commissioner, or by a judicial authority when non-business premises are used exclusively for residential purposes. According

to the Togolese authorities, this right could be exercised to respond to an EOI request, including to visit non-business premises if the existence of tax offences or fraudulent manoeuvres, whether in Togo or not, is suspected by the requesting jurisdiction.

244. The Togolese authorities have indicated that the tax administration can exercise the right to information with persons that do not have any specific obligation to retain information or documents. Furthermore, the right to information may be exercised after the expiry of the obligation of the information holder to retain such documents or information. However, in these cases, it cannot sanction the holder of the information if he does not provide the information.

245. In practice, the Togolese authorities have indicated that they have not encountered any cases of refusal to provide the information requested to date.

246. The implementation of these binding powers in practice will be analysed in the Phase 2 review.

B.1.5. Secrecy provisions

Bank secrecy

247. Banking secrecy is protected in Togo by the WAMU framework law on banking regulations[29] (Article 30):

> Persons involved in the management, administration, control or operation of credit institutions shall be bound by professional secrecy, subject to the provisions of Article 53, last paragraph.
>
> The same persons are prohibited from using confidential information of which they have knowledge in the course of their activity, to carry out operations directly or indirectly for their own account or to benefit other persons.

248. The last paragraph of Article 53 of the same law states that professional secrecy cannot be invoked against the Banking Commission, the Central Bank, or the judicial authority acting in the context of criminal proceedings. Therefore, this exemption from banking secrecy does not cover requests for information sent by the tax authorities to banks. However, as banks and other financial institutions are subject to the control of the administrative authority, the tax administration can exercise its right to information, without them being able to invoke professional secrecy (Article 262,

29. Law no. 2009-019 of 7 September 2009.

LPF). The right to information can also be expressly exercised with banks (Article 275, LPF). Moreover, the tax authorities' right to information is not restricted in the case of bank secrecy, as the only limitations provided for by law are documents classified as defence secrets, medical files and documents relating to the secrecy of industrial processes (Article 259, LPF – see paragraphs 230 and 231).

249. Since the law on banking regulations is a WAMU act, it should take precedence over national legislative provisions. Consequently, although the provisions on the right to information contained in the LPF make it possible to waive bank secrecy, their articulation with bank secrecy as provided for in WAMU law could raise questions of interpretation as to the legality of lifting bank secrecy, particularly for the EOI for tax purposes. According to the Togolese authorities, as this WAMU banking legislation is not intended to apply to tax matters, the banks must comply with the requirements of the tax law.[30] The interpretation and implementation of the link between bank secrecy under WAMU legislation and the right to information under tax law will be analysed during the Phase 2 review (see Annex 1).

Professional secrecy

250. Article 357 of the Criminal Code provides for a general obligation of professional secrecy for any person entrusted, by status or profession, with information of a confidential nature. This obligation applies in particular to lawyers, notaries and accountants.

251. The professional secrecy of lawyers is also enshrined in article 44 of Regulation No. 05/CM/WAEMU on the harmonisation of rules governing the legal profession in the WAEMU area. This provision provides that "a lawyer, in all matters, shall not make any disclosure contrary to professional secrecy" and that he must "respect the secrecy of the investigation in criminal matters, by refraining from publishing documents, exhibits or letters relating to an ongoing investigation or from communicating, except to his client for the purposes of his defence, information extracted from the case file". The Togolese authorities interpret this provision as covering only information intended for use in a pending or contemplated legal proceeding and communications for the purpose of seeking or providing legal advice, as provided for in the standard. The scope of attorney-client privilege, as defined by the WAEMU rules, is therefore consistent with the standard.

30. The Tax Procedure Code (LPF) falls under the exclusive and autonomous competence of Togo and consequently supersede all legislations, including regional legislation.

252. As for banking secrecy, the professional secrecy of lawyers and other legal and accounting professions is not listed as a limit to the right to information in Article 259 of the LPF and professional secrecy cannot in principle be invoked in the context of the right to information (Article 262, LPF). In addition, the right to information clearly allows the tax administration to obtain information from members of professions whose practice authorises intervention in transactions, the provision of legal, financial or accounting services or the holding of property or funds on behalf of third parties (Article 265, LPF), which includes lawyers. In this case, the right to information can be related, among others, to the identity of the client, the amount, date and form of the payment received by the professional (fees, reimbursement of expenses, etc.) as well as the supporting documents for this payment. The Togolese authorities confirmed that further information could be requested from these legal and accounting professions under the right to information. The order on beneficial owners also states that persons subject to the obligation to identify the beneficial owners of their clients must also provide the tax authorities with the information and documents referred to in this order, i.e. those relating to beneficial owners (Article 25).

253. Therefore, Togo's legal and regulatory framework allows for information held by the legal and accounting professions to be obtained through the right to information, in accordance with the standard.

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.

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

Notification

254. Togolese law does not provide for any obligation to notify the persons subject of an EOI request, either before or after the information is sent to the requesting jurisdiction. Moreover, when the tax administration exercises its right to information, it does not inform the information holder of the purpose of its request. The risk that the taxpayer is indirectly informed of the existence of the EOI request is therefore limited.

Appeal rights

255. The Togolese legal and regulatory framework does not contain a specific appeal procedure against the EOI procedure or the right to information exercised with information holders. Nevertheless, there is a general right of appeal against administrative acts, including the right to information procedures. However, this appeal has no suspensive effect on the act. The information holder will therefore be obliged to provide the tax authorities with the requested information or will face the penalties described in paragraph 241.

256. The Togolese authorities have indicated that, to the extent they know, no appeal has been lodged against a right to information procedure.

257. The conclusions are as follows:

Legal and Regulatory Framework: in place

The rights and safeguards that apply to persons in Togo are compatible with effective exchange of information.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

Part C: Exchange of information

258. Sections C.1 to C.5 evaluate the effectiveness of Togo's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Togo's relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Togo's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Togo can provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

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

259. Togo's EOI network covers 152 jurisdictions and contains bilateral double taxation conventions (DTCs), the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) as amended in 2010 and two regional instruments:

- the Regulation adopting rules for the avoidance of double taxation within the WAEMU (the WAEMU Regulation) to which Togo and 7 other jurisdictions are party[31]
- the ECOWAS Supplementary Act adopting community rules for the elimination of the double taxation within the ECOWAS member States (the ECOWAS Supplementary Act) to which Togo and 14 other jurisdictions are party.[32]

260. Togo's EOI network is generally compliant with the standard. However, Togo has still not ratified the Multilateral Convention, signed on 30 January 2020, nor the DTC signed with Tunisia in 1987. This situation prevents the

31. Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger and Senegal.
32. Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal and Sierra Leone.

EOI between Togo and other participating jurisdictions in the Multilateral Convention and thus limits Togo's EOI network in force to 15 partners.

261. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
Togo has not ratified the Multilateral Convention, signed in 2020, although this ratification would increase the number of exchange relationships in force from 15 to 146. In addition, a bilateral convention signed in 1987 has still not been ratified by Togo.	Togo must ensure that its EOI instruments are ratified and enter into force as soon as possible.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.1.1. Standard of foreseeable relevance

262. The standard contemplates exchange of information upon request in the widest possible extent. However, it does not permit "fishing expeditions". The balance between these two competing elements is found in the concept of "foreseeable relevance" in Article 26(1) of the OECD Model Tax Convention.

263. The Multilateral Convention and the ECOWAS Supplementary Act provide for an exchange of "foreseeably relevant" information. The WAEMU Regulation provides for an exchange of "necessary" information and the DTC with France provides for an exchange of "useful" information. Togo interprets and applies its instruments in accordance with the commentary to article 26 of the OECD Model, which states, inter alia, that Contracting States may agree on an alternative formulation of the standard of foreseeable relevance, for example by using the terms "necessary" or "useful", as long as such formulation is consistent with the scope of the article and therefore understood to require an effective exchange of information. The use of these terms is therefore considered to be consistent with the standard.

264. Furthermore, the DTC with France provides for the exchange of tax information that the tax authorities "have at their disposal". The Togolese authorities have indicated that they interpret this provision as covering both information to which the OTR has direct access and information to which it may have access, for example by exercising its right to information, which is in line with the standard.

Clarifications and foreseeable relevance in practice

265. The procedure for processing incoming requests developed by Togo contains a step for verifying the validity of such requests. It follows the guidelines provided by the Commentary to the OECD Model Tax Convention. The competent authority verifies in particular the status of the competent authority signing the request, the exhaustion of domestic means and the tax purpose pursued by the requesting jurisdiction.

Group requests

266. The EOI standard includes a reference to group requests in accordance with paragraph 5.2 of the Commentary to the OECD Model Tax Convention. The foreseeable relevance of a group request must be sufficiently demonstrated, and the information requested should help to determine compliance with tax obligations by taxpayers in the group.

267. There is no specific process implemented by Togo for the processing of group requests. Togo processes a group request using the same procedures as those used for individual requests. If Togo receives a group request, it analyses the compliance of the request with the foreseeable relevance criteria of the EOIR standard.

268. The processing of group requests received by Togo will be analysed during the Phase 2 review (see Annex 1).

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

269. Article 26(1) of the OECD Model Tax Convention states that “the exchange of information is not restricted by Articles 1 and 2”, with Article 1 defining the scope of persons covered by the convention and Article 2 defining the taxes covered.

270. The Multilateral Convention does not limit the scope of persons covered by the exchange of information. The WAEMU Regulation and the ECOWAS Supplementary Act contain the sentence that exchange of information is not limited to persons covered by those instruments. The DTC with France does not contain this sentence, but it provides for an exchange of information useful to the application of the provisions of this Convention, or of the laws of the Contracting States relating to the taxes covered by the Convention and concerning the fight against tax fraud. The Convention does not, therefore, limit the exchange of information to their residents, since their tax laws apply to all their taxpayers, whether resident or not. The exchange of information is therefore possible in respect of any person under this convention. The Togolese authorities confirm that they agree with this

interpretation and that the term "fight against tax fraud" is not interpreted in such a way as to limit the scope of the exchange of information.

271. In practice, the requests for information received by the Togolese tax authorities generally involve a taxpayer resident in Togo.

C.1.3 and C.1.4. Obligation to exchange all types of information including in the absence of domestic tax interest

272. The Multilateral Convention and the WAEMU Regulations contain provisions equivalent to paragraphs 4 and 5 of article 26 of the OECD Model Tax Convention. The DTC with France does not contain such provisions. However, there are no specific restrictions in the laws of Togo and France that would prevent the exchange of any type of information or that would prevent the exchange of information that Togo would not need in its own tax interest.

273. In practice, although the requests received by the Togolese tax authorities generally involve a taxpayer resident in Togo, the information exchanged is not always of immediate tax interest to Togo.

C.1.5 and C.1.6. Civil and criminal tax matters

274. The EOI instruments to which Togo is a party and Togolese legislation do not provide for the principle of dual criminality as a condition for replying to an EOI request in criminal tax matters. Togo therefore interprets these instruments and its legislation as allowing an exchange of information even in cases where the act under investigation would not constitute a criminal offence under Togolese law if it had occurred in Togo.

275. Togo's EOI instruments do not restrict the exchange of information to criminal tax matters. Therefore, Togo interprets these agreements as allowing for the exchange of information in relation to tax matters in both administrative and civil matters and criminal matters.

C.1.7. Provide information in specific form requested

276. There is no specific restriction in Togo's EOI instruments or in its legislation that would prevent it from providing the requested information in the form requested by the requesting jurisdiction.

C.1. 8 and C.1.9. Signed agreements should be in force and be given effect through domestic law

277. The WAEMU Regulation, the ECOWAS Supplementary Act as well as the DTC with France are the only EOI instruments of Togo in force. The Multilateral Convention signed by Togo in 2020 and the DTC with Tunisia

signed in 1987 have not yet been ratified and are not in force. This limits the number of EOI relationships in force to 15 partners. Ratification of the Multilateral Convention by Togo would enable it to have at least 146 EOI relationships in force (considering that 8 other participating jurisdictions to the Multilateral Convention have not yet ratified it, among which 6 jurisdictions[33] have not any other EOI instrument in force with Togo). Therefore, **Togo should ensure that its EOI instruments are ratified and entered into force as soon as possible**.

278. An EOI instrument only takes effect after it has been ratified and enacted. After its signature and the agreement given by the Ministry of Foreign Affairs, a law ratifying the instrument is presented to Parliament for adoption. Then, the President of the Republic enacts the instrument. There is no predefined timeframe for the completion of these steps.

279. WAEMU Regulations are immediately applicable in all States Parties without the need for transposition or ratification. Only the WAEMU Commission is empowered, in accordance with the provisions of article 24 of the WAEMU Treaty, to adopt the implementing regulations necessary for the application of a regulation. Thus, for the application of the WAEMU Regulation, the Implementing Regulation No. 005/2010/COM/WAEMU was issued on 17 November 2010 and is binding on all WAEMU Member States, including Togo.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	**152**
In force	15
In line with the standard	15
Not in line with the standard	0
Signed but not in force	137
In line with the standard	137
Not in line with the standard	0
Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms	**0**

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

> The jurisdiction's network of information exchange should cover all relevant partners, meaning those jurisdictions who are interested in entering into an information exchange arrangement.

280. With the signing of the Multilateral Convention, regional instruments and bilateral agreements, Togo currently has a wide EOI network covering

33. Gabon, Honduras, Madagascar, Papua New Guinea, Philippines, United States.

152 jurisdictions. However, the Multilateral Convention and one bilateral agreement are not in force. The EOI network in force is therefore limited to 15 jurisdictions, mainly through the WAEMU and ECOWAS regional instruments.

281. Togo has received requests from several jurisdictions to initiate DTC negotiations, accompanied by templates containing EOI provisions in line with Article 26 of the OECD Model Tax Convention. The Togolese authorities have indicated that they have responded favourably to all these requests and that negotiations are ongoing. In addition, no member of the Global Forum has indicated in the preparation of this report that Togo has refused to negotiate or sign an EOI instrument.

282. The standard requires jurisdictions to establish an EOI relationship in accordance with the standard with all partners that are interested in such a relationship. Therefore, Togo should continue to conclude EOI agreements with any new relevant partner who would so require and ensure that existing relationships are effective (see Annex 1).

283. The conclusions are as follows:

Legal and Regulatory Framework: in place

The network of information exchange mechanisms of Togo covers all relevant partners.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.3. Confidentiality

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

284. The EOI instruments to which Togo is a party provide for confidentiality rules in line with the standard. The provisions of Togolese legislation on confidentiality requirements, which apply in particular to tax officials, also provide for the confidentiality of information exchanged.

285. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms and legislation of Togo concerning confidentiality.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

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

286. The Multilateral Convention, the ECOWAS Supplementary Act and the DTC with France protect the confidentiality of the exchanged information, in accordance with the standard. In particular, the DTC provides that information obtained must be kept secret under the same conditions as those provided for information obtained under Togolese law and should be communicated only to persons or authorities concerned with the assessment or collection of taxes.

287. The WAEMU Regulation does not contain a provision on the confidentiality of exchanged information under this instrument. However, Article 14 of Implementing Regulation No. 005/2010/COM/WAEMU states that "information received by a Member State shall be treated as confidential in the same manner as information obtained under the domestic law of that Member State. This provision complements regulation No. 08/CM/WAEMU and is binding on member States in the same way as that regulation (see paragraph 279).

288. In order to preserve the confidentiality of the exchanged information, Togolese legislation provides that the obligation of professional secrecy applies to tax administration officials and to all information gathered for the assessment, audit, recovery and litigation of taxes (Article 339, LPF and Article 357, Criminal Code). The Togolese authorities have confirmed that this includes information gathered under an EOI procedure and that this obligation continues to apply after the termination of the employment of the tax official.

289. The LPF provides for exceptions to the confidentiality requirements, in particular when the information held by the tax administration is necessary for the missions of the judicial authorities or other administrations (Articles 343 to 355, LPF). However, as the provisions of EOI instruments have a higher legal value than those of the LPF, the Togolese authorities have confirmed that information received from a foreign jurisdiction is used in accordance with these international provisions, including when the use of this information for purposes other than tax is authorised by the LPF.

290. Any person can also obtain, on request, extracts from the registers concerning the declarations in which he/she is mentioned (Article 341, LPF). However, the Togolese authorities have specified that this provision does not allow the taxpayer or the information holder to obtain correspondence between competent authorities or any other exchanged information.

291. The confidentiality requirements are also reflected in organisational and IT measures. On the organisational level, an EOI unit has been set up to better manage the risks related to the confidentiality of information exchanged with partner jurisdictions. The OTR also has an Audit Department and an Anti-Corruption Department, which are responsible for ensuring the proper application of the legal and organisational framework and the proper behaviour of all staff. There is also a Programme, Procedure and Monitoring Unit attached to the Commissioner of Taxes, which deals with issues relating to compliance with the procedures and programmes, including the ones in relation with confidentiality requirements, incumbent on the Commissioner of Taxes. In terms of information technology, to protect the security of equipment and other applications, tax administration agents work in a domain account to which each agent has the access rights relevant to his or her function. In addition, the OTR has its own e-mail and secure information exchange tools. The practical implementation measures of confidentiality protection will be assessed during the Phase 2 review.

292. Breach of confidentiality requirements is punishable by 1 to 3 years' imprisonment and a fine of XOF 1 to XOF 3 million (EUR 1 524 to EUR 4 600 – Article 358, Criminal Code). In addition, the OTR's Code of Conduct and Disciplinary Procedures considers the disclosure of confidential information to be significant misconduct (Article 18), punishable by dismissal from employment (Article 25). These sanctions apply to the disclosure of information received in the context of the EOI.

293. The Terms of Reference, as amended in 2016, clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax, an exception applies where the EOI agreement provides that the information can be used for such other purposes under the laws of both contracting parties and the competent authority supplying the information authorises the use of information for purposes other than tax purposes. Such a provision is contained in the Multilateral Convention. Togo has indicated that it has not received any requests from partners for its authorisation to use the information for non-tax purposes and, similarly, Togo has not asked its partners to use the information received for non-tax purposes.

C.3.2. Confidentiality of other information

294. The confidentiality provisions included in the EOI instruments and in Togolese legislation do not differentiate between information received in response to requests and information contained in foreign requests. All information, such as reference documents and communications between the requesting and requested authorities as well as within the tax administration, is treated as confidential. The Togolese authorities have indicated that the information obtained through the EOI is not clearly identified as such and

that there is no internal guidance on labelling this information. The lack of labelling of the information exchanged will be analysed during the Phase 2 review (see Annex 1)

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.

295. The exchange of information instruments to which Togo is a party ensures that the parties concerned would not be required to provide information that would reveal an industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy. The DTC with France does not refer to public policy, but nevertheless provides that assistance may not be given where the requested State considers that it would endanger its sovereignty or security or undermine its general interests. These concepts are understood to have the same content as the notion of "public policy". This interpretation is confirmed by the Togolese authorities.

296. Article 259 of the LPF prohibits the Togolese tax authorities from providing information that would reveal a commercial, industrial or professional secret, or whose disclosure would be likely to undermine national security. As indicated in paragraph 231 these limitations on the tax administration's access powers are consistent with the standard.

297. With regard to professional secrecy, the EOI mechanisms do not define it. Togolese law, as described in section B.1.5 above, defines professional secrecy and enables the access to information held by legal and accounting professions in accordance with the standard (see paragraphs 251 to 253).

298. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in respect of the rights and safeguards of taxpayers and third parties.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

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.

299. For the exchange of information to be effective, it must take place within a time frame that allows the requesting tax authorities to process the information in the context of the relevant cases. If a response is provided only after a significant period of time, the information may no longer be useful to the requesting authorities. This is particularly important in the context of international co-operation.

300. To the extent that effectively requesting and providing information is a matter of practice, this will be assessed during the Phase 2 review.

301. The conclusions are as follows:

Legal and Regulatory Framework

This element involves issues of practice. Accordingly, no determination has been made.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.5.1. Timeliness of responses to requests for information

302. The various steps in the process of registering, monitoring and processing the requests received are formalised in the Manual of Procedures of the Tax Commissioner Office (MANPROCI), but no deadline is set for their completion.

303. In addition, there is no defined procedure for updating the status of an incoming request within 90 days of its receipt. An analysis of the practice of the Togolese authorities on the timeliness to respond to EOI requests and, where appropriate, to send status updates, as well as in terms of communication with partners, will be carried out during the Phase 2 review.

C.5.2. Organisational processes and resources

Organisation of the competent authority

304. The function of competent authority for EOI is performed within the tax administration by the Commissioner General of the OTR. The latter relies on the EOI Unit (UER) which was established in 2019. The UER is composed of a Head of Unit, deputised by a senior official and two technical officials.

305. The UER is responsible for sending and receiving EOI requests, for communicating with the foreign authorities and the Togolese offices that have initiated Togolese EOI requests, and for requesting the relevant tax services to gather the information requested in the context of the EOI. Indeed, although the UER can exercise the right to information directly to obtain the requested information, it can also rely on other services of the tax administration if the situation so requires. The UER is also in charge of all other matters relating to EOI.

Resources and training

306. UER staff benefited from the training provided under the "Train the Trainers" programme offered by the Global Forum Secretariat. The trained trainers, in turn, provided training to some auditors and to some of the staff responsible for tax audits in general and tax law. In addition, OTR staff have been encouraged to follow the online training courses offered by the Global Forum and the OECD.

307. The UER monitors the activity of EOIR through a monitoring table that the Togolese authorities have drawn up following the template proposed by the Global Forum. This table contains, inter alia, the references of the requests, their legal basis, the dates of the correspondence and the type of requests (individual or group) and of requested information.

308. Each UER staff member signs a performance contract when he or she starts work in the Unit. This performance contract summarises the various tasks to be performed and the performance indicators on response times and quality of work. These indicators are assessed at least annually.

309. The MANPROCI describes the processes to be implemented for the processing of outgoing and incoming requests and the actors involved. For incoming requests, the Manual provides for the sending of an acknowledgement of receipt and then the sending of the information gathered through either the accessible databases or the right to information.

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

310. The exchange of information shall not be subject to unreasonable, disproportionate and unduly restrictive conditions. No factors or legal issues have been identified that would be unreasonable, disproportionate or excessively restrictive in Togo.

Annex 1: List of in-text recommendations

The Global Forum may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, the circumstances may change, and the relevance of the issue may increase. In these cases, a recommendation may be made; however, it should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be stated in the text of the report. A list of such recommendations is reproduced below for convenience.

- **Element A.1:** Togo must ensure, pursuant to the AML law, the availability of beneficial owner information in all cases for relevant companies. The shortcomings noted in the AML law relate to the absence of an obligation to use the services of a person subject to AML obligations, the absence of an obligation to update the information in the event of a change and at a specific frequency, the absence of a time limit for the retention of information by non-financial AML-obliged persons and the absence of retention of beneficial ownership information in the event that the AML-obliged person ceases its activity (paragraph 116).
- **Element C.2:** Togo should continue to conclude EOI agreements with any new relevant partner who would so require (paragraph 282).

In addition, the Global Forum may identify certain aspects of the legal framework that require follow-up in Phase 2. A non-exhaustive list of these aspects is reproduced below for ease of reference.

- **Element A.1.1:** The implementation in practice, including the detail of information to be kept, of the obligation for all entities and legal arrangements to hold information on the identity of their associates and partners during any subscription or modification of shares or quotas or during any purchase of goods and services (paragraphs 63).
- **Element A.1.1:** The monitoring of inactive companies in Togo and whether or not it ensures the availability of ownership information (paragraph 80).

- **Element A.1.1:** The implementation in practice of the interpretation of the Togolese authorities in relation to the determination of beneficial owners in a situation of joint controlling interest (paragraphs 91 and 108).
- **Element A.1.1:** The implementation of the tax provisions on the availability of information on beneficial owners of companies (paragraph 102).
- **Element A.1.1:** The interaction between tax obligations and the AML obligations for the identification of beneficial owners (paragraphs 109 and 116).
- **Element A.1.2:** The follow-up activities carried out by the Togolese authorities to ensure the absence of bearer shares still in circulation (paragraph 127).
- **Element A.1.4:** The implementation in practice of the requirements of identification of beneficial owners of foreign legal arrangements (paragraph 150).
- **Elements A.1.4** and **A.3:** The implementation of the definition of beneficial owners of trusts or *fiducies*, as provided for in the AML law (paragraph 156 and 215).
- **Element A.2:** The effectiveness of the Togolese system to ensure that the accounting information are effectively available in Togo (paragraph 189).
- **Element A.2:** The compliance with the accounting requirements by non-professional trustees and the assessment of the materiality of the risk of an EOI request relating to a trust administered by a non-professional trustee (paragraph 195).
- **Element A.2:** The implementation in practice of the provision related to liquidation proceedings of the entities and their impact on the availability of the accounting underlying documentation of liquidated entities (paragraph 198).
- **Element B.1:** The interpretation of the Togolese authorities on the applicability of the right of tax investigation in the context of EOI request on direct taxes (paragraph 232).
- **Element B.1:** The interpretation and implementation of the interaction between bank secrecy under WAMU legislation and the right to information under tax law (paragraph 249).
- **Element C.1:** The treatment of group requests received by Togo (paragraph 268).
- **Element C.3:** The lack of labelling of the exchanged information (paragraph 294).

Annex 2: List of Togo’s EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	France	DTC	24 November 1971	1 April 1975
2	Tunisia	DTC	11 February 1987	Not in force

Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[34] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

The Multilateral Convention was signed by Togo on 30 January 2020. Once it enters into force in Togo, Togo will be able to exchange information with all other Parties to the Multilateral Convention.

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

The Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Armenia, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Cabo Verde, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Co-ok Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,[35] Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Eswatini, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Jordan, Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), North Macedonia, Malaysia, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Namibia, Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russia, Rwanda, 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, Thailand, Tunisia, Türkiye, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Benin (entry into force 1 May 2023), Burkina Faso (entry into force on 1 April 2023), Gabon, Honduras,

35. Note by Türkiye: 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. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye 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 Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Madagascar, Papua New Guinea, Philippines, Togo, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

Regulation 08/2008/CM/WAEMU to prevent double taxation in the Community and to institute mutual tax assistance

Regulation No. 08/2008/CM/WAEMU to prevent double taxation in the Community and to institute mutual tax assistance (the WAEMU Regulation) is a regional instrument adopted on 26 September 2008 and in force since 1 January 2009. The eight member jurisdictions of the WAEMU are covered by this regional instrument: Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo.

Article 33 of the WAEMU Regulation contains provisions relating to the EOI on tax matters between the jurisdictions covered by the regulation. These provisions are consistent with the EOIR standard but not the latest version of Article 26 of the OECD Model Tax Convention. In particular, they do not include the aspects of the Convention relating to the confidentiality of the information exchanged. Nonetheless, the confidentiality of information exchanged under the WAEMU Regulation is protected, in accordance with the standard, by the provisions of implementing regulation 005/2010/COM/WAEMU (Article 14), which was adopted on 17 November 2010 for the implementation of the WAEMU Regulation and which is applicable in all WAEMU member states, including Togo.

ECOWAS Supplementary Act 5/12/18 adopting community rules for the elimination of the double taxation with respect to taxes on income, capital and inheritance and the prevention of tax evasion and avoidance within the ECOWAS member States

ECOWAS Supplementary Act is a regional instrument adopted on 22 December 2018 and entered into force in 2021. All fifteen ECOWAS member jurisdictions are covered by this regional instrument: Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

Article 37 of the ECOWAS Supplementary Act contains a provision for the exchange of information on tax matters. This provision is in line with the standard and reflects the 2005 version of Article 26 of the OECD Model Tax Convention. It includes, in particular, the concept of foreseeable relevance, the requirements for confidentiality of the information exchanged as well as the requirements to exchange any information, even in the absence of a domestic tax interest.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and amended in December 2020 and November 2021, and the Schedule of Reviews.

The assessment is based on information available to the assessment team, including signed information exchange agreements, laws and regulations in force or applicable as of January 2023, Togo's responses to the EOIR questionnaire, information provided by partner jurisdictions, including information on the negotiation of EOI instruments with Togo. As Togo has limited experience in EOIR, the assessment of this jurisdiction is conducted in two phases, in accordance with the section V of the Methodology, as amended in 2021. As the Phase 1 of the assessment focuses only on the legal and regulatory framework, no peer input was required at the launch of this review. One peer did, however, provide input on its EOI practice with Togo at the time of the launch of the review.

List of laws, regulations and other materials received

OHADA Uniform Act on the Law of Commercial Companies and Economic Interest Groups (AUDSCGIE)

OHADA Uniform Act on General Commercial Law (AUDCG)

OHADA Uniform Act on Co-operative Societies (AUSC)

OHADA Uniform Act on Accounting Law and Financial Reporting (AUDCIF)

OHADA Uniform Act on Insolvency Procedure (AUPC)

Regulation no. 025/MEF/SG/OTR/CG of 21 February 2022 specifying the modalities of identification, declaration and retention of information on beneficial owners

General Tax Code

Criminal Code

Instruction no. 007-09-2017 on the modalities of application by financial institutions of the uniform law on the fight against money laundering and terrorist financing in WAMU member states.

Tax procedures Code

WAMU framework law no. 2009-019 of 7 September 2009 (banking law)

Uniform Act No. 2018-004 of 4 May 2018 on the fight against money laundering and the financing of terrorism in WAMU Member States (AML Act or Anti-Money Laundering Act)

Regulation no. 05/CM/WAEMU relating to the harmonisation of the rules governing the profession of lawyer in the WAEMU area.

Current review

Due to the limited practical experience of Togo in EOIR in practice, this report analyses only Togo's legal and regulatory framework in relation to the standard of transparency and EOIR, in the second round of reviews conducted by the Global Forum. As Togo joined the Global Forum in 2016, it was not assessed in the first round.

In accordance with the 2016 Methodology for peer reviews and non-member reviews, as amended in 2021, a Phase 2 review, on the practical implementation of the legal and regulatory framework, will be scheduled at the earlier of: (i) the expiry of a period of four years from the date of launch of the Phase 1 review, i.e. June 2026 in the case of Togo, and (ii) the establishment of EOIR experience in respect of criteria that include the number of requests received (around ten requests over a three year review period); the number of taxpayers involved in the requests; the amounts involved; and the complexity of the requests received, as well as the existence of outgoing requests and their nature and characterisation, subject to a contrary indication by the Steering Group of the Global Forum. Progress made since the adoption of the Phase 1 report will be assessed during the Phase 2 review.

Information relating to the review of Togo is indicated in the table below.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
Round 2 Phase 1	Mr Awunti Joseph Tanyi-Mbianyor (Cameroon) Mr Mamade Faisal Oozeerally (Mauritius) Ms Carine Kokar (Global Forum Secretariat),	Not applicable	17 January 2022	27 March 2023

Annex 4: Togo's response to the review report[36]

Togo expresses its thanks and gratitude to the assessment team and to the Global Forum Secretariat for their support throughout the review and for their high-quality assistance.

Togo also thanks the members of the Peer Review Group as well as all other partners for their valuable input and contributions to its assessment.

Togo endorses the conclusions reached in the report in that it reflects the current state of the Togolese legal and regulatory framework in relation to the 2016 Terms of Reference.

Togo also takes note of the recommendations issued in the Phase 1 report and reassures peers of its determination and commitment to implement these recommendations for a successful Phase 2 review.

Finally, Togo reiterates its commitment to implement the standards of transparency and exchange of information for tax purposes in accordance with the defined roadmap and to take full advantage of this framework to improve tax revenue mobilisation.

36. 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 TOGO 2023 (Second Round, Phase 1)

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 publication presents the results of the Second Round Peer Review on the Exchange of Information on Request for Togo. It refers to Phase 1 only (legal and regulatory framework).

PRINT ISBN 978-92-64-38599-3
PDF ISBN 978-92-64-43491-2