Global Forum on Transparency
and Exchange of Information for Tax Purposes

Supplementary Peer Review Report
Phase 1
Legal and Regulatory Framework

MONACO

OECD

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. These standards have also been incorporated into the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review 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 review reports, please refer to *www.oecd.org/tax/transparency*.

Executive Summary

1. This is a supplementary report on the amendments made by Monaco to its legal and regulatory framework for transparency and exchange of information. It complements the Phase 1 Peer Review report of Monaco which was adopted and published by the Global Forum on Transparency and Exchange of Information for Tax Purposes in September 2010 (the "2010 Report"). This supplementary report considers the changes made by the Monaco since May 2010, the date at which the legal and regulatory framework was previously assessed, to address the recommendations made in the 2010 Report. It reflects Monaco's report on the steps taken since its assessment sent to the Peer Review Group in July 2011, in accordance with paragraph 57 of the Global Forum's Methodology (see Annex 2).

2. In July 2011, Monaco reported on the steps taken to initiate the legislative amendments which are necessary to address the determination and recommendations made in the 2010 Report relating to element A.2 (availability of accounting information), which was previously assessed to be "Not in place". It also describes the recent developments as to the negotiation of agreements containing exchange of information (EOI) mechanisms, in response to the recommendations under element C.1 (EOI mechanisms), which was found to be "In place", and element C.2 (EOI network covering all relevant partners), which was previously assessed to be "In place, but certain aspects of the legal implementation of the element need improvement". Further, Monaco suggested in that report that its new EOI policy was to no longer sign TIEAs. When reporting on the steps undertaken, Monaco is silent as to the deficiencies identified under elements A.1 (availability of ownership information) and B.2 (requirements regarding notification, rights and safeguards), which were found to be "In place, but certain aspects of the legal implementation of the element need improvement".

3. At its meeting held in the Cayman Islands on 18-22 July 2011, the Peer Review Group discussed the steps taken by Monaco to address the recommendations made in the 2010 Report. Concerns were expressed regarding substantial changes in Monaco's treaty policy in relation to negotiation of tax information exchange agreements (TIEAs) and the fact that compliance

with the standards, particularly as regards elements C.1 and C.2, seemed to be deteriorating. As a result, the Peer Review Group decided to open a follow-up procedure, in accordance with paragraph 59 of the Global Forum's Methodology. During the course of this supplementary review, Monaco confirmed that it has not changed its policy and this is further detailed in this supplementary report under element C.2.

4. Since its commitment to the international standard on transparency and exchange of information on 24 March 2009, Monaco has signed 23 agreements which meet the standard, in addition to the existing DTC with France, dating back to 1963. Monaco is encouraged to continue making progress in negotiating new EOI agreements to the standard and recommended to ensure that its EOI agreements are ratified and brought into force expeditiously. Most importantly, even though Monaco has negotiated tax information exchange agreements (TIEAs) in the past, two Global Forum members have indicated that they have approached Monaco to negotiate TIEAs but have so far been unsuccessful in their approaches. Monaco has indicated that it prefers to establish DTCs but that it is ready to sign TIEAs without any conditions. Monaco has advised accordingly that it sent in late August 2011 proposals to negotiate TIEAs to these two jurisdictions. It is recommended that, in accordance with the standard, Monaco ensures that it enters into EOI agreements (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an EOI agreement with Monaco.

5. The initial assessment of the legal and regulatory framework in force in Monaco showed that, overall, the Principality's legal framework meets the international standard for transparency and exchange of information with respect to availability of information. Administrative authorisation to engage in a business activity, as well as registration in the Monegasque Directory of Commerce and Industry, provide broad assurance that ownership and accounting information concerning commercial companies and partnerships is available. The same holds true with regard to banking information, the availability of which is assured under the anti-money laundering legislation.

6. In contrast, the Monegasque legal and regulatory framework could be improved with regard to the availability of ownership information on certain types of companies and foreign-law trusts established in or transferred to Monaco. In addition, the Monegasque legislation authorises the issuance of bearer shares by companies listed on a regulated market. It is noted, however, that this situation only applies to two companies registered in Monaco, and thus this deficiency remains limited in its impact. Since Monaco does not have a stock exchange market, these two companies are listed in France and information concerning the owners of the bearer shares issued by these companies would not be available to the Monegasque competent authorities

in such cases. Monaco is, therefore, recommended to ensure that mechanisms are in place through which ownership information on bearer shares would be available in all circumstances. Finally, the Monegasque legal and regulatory framework does not meet the international standard with regard to the availability of accounting information, in particular for non-trading partnerships, foreign-law trusts established in or transferred to Monaco and foundations. Monaco is recommended to introduce in its legislation binding obligations on all relevant entities and arrangements to ensure that reliable accounting records, including underlying documents, are kept for at least five years.

7. In the area of access to information, Monegasque legislation provides for access to available information held by any person when such information is required for the purposes of international information exchange, including information that is required to be kept in Monaco for anti-money laundering purposes. Likewise, the absence of any reference to the national interest, whether domestically or in the treaties concluded by Monaco, ensures that the Monegasque competent authorities can exercise their powers to collect information for exchange purposes. However, Monaco put in place a prior notification procedure which is inconsistent with the international standard since it does not allow for any exceptions. Monaco is recommended to introduce some exceptions to the prior notification procedure to bring it in line with the international standard, *e.g.* in cases in which the information requested is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction.

8. Monaco Phase 2 Peer Review, scheduled for the second half of 2012, will consider the practical application by its competent authorities of the legal framework governing transparency and information exchange. In the meantime, a follow up report on the steps undertaken by Monaco to answer the recommendations made in this report should be provided to the PRG within six months after the adoption of this report.

Introduction

Information and methodology used for the follow up report of Monaco

9. The assessment of Monaco's legal and regulatory framework made through this supplementary peer review report was prepared pursuant to paragraph 59 of the Global Forum's *Methodology for Peer Reviews and Non-member Reviews*, and considers recent changes to the legal and regulatory framework of Monaco based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*. This supplementary report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at August 2011, and information supplied by Monaco. It follows the Phase 1 Report of Monaco which was adopted and published by the Global Forum in September 2010.

10. The Terms of Reference breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. In respect of each essential element a determination is made that: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In particular, this report considers changes in Monaco's legal and regulatory framework which relate to three of the essential elements (elements B2, C1 and C2).

11. The supplementary review was conducted by an assessment team, which consisted of two expert assessors: Mrs. Shauna Pittman, Adviser in the Canadian Revenue Agency; Mr. Kamlesh Varshney of the Indian Ministry of Finance, Department of Revenue; and two representatives of the Global Forum Secretariat: Mrs. Renata Fontana and Mr. Rémi Verneau.

12. An updated summary of determinations, recommendations and factors underlying recommendations in respect of the 10 essential elements of the Terms of Reference, which takes into account the conclusions of this supplementary report, can be found in the annexes to this report.

Compliance with the Standards

A. Availability of information

Overview

13. Effective exchange of information requires the availability of reliable information. This report considers the legal and regulatory framework now in place in Monaco as regards the availability of ownership information, accounting records and banking information.

14. The 2010 Report concluded that element A.1 (availability of ownership information) was "In place, but certain aspects of the legal implementation of the element need improvement", notably: (i) the availability of ownership information on certain types of companies; (ii) the identification of owners of bearer shares which may be issued by companies that are eligible for trading on a regulated market; and (iii) the identification of settlors and beneficiaries of foreign trusts administered in Monaco or in respect of which a trustee is resident in Monaco. However, Monaco has not yet shown any progress with respect to the deficiencies identified under element A.1.

15. Element A.2 (availability of accounting information) was found to be "Not in place" and three recommendations were made concerning: (i) non-trading partnerships; (ii) foreign law trusts established in or transferred to Monaco, and (iii) foundations. In respect of these relevant entities, Monaco was requested to ensure that reliable accounting records, including underlying documentation, are kept for at least five years, in accordance with the *Terms of Reference* (*ToR*). However, it appears that no concrete progress has been made on the implementation of the recommendations under element A.2. As to element A.3 (bank information), which was found to be "In place", no recommendations were made in the 2010 Report.

16. When reporting on the steps taken to address the deficiencies identified in the 2010 report, Monaco has indicated that the Monegasque authorities decided in February 2011 to engage a group of experts and that "a complete overhaul of Monaco's economic law has been initiated with the objective to modernization it in compliance with the new international standard". It was further stated that "[t]he objective is to have a preliminary bill drafted for this Autumn". In addition, Monaco advised in August 2011 that a bill amending miscellaneous provisions and two Sovereign Orders the purpose of which will be (i) to ensure the availability of accurate ownership information relating to companies and trusts and (ii) to require partnerships under civil law, trustees, and foundations to maintain accounting records and the accompanying documentation for at least five years, will be tabled in the National Council in September 2011.

A.1. Ownership and identity information

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

Companies *(ToR A.1.1),* ***Bearer shares*** *(ToR A.1.2),* ***Partnerships*** *(ToR A.1.3),* ***Trusts*** *(ToR A.1.4),* ***Foundations*** *(ToR A.1.5) and* ***Enforcement provisions to ensure availability of information*** *(ToR A.1.6)*

17. The 2010 Report noted that Monaco had a sound legal and regulatory framework ensuring the availability of ownership information on trading companies and partnerships thanks to registration requirements and other mechanisms such as the obligation to obtain an administrative authorization to engage in business activities in Monaco. However, the 2010 Report also identified some deficiencies concerning (i) the availability of ownership information on certain types of companies (*société anonyme monégasque* (SAM); *société en commandite par actions* (SCA)); (ii) the identification of owners of bearer shares which may be issued by SAMs and SCAs that are eligible for trading on a regulated market; and (iii) the identification of settlors and beneficiaries of foreign trusts administered in Monaco or in respect of which a trustee is resident in Monaco.

18. Accordingly, Monaco was recommended to address these shortcomings and to ensure that identity information on the shareholder of trading companies and on settlors and beneficiaries of foreign law trusts with a Monegasque resident trustee or administrator is available in all circumstances. Since then, Monaco advised in August 2011 that a draft bill and a Sovereign Order proposal will be tabled in the National Council in September 2011. The purpose of these two bills is: (i) to create an obligation for all companies to

have knowledge of their shareholders in any circumstances; and (ii) to remove from Monaco legislation the 25% threshold that applies for the identification of trusts beneficial owners. As these bills have not been adopted and enacted yet, no changes are made to determination, underlying factors and recommendations made under element A.1 in the 2010 Report.

Determination and factors underlying recommendations

<table>
<tr><th colspan="2">Phase 1 determination</th></tr>
<tr><td colspan="2">The element is in place, but certain aspects of the legal implementation of the element need improvement.</td></tr>
<tr><th>Factors underlying the recommendations</th><th>Recommendations</th></tr>
<tr><td>In Monaco there is no requirement and no legal mechanism for keeping information available and up to date with regard to the shareholders of SAMs and SCAs.</td><td rowspan="2">Monaco must ensure that its competent authorities have continuous access to information on the shareholders of trading companies, irrespective of the type of company in question.</td></tr>
<tr><td>Monegasque legislation allows companies traded on a foreign stock exchange to issue bearer shares but contains no mechanism that would ensure the availability of ownership information. There are, however, only two companies in this situation.</td></tr>
<tr><td>While Monegasque legislation authorises the creation in or transfer to Monaco of foreign trusts, the record-keeping requirements of the law on the fight against money laundering do not ensure that information on the settlors and beneficiaries of trusts is available in all circumstances.</td><td>Monaco should ensure that trustees are required to hold identity information on settlors and beneficiaries of express trusts in all circumstances.</td></tr>
</table>

A.2. Accounting records

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

General requirements (ToR A.2.1), Underlying documentation (ToR A.2.2) and the 5-year retention standard (ToR A.2.3)

19. The 2010 Report found that Monaco had serious deficiencies in its legal and regulatory framework concerning the availability of accounting records for all relevant entities. Accordingly, element A.2 was found to be "Not in place" and three recommendations were made concerning (i) non-trading partnerships; (ii) foreign law trusts established in or transferred to Monaco, and (iii) foundations. In respect of these relevant entities, Monaco was requested to ensure that reliable accounting records, including underlying documentation, are kept for at least five years, in accordance with the *Terms of Reference*.

20. When reporting to the PRG in July 2011, the Monegasque authorities indicated that Monaco is looking into the accounting rules adopted by other jurisdictions which meet the standard to find an adequate solution for the lack of accounting obligations for non-trading partnerships, foreign law trusts and foundations. Monaco advised in August 2011 that a bill amending miscellaneous provisions will be tabled in the National Council in September 2011 and a Sovereign Order on foundations will also be adopted quickly. The purpose of these bills is to create an obligation for partnerships under civil law, trustees, and foundations to maintain accounting records and underlying documentation for at least five years. As these bills have not been adopted and enacted yet, the determination, factors and recommendations made in the 2010 Report under A.2 remain unchanged.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying the recommendations	**Recommendations**
No accounting obligation is imposed under Monegasque legislation on non-trading partnerships or companies that are not deemed traders under the Commercial Code. And yet 80% of Monegasque partnerships fall into this category.	Monaco should ensure that reliable accounting records be kept for all relevant entities and arrangements that may be created in Monaco, among which, *inter alia*, are trusts, foundations and non-trading partnerships, and these records should be accessible for at least five years, in compliance with the terms of reference.
Monegasque legislation imposes no bookkeeping or record-keeping obligations on foreign-law trusts established in or transferred to Monaco.	
Monegasque legislation imposes no requirements as to form and makes no reference to an international accounting standard in respect of the accounting records to be kept and supplied by foundations.	

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

21. The 2010 Report found that Monaco had a legal framework in place to ensure the availability of relevant banking information for all account holders. The determination for A.3 was, and remains, "The element is in place".

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to information

Overview

22. A variety of information may be needed in respect of the administration and enforcement of the relevant tax laws and jurisdictions should have the authority to access all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities.

23. The 2010 Report noted that element B.1 (access to information) was "In place" and no recommendations were made while element B.2 (notification requirements and rights and safeguards) was found to be "In place, but certain aspects of the legal implementation of the element need improvement" and one recommendation on the new procedure concerning prior notification was made. It appears that Monaco has taken no steps to address the deficiency identified under element B.2.

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).

Ownership and identity information (ToR B.1.1), Accounting records (ToR B.1.2), Use of information-gathering instruments without reference to domestic interest (ToR B.1.3), Compulsory powers (ToR B.1.4), Secrecy provisions (ToR B.1.5)

24. In the area of access to information, the 2010 Report concluded that the Monegasque legislation provides for sufficient access powers to information held by any person when such information is required under an EOI

arrangement, including information that is required to be kept in Monaco for anti-money laundering purposes. The absence of a domestic tax interest requirement ensures that the Monegasque competent authorities can exercise their powers to collect information for exchange purposes. The determination for B.1 was, and remains, "The element is in place".

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B.2. Notification requirements and 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.

Not unduly prevent or delay exchange of information (ToR B.2.1)

25. The 2010 Report found that, at the time of the assessment, Monaco had put in place a new prior notification procedure which was considered inconsistent with the standard since it did not allow for any exceptions. The 2010 Report noted, however, that EOI agreement with France is not affected by these new rules.

26. Monaco's report to the PRG is silent on this point and it appears that Monaco has taken no action to introduce some exceptions to the prior notification procedure to bring it in line with the standard, *e.g.* in cases in which the information requested is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction. Therefore, no changes are made to determination, factors and recommendations made under element B.2 in the 2010 Report.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need to be improved.	
Factors underlying the recommendations	**Recommendations**
The prior notification procedure does not allow for any exception and therefore applies to any incoming requests sent by Monaco's partners, with the exception of the ones sent by France.	Monaco should examine the conditions under which the new notification procedure that applies in Monaco is compatible with an effective exchange of information.

C. Exchanging information

Overview

27. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanisms for doing so. In Monaco, the legal authority to exchange information is derived from bilateral mechanisms (double tax conventions (DTCs) and tax information exchange agreements (TIEAs)), as well as domestic law to a lesser extent. This section of the report examines whether Monaco has a network of information exchange arrangements that would allow it to achieve the effective EOI in practice.

28. The 2010 Report found element C.1 (exchange of information mechanisms) to be "In place" but a recommendation was made since, at the time of the assessment, Monaco had brought into force only four of its 23 EOI agreements. Element C.2 (network of exchange of information mechanisms) was assessed as to be "In place but certain aspects of the legal implementation of the element need improvement" and recommendations were made as: (i) Monaco's EOI network did not cover all relevant partners, that is to say all jurisdictions which had indicated that they would like to enter into such a relationship with the Principality, in particular Italy; and (ii) Monaco's treaty negotiation policy did not focus on rapidly expanding its EOI network with its relevant partners. The 2010 Report also noted that each of the elements C.3 (confidentiality) and C.4 (rights and safeguards of taxpayers and third parties) were "In place". Finally, as with other Phase 1 reports, in respect of C.5 (timeliness of responses to requests for information), the 2010 Report noted that it involved issues of practice that would be dealt with in the Monaco's Phase 2 review.

29. When reporting to the PRG in July 2011, Monaco has indicated that a new TIEA with Germany was signed and an additional six EOI agreements have entered into force since the 2010 Report was drafted. In further correspondence dated 12 August 2011, the Monegasque authorities clarified that an additional eight EOI agreements have entered into force, bringing to 14 the total number of EOI agreements in force since the 2010 Report. In addition, Monaco also reported to be "currently in more or less advanced negotiations with a dozen of states with the aim of signing new agreements" and described

further steps which have been taken in connection with the negotiation of an EOI agreement with Italy.Further, Monaco suggested in that report that its new EOI policy was to no longer conclude TIEAs.

30. Currently, Monaco has 24 EOI agreements, 18 of which are in force. Whilst it is acknowledged that Monaco has taken steps towards expanding its EOI network with some relevant partners and bringing an additional 14 existing EOI agreements into force, Monaco is encouraged to continue making progress in negotiating new EOI agreements to the standard Similarly, the recommendation and underlying factor of element C.1 have been removed to correctly reflect the current situation.

31. Most importantly, even though Monaco has negotiated TIEAs in the past, two Global Forum members[1] have indicated that they have approached Monaco for negotiations of TIEAs but have so far been unsuccessful in their approaches, either because they received no answer after several attempts to negotiate with Monaco or because Monaco has indicated that it wants instead to negotiate a DTC rather than a TIEA. The Monegasque authorities have indicated that they prefer to establish DTCs, but they are ready to sign TIEAs without any conditions. In addition, Monaco sent in late August proposals to negotiate TIEAs to these jurisdictions. Therefore, although the first recommendation has been revised to better reflect the new situation, the determination made under C.2 in the 2010 report remains unchanged.

C.1. Information exchange mechanisms

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

32. At the time the 2010 Report was drafted (May 2010), Monaco's EOI network, covered 23 jurisdictions[2] (a DTC signed with France in 1963 and 22 new agreements signed since July 2009) and these EOI agreements were found to be in accordance with the standard in that they allowed all types of foreseeably relevant information to be exchanged with respect to all persons, with no domestic restrictions or formalities that could hinder the effective EOI. The 2010 Report found element C.1 to be in place but a recommendation was made since, at the time of the assessment, Monaco had brought into force only three of the 22 EOI agreements signed since July 2009. The 2010 Report also noted that Monaco had completed its domestic procedures for the entry

1. Spain and Poland.
2. France, Luxembourg, Qatar, St. Kitts and Nevis, the Seychelles (jurisdictions with which Monaco has signed DTCs), Andorra, Argentina, Austria, Australia, The Bahamas, Belgium, Denmark, the Faroe Islands, Finland, Greenland, Iceland, Liechtenstein, the Netherlands, Norway, Samoa, San Marino, Sweden, and the United States (jurisdictions with which TIEAs have been signed).

into force of the EOI agreements with Andorra, Argentina, Liechtenstein, the Netherlands, Seychelles, and Samoa.

33. When reporting to the PRG, Monaco has indicated that a new TIEA with Germany (Germany-Monaco TIEA) was signed and the Monegasque authorities have further clarified that an additional 14 EOI agreements have entered into force since the cut-off date of the 2010 Report (see updated list on Annex 3). Six EOI agreements signed by Monaco more than 12 months ago are still not in force, though Monaco has taken all necessary steps for ratification of five of them.

34. The Germany-Monaco TIEA meets the international standard, as further analysed in this section. In addition, Monaco also reported to be "currently in more or less advanced negotiations with a dozen of states with the aim of signing new agreements" and described further steps which have been taken in connection with the negotiation of an EOI agreement with Italy. Monaco is, therefore, encouraged to continue making progress in negotiating new EOI agreements to the standard and ensuring that its EOI agreements are ratified and brought into force expeditiously.

Foreseeably relevant standard (ToR C.1.1)

35. The international standard for EOI envisages information exchange to the widest possible extent. Nevertheless it does not allow "fishing expeditions", *i.e.* speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 1 of the OECD Model TIEA. The Germany-Monaco TIEA has a provision which mirrors Article 1 of the OECD Model TIEA and which is in line with the international standard.

36. It is noted that the Germany-Monaco TIEA contains a Protocol which clarifies Article 5(5)(a), by stating that the identification of the person under examination or investigation must be sufficiently established, *generally* by the name and, *to the extent known*, the address, the bank account number or equivalent identity information. From Article 5(5)(a) of the OECD Model TIEA and its commentary, is clear that the obligation to "identify" the relevant taxpayer, does not necessarily require the provision of their name or address. Therefore, the wording of item 1 of the Protocol to the Germany-Monaco TIEA seems to be consistent with the standard.

In respect of all persons (ToR C.1.2)

37. For EOI to be effective it is necessary that a jurisdiction's obligations to provide information is not restricted by the residence or nationality of the

person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard for EOI envisages that EOI mechanisms will provide for exchange of information in respect of all persons.

38. The Germany-Monaco TIEA contains a provision concerning jurisdictional scope which is equivalent to Article 2 of the OECD Model TIEA and which conforms to the international standard.

Exchange information held by financial institutions, nominees, agents and ownership and identity information *(ToR C.1.3)*

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

40. Article 5(4) of the Germany-Monaco TIEA does not allow the requested jurisdiction to decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

Absence of domestic tax interest *(ToR C.1.4)*

41. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

42. Article 5(2) of the Germany-Monaco TIEA allows information to be obtained and exchanged notwithstanding it is not required for any domestic tax purpose.

Absence of dual criminality principles *(ToR C.1.5)*

43. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to the information request) would constitute a crime under the laws of the requested country if it had

occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

44. The Germany-Monaco TIEA does not apply the dual criminality principle to restrict the exchange of information.

Exchange of information in both civil and criminal tax matters (ToR C.1.6)

45. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

46. The Germany-Monaco TIEA provides for EOI in both civil and criminal tax matters.

Provide information in specific form requested (ToR C.1.7)

47. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

48. Article 5(3) of the Germany-Monaco TIEA allows for information to be provided in the specific form requested, to the extent allowable under the requested jurisdiction's domestic laws.

In force (ToR C.1.8)

49. The exchange of information cannot occur unless a jurisdiction has information exchange mechanisms in force. Where such mechanisms have been signed, the international standard requires a jurisdiction to complete the measures needed for them to take effect.

50. At the time the 2010 Report was drafted, the EOI agreements concluded with France, the United States, Luxembourg and San Marino had entered into force. Fourteen new EOI agreements have entered into force in the meantime, *i.e.* the TIEAs with Andorra (16 December 2010), Argentina (7 August 2010), Austria (1 August 2010), Australia (13 January 2010), The Bahamas (18 February 2011), Denmark (6 October 2010), Faroe Islands (7 May 2011), Finland

(20 November 2010), Iceland (23 February 2011), Liechtenstein (14 July 2010), the Netherlands (1 December 2010), Norway (20 January 2011) and Sweden (26 December 2010), and the DTC with Qatar (15 June 2010). See Annex 3 for details of signing and entry into force of all of Monaco's EOI agreements.

51. Six EOI agreements signed by Monaco more than 12 months ago are still pending ratification, though Monaco has ratified five of them (Germany, Greenland, St. Kitts and Nevis, Samoa and the Seychelles). Monaco is encouraged to take all the necessary measures to ratify and bring the remaining EOI agreement (with Belgium) into force expeditiously. Therefore, the determination for element C.1 remains unchanged, though the recommendation and underlying factor have been removed to correctly reflect the current situation.

In effect (ToR C.1.9)

52. In order for information exchange to be effective, the contracting parties have to take the necessary measures to comply with their commitments.

53. Following the ratification of the TIEAs with Argentina, Austria, Australia, Liechtenstein, Sweden and of the DTC with Qatar, Monaco published the respective enactments in the Journal de Monaco on 23 July 2010, 17 December 2010, 28 January 2011 and 29 April 2011.

54. Monaco has created a domestic framework for exchange of information based on the EOI agreements signed by it. Monaco's competent authority has powers to access information to give effect to the terms of its international EOI agreements.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
~~**Factors underlying the recommendations**~~	~~**Recommendations**~~
~~Although 2224 information exchange agreements have been concluded since July 2009, to date only three18 have entered into force.~~	~~Monaco must ensure that information exchange mechanisms permit the effective exchange of information by ensuring that the relevant legislation is swiftly enacted.~~

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

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

55. The standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

56. In the 2010 Report, element C.2 was assessed as to be "In place but certain aspects of the legal implementation of the element need improvement" and recommendations were made as: (i) Monaco's EOI network did not cover all relevant partners, that is to say all jurisdictions which had indicated that they would like to enter into such a relationship with the Principality, in particular Italy; and (ii) Monaco's treaty negotiation policy did not focus on rapidly expanding its EOI network with its relevant partners.

57. According to the information provided to the PRG in July 2011, Monaco continues to expand its EOI network by concluding a TIEA to the standard with Germany and being currently involved "in more or less advanced negotiations with a dozen of states with the aim of signing new agreements".[3] Monaco also described further steps which have been taken in connection with the negotiation of an EOI agreement with Italy. It is, therefore, acknowledged that Monaco has made some progress towards expanding

3. Brunei; Cyprus;* India; Mexico; New Zealand; and South Africa, treaties already initialled. Antigua and Barbuda; Bahrain; Czech Republic; Greece; Guernsey; Hong-Kong, China; Malaysia; Mauritius; Portugal; Saint Lucia; Saint Vincent and the Grenadines; Singapore; Slovak Republic; UAE; and Uruguay, negotiations under way.

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

2. Footnote by all the European Union Member States of the OECD and the European Commission: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus."

its EOI network with some relevant partners. Monaco finally indicated that its new EOI policy was to no longer sign TIEAs.

58. Currently, Monaco has 24 EOI agreements, including 22 with Global Forum members, 13 of which are simultaneously OECD member countries. However, comments were sought from Global Forum members in the course of the preparation of this report, and two Global Forum members, Spain and Poland, have indicated that they have approached Monaco to negotiate TIEAs but have so far been unsuccessful in their approaches, either because they received no answer after several attempts to negotiate with Monaco or because Monaco has indicated that it wants instead to negotiate a DTC rather than a TIEA. In the specific case of the relationship with Poland, Monaco's authorities have advised that negotiations commenced in June 2009 when Monaco proposed to Poland that they negotiate a bilateral agreement. Poland replied on 17 July 2009 indicating that it agreed on the principle but not before the first semester of 2010. After some discussions, on 17 March 2010 Poland suggested that a DTC could be concluded after the conclusion of a TIEA and some effective exchange of information.

59. The Monegasque authorities have indicated that they give priority to the establishment of DTCs as a means to develop Monaco's economic relationships, but they are ready to sign TIEAs. Furthermore, Monaco's authorities have advised that on 22, 25, and 26 August 2011, they respectively sent proposals for TIEAs negotiations to the Slovak Republic, Poland and Spain. Therefore the determination and factors made under C.2 in the 2010 report remain unchanged. It is recommended that, in accordance with the international standard, Monaco ensures that it enters into EOI agreements (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an EOI agreement with it.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place but certain aspects of the legal implementation of the element need improvements.	
Factors underlying the recommendations	**Recommendations**
The network of treaties containing provisions regarding the exchange of information does not currently cover all of those jurisdictions who have indicated that they would like to enter into such a relationship with the Principality.	~~Monaco must ensure that its network of information exchange mechanisms covers all relevant partners, that is to say all jurisdictions which have indicated that they would like to enter into such a relationship with the Principality, in particular Italy.~~ Monaco should enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it, including in particular Italy.
No priority has been given in Monaco's negotiating policy to the rapid signing of information exchange agreements with these partners.	Monaco must ensure that its negotiating policy and the priorities set internally are such that it can obtain, as rapidly as possible, a network of information exchange mechanisms which covers all relevant partners.

C.3. Confidentiality

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

Information received: disclosure, use and safeguards (ToR C.3.1) and all other information exchanged (ToR C.3.2)

60. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of

information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

61. This element was found as to be "In place" in the 2010 Report and no recommendations were made. The Germany-Monaco TIEA meets the standards for confidentiality including the limitations on disclosure of information received and use of the information exchanged, which are reflected in Article 8 of the OECD Model TIEA.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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

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

Exceptions to requirement to provide information (ToR C.4.1)

62. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other listed secret may arise. This element was found as to be in place in the 2010 Report and no recommendations were made.

63. The Germany-Monaco TIEA generally follows the OECD Model TIEA in respect of the limits on information which must be exchanged under Article 7, *i.e.* information which is subject to legal privilege; would disclose any trade, business, industrial, commercial or professional secret or trade process; or would be contrary to public policy, is not required to be exchanged.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Response within 90 days (ToR C.5.1), Organisational process and resources (ToR C.5.2), Absence of restrictive conditions on exchange of information (ToR C.5.3)

64. There is no provision in Monaco's legislation or in its EOI agreements that sets out clear conditions governing the information exchange, other than those set out in Article 26 of the OECD Model Convention or Article 5(6) of the OECD Model TIEA. A review of the practical application of these processes and the resources available to the Monegasque authorities will be conducted in the context of its Phase 2 review.

Determination and factors underlying recommendations

Phase 1 determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying the recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	In Monaco there is no requirement and no legal mechanism for keeping information available and up to date with regard to the shareholders of SAMs and SCAs.	Monaco must ensure that its competent authorities have continuous access to information on the shareholders of trading companies, irrespective of the type of company in question.
	Monegasque legislation allows companies traded on a foreign stock exchange to issue bearer shares but contains no mechanism that would ensure the availability of ownership information. There are, however, only two companies in this situation.	
	While Monegasque legislation authorises the creation in or transfer to Monaco of foreign trusts, the record-keeping requirements of the law on the fight against money laundering do not ensure that information on the settlors and beneficiaries of trusts is available in all circumstances.	Monaco should ensure that trustees are required to hold identity information on settlors and beneficiaries of express trusts in all circumstances.

Determination	Factors underlying the recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
The element is not in place.	No accounting obligation is imposed under Monegasque legislation on non-trading partnerships or companies that are not deemed traders under the Commercial Code. And yet 80% of Monegasque partnerships fall into this category.	Monaco should ensure that reliable accounting records be kept for all relevant entities and arrangements that may be created in Monaco, among which, *inter alia*, are trusts, foundations and non-trading partnerships, and these records should be accessible for at least five years, in compliance with the terms of reference.
	Monegasque legislation imposes no bookkeeping or record-keeping obligations on foreign-law trusts established in or transferred to Monaco.	
	Monegasque legislation imposes no requirements as to form and makes no reference to an international accounting standard in respect of the accounting records to be kept and supplied by foundations.	
Banking information should be available for all account holders. *(ToR A.3)*		
The element is in place.		
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 element 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 element is in place, but certain aspects of the legal implementation of the element need improvement.	The prior notification procedure does not allow for any exception and therefore applies to any incoming requests sent by Monaco's partners, with the exception of the ones sent by France.	Monaco should examine the conditions under which the new notification procedure that applies in Monaco is compatible with an effective exchange of information.

Determination	Factors underlying the recommendations	Recommendations
Information exchange mechanisms should provide for effective exchange of information. *(ToR C.1)*		
The element is in place.		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The network of treaties containing provisions regarding the exchange of information does not currently cover all of those jurisdictions who have indicated that they would like to enter into such a relationship with the Principality.	Monaco should enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it, including in particular with Italy.
	No priority has been given in Monaco's negotiating policy to the rapid signing of information exchange agreements with these partners.	Monaco must ensure that its negotiating policy and the priorities set internally are such that it can obtain, as rapidly as possible, a network of information exchange mechanisms which covers all relevant partners.
The information exchange mechanisms of jurisdictions should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
The element is in place.		
Information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review		

Annex 1: Jurisdiction's Response to the Supplementary Review[4]

After reading the final report adopted by the PRG, in Paris, and following the discussion session and the second reading that took place on 19 and 22 September, Monaco would like to make some clarifications.

- First of all, Monaco wishes to confirm its position as expressed in Bermuda, which is not to refuse to negotiate TIEAs, but to have a preference for DTAs, particularly with countries that it has or wishes to develop of substantial economic or social relationships with, including of course with its neighboring states, without excluding TIEAs.

  For example, when signing a TIEA, negotiation of a DTA may be further agreed, at a date fixed by mutual agreement, if this would be possible.

  Without saying that especially for DTAs, they could be negotiated and adjusted to fairly take into account Monaco's and its counterpart's specific tax matters, based on DTAs concluded by major countries with other jurisdictions with a profile comparable to that of the Principality.

- Concerning the fundamental question of choosing a TIEA or DTA, Monaco cannot help but notice, with perplexity, that it appears that some countries give themselves the right to determine their international tax policy between DTAs and TIEAs, possibility that is not recognised to other countries, especially the smaller ones.

  This could be in contradiction with the principle of equal foorting between jurisdictions once again confirmed in a meaningful way in the OECD draft report to the G20.

- In the same way, as regards freedom that some countries can take against smallers, if the Principality is not listed on any blacklist maintained by a country with which a bilateral agreement has entered into force, the Global Forum should, in our view, resolve the delicate issue of the incompatibility of signing of an agreement with registration or maintenance on the blacklist held by this country.

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

Otherwise, this would also be contrary to the work of the Global Forum as part of the evolving relationship of trust and cooperation between states, which is one of the reasons for the OECD. In this regard, if one cannot help but mention the paradox of a country that, after the signing of an agreement even before its ratification, scored the other signatory on its blacklist, it can evoke the positive example of Spain that has been clearly taking the position that this type of collaborative agreement will restore full confidence between the Contracting States and, therefore, the output from its blacklist.

- These general considerations in mind, Monaco wishes to emphasize that the measures adopted in response to supplementary report – establish following the decision of the peer review group of the OECD to launch a follow up procedure as provided by paragraph 59 of the methodology – demonstrate, if proof were needed, that the Principality continues to play the game to meet the standards set out by the OECD.

  Proofs are the two Sovereign Orders published in the Journal de Monaco on 16 September 2011, the bill tabled by the National Council on the same day and the resumption of negotiations with several countries with the aim of extending the network of exchange of information.

- As a result, compared to the phase 1 assessment whose report was approved in September 2010 in Singapore, we can noted than after receiving the explanation of Monaco on the draft supplementary report, the assessors have rectified the determination for element C2, that had been downgraded, and improved the rating of element C1 by removing the recommendation.

- As for other elements, in less than a month, Monaco has provided concrete and exhaustive answers to each of them, taking the decision to amend the provisions of its laws to fully meet the recommendations made by the OECD, through a bill and the two Sovereign Orders mentioned above.

  However, these substantial amendments have only partly been retained in the supplementary report as the Sovereign Orders were issued on 16 September 2011, after the cut off date of 9 September and the bill tabled by the National Council will only be considered after its vote and its entry into force.

- In accordance with the procedure, from the enactment of this text, Monaco will inform the Global Forum Secretariat to request a supplementary report considering all these provisions that are likely to result in the deletion of the recommendations made under the element A1 and the change of the determination of element A2 from “not in place” to “element in place.”

- Even if the above procedure of the Global Forum has not considered two orders published on 16 September 2011, the fact remains that since then, Monaco now mets, "de jure and de facto, " the conditions:
  - For the identification of all natural persons beneficiary of trust property and those who control assets of a trust (A1) and
  - For record keeping requirements for foundations and mandatory retention at the head office for at least five years (A2).
- Similarly, Bill No. 888 "on miscellaneous measures for updating the legislation on limited companies, partnerships under civil law, trusts and foundations" tabled by the National Council on 16 September 2011 and whose vote is scheduled at the end of November 2011 aims at:
  - Permanently abolishing the bearer securities in listed companies by providing that securities can only be registered for all companies, listed and unlisted, without exception, and by providing appropriate powers to the Department of Finance, to require a listed company to proceed, through the central depository, to the identification of all shareholders and make the results of the identification process (A1) available;
  - registering any transfers of shares on a share register, by giving relevant Services of the Department of Finance the authority to consult at any time, these records to be kept up to date (A1)
  - making bookkeeping and the underlying documentation compulsory for partnerships under civil law and foreign trusts established or transferred to Monaco, and a mandatory retention of such accounts at the registered office for a period of at least five years with significant penalties for failure to comply (A2), and
  - Amending criminal sanction provided for foundations to make it more deterrent and identical to that proposed for partnerships under civil law and trusts (A2).

* * * *

Between August 18, 2011, date on which the draft report was sent out and additional discussion and rereading occurred on 19 and 21 September in Paris, in just one month, significant developments have occurred, such as to meet the recommendations expressed in the supplementary report.

Based on the efforts they do so in this very short period of time, it would seem fair and appropriate – as a result of the aforementioned request to be made by Monaco after the promulgation of the Act – that a new supplementary report will further be established to consider all of these steps, now concrete, by removing the recommendations set out again for Element A1 and changing the rating of element A2 to "element is in place".

Annex 2: List of all Exchange-of-Information Mechanisms in Force

	Jurisdiction	Type of agreement	Date of signature	Date in force
1	France	Double taxation convention (DTC)	18 May 1963	1 September1963
2	Belgium	Taxation information exchange agreement (TIEA)	15 July 2009	
3	Luxemburg	DTC	27 July 2009	3 May 2010
4	Samoa	TIEA	7 September 2009	
5	United States	TIEA	8 September 2009	23 March 2010
6	Austria	TIEA	15 September 2009	1 August 2010
7	Qatar	DTC	17 September 2009	15 June 2010
8	St. Kitts and Nevis	DTC	17 September 2009	
9	Andorra	TIEA	18 September 2009	16 December 2010
10	The Bahamas	TIEA	18 September 2009	18 February 2011
11	Liechtenstein	TIEA	21 September 2009	14 July 2010
12	San Marino	TIEA	29 September 2009	3 May 2010
13	Argentina	TIEA	30 October 2009	7 August 2010
14	Seychelles	DTC	4 January 2010	
15	The Netherlands	TIEA	11 January 2010	1 December 2011
16	Australia	TIEA	1 April 2010	13 January 2011
17	Denmark	TIEA	23 June 2010	6 October 2010
18	Finland	TIEA	23 June 2010	20 November 2010
19	Greenland	TIEA	23 June 2010	
20	Faroe Islands	TIEA	23 June 2010	7 May 2011
21	Iceland	TIEA	23 June 2010	23 February 2011
22	Norway	TIEA	23 June 2010	30 January 2011
23	Sweden	TIEA	23 June 2010	26 December 2010
24	Germany	TIEA	27 July 2010	

Annex 3: List of all Laws, Regulations and Other Relevant Material

Loi n° 408 du 20 janvier 1945 complétant l'ordonnance sur les sociétés anonymes et en commandite par actions, du 5 mars 1895, notamment en ce qui concerne la nomination, les attributions et la responsabilité des commissaires (y compris le formulaire Attestation Normée). Ordonnance souveraine n°2.693 du 23 mars 2010 relative à la coopération internationale en matière fiscale.