

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information
on Request

MONACO

2018 (Second Round)



Global Forum on Transparency and Exchange of Information for Tax Purposes: Monaco 2018 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE
OF INFORMATION ON REQUEST

March 2018
(reflecting the legal and regulatory framework
as at January 2018)

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries or those of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

This document, as well as any data and any map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Please cite this publication as:

OECD (2018), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Monaco 2018 (Second Round): Peer Review Report on the Exchange of Information on Request*, OECD Publishing, Paris.
<http://dx.doi.org/10.1787/9789264291157-en>

ISBN 978-92-64-29114-0 (print)
ISBN 978-92-64-29115-7 (PDF)

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

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Photo credits: Cover © Pykha, inspired by an image © Syda Productions/Shutterstock.com.

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

© OECD 2018

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of the source and copyright owner(s) is given. All requests for public or commercial use and translation rights should be submitted to rights@oecd.org. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at info@copyright.com or the Centre français d'exploitation du droit de copie (CFC) at contact@cfcopies.com.

Table of contents

Reader’s guide	5
Acronyms and abbreviations	9
Executive summary	13
Overview of Monaco	19
Part A: Availability of information	23
A.1. Information on legal owners, beneficial owners and identity	23
A.2. Accounting records	42
A.3. Banking information	49
Part B: Access to information	53
B.1. Competent authority’s powers to obtain and provide information	53
B.2. Notification requirements and rights and safeguards	60
Part C: Exchanging information	65
C.1. Exchange of information mechanisms	65
C.2. Mechanisms for exchanging information with all relevant partners	72
C.3. Confidentiality	73
C.4. Rights and safeguards of taxpayers and third parties	77
C.5. Timeliness of response to requests for information	77
Annex 1: List of in-text recommendations	87
Annex 2: List of EOI mechanisms in Monaco	88
Annex 3: Methodology for the review	91
Annex 4: Jurisdiction’s response to the report	98

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 145 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

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>.

Acronyms and abbreviations

General terms

2010 Terms of Reference	Terms of Reference for the EOIR, as approved by the Global Forum in 2010.
2016 note on assessment criteria	Note on assessment criteria, as approved by the Global Forum of 29-30 October 2015.
2016 Methodology	2016 Methodology for Peer Reviews and Non-member Reviews, as approved by the Global Forum of 29 and 30 October 2015.
2016 Terms of Reference	Terms of Reference for the EOIR, as approved by the Global Forum on 29 and 30 October 2015.
AEOI	Automatic exchange of information
AML	Anti-money laundering
AML/FT	Anti-money laundering and terrorist financing
CDD	Customer due diligence
CRS	Common Reporting Standard
DTT	Double taxation treaty
EOIR	Exchange of information on request
EU	European Union
FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
Multilateral Convention (MAAC)	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010

PRG	Global Forum Peer Review Group
TIEA	Tax Information Exchange Agreement
VAT	Value-added tax

Terms specific to Monaco

AC	Commercial agent (agent commercial)
PTA	The French Prudential Control Authority (Autorité de Contrôle Prudentiel et de Résolution)
AR	Artisan
AM	Ministerial order
A.M.F.	Financial Markets Authority (Autorité des Marchés Financiers – French regulator)
CCAF	Financial Activities Supervisory Commission (Commission de Contrôle des Activités Financières)
C.C.I.N.	Monegasque Data Protection Authority (Commission de Contrôle des Informations Nominatives)
DFIN	Department of Finance and Economy (Département des Finances et de l'Economie)
DEE	Department for Economic Development (Direction de l'Expansion Economique)
DSF	Department of Tax Services (Direction des Services Fiscaux)
GED	Electronic Document Management
IMSEE	National Statistics Office (Institut national de la statistique et des études économiques)
I.S.B	Corporate Profit Tax (Impôt sur les Bénéfices)
AML/FT Law	Law No. 1.362 on Law No. 1.362 of 3 August 2009 on Money Laundering, Terrorism Financing and Corruption
N.I.S.	Statistical Identification Number (Numéro d'Identification Statistique)
AML/FT Order	Sovereign Order No. 2.318 of 3 August 2009 setting the conditions for the application of the AML/FT law

SO	Sovereign Order (Ordonnance Souveraine)
PSSI	Information Systems Security Policy (Politique de Sécurité des Systèmes d'Information)
PP	Sole trader business (Activité en nom personnel)
PR	Profession
RCI	Directory of Commerce and Industry (Répertoire du Commerce et de l'Industrie)
SCADA	Central Records Office (Service Central des Archives et de la Documentation Administrative)
SAM	Monegasque joint stock company (Société anonyme monégasque)
SARL	Limited liability company (Société à responsabilité limitée)
SCA	Partnership limited by shares (Société en commandite par actions)
SCS	Limited partnership (Société en commandite simple)
SNC	Ordinary trading partnership (Société en nom collectif)
SICCFIN	The Financial Circuits Supervisory and Monitoring Service (Service d'Information et de Contrôle sur les Circuits Financiers – the Monegasque FIU)

Executive summary

1. This report analyses the legal implementation of the exchange of information on request standard (EOIR standard) by Monaco, the implementation of the legal system in practice, as well as the exchange of information on request practice throughout the period from 1 October 2013 to 30 September 2016 based on the 2016 Terms of Reference. Monaco’s first round of evaluations was in four phases: the phase 1 review in 2010, the first supplementary review in 2011 and the second supplementary review in 2012, assessed Monaco’s legal and regulatory framework for the exchange of information, while Phase 2, carried out in 2012 (2013 Review), looked at the practical implementation of that framework, as well as any changes made to the legal and regulatory framework since the second supplementary review. The 2013 Report concluded that Monaco was largely compliant.

2. This report notes many improvements in the legal framework and in practice, which has the result of conforming Monaco to the EOIR standard for all elements, except Element A.1 where improvements are still needed. This report concludes that Monaco is **Compliant** with the EOIR standard.

3. The following table compares the results of the most recent peer review reports for Monaco:

Comparison between the ratings in the 2013 Report and the current EOIR review (2018)

Element	2013 Report	EOIR Report (2018)
A.1. Availability of identity and ownership information	Compliant	Largely Compliant
A.2. Availability of accounting information	Largely Compliant	Compliant
A.3. Availability of banking information	Compliant	Compliant
B.1. Access to information	Compliant	Compliant
B.2. Rights and safeguards	Partially Compliant	Compliant
C.1. EOIR mechanisms	Compliant	Compliant
C.2. Network of EOIR mechanisms	Largely Compliant	Compliant
C.3. Confidentiality	Compliant	Compliant
C.4. Rights and safeguards	Compliant	Compliant
C.5. Quality and timeliness of responses	Largely Compliant	Compliant
Overall rating	Largely Compliant	Compliant

Progress made since the last review

4. The 2013 Report issued recommendations on the availability of accounting records (element A.2), the absence of exceptions to the prior notification of the person concerned by the information request (element B.2), on Monaco's networks of information exchange mechanisms (element C.2) and information exchange in terms of quality and practice (element C.5).

5. In terms of Element A.2, Monaco received a monitoring recommendation regarding accounting record-keeping requirements by non-trading partnerships and trusts, as these were recent and in 2013 Monaco had limited experience in this area. Since 2013, Monaco has carried out constant monitoring to ensure the availability of accounting records of non-trading partnerships and trusts. The recommendation is addressed.

6. Element B.2 on the rights and safeguards of taxpayers contained two recommendations with which Monaco has complied:

- The first on the absence of exceptions to the prior notification of the person concerned by the EOI request. In early 2013, Monaco amended the law to include exceptions to the prior notification in compliance with the standard, so that these exceptions were available throughout the assessment period.
- The second contained a recommendation on monitoring, as the procedure for collecting information to respond to requests under an EOI agreement from a country other than France was recent. Monaco responded to 46 EOI requests from partners other than France, in a timely manner and without difficulty, showing that the monitoring recommendation is no longer necessary.

7. Element C.2 included a recommendation that Monaco should enter into information exchange agreements (irrespective of their form) with all relevant partners, that is, the partners interested in concluding an information exchange agreement with Monaco, including Italy, Poland and the United Kingdom. Since 2013, Monaco has signed an EOI agreement with Italy and the United Kingdom but above all signed and ratified the Convention on Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention) thereby considerably extending its EOI network to include over 110 jurisdictions. Consequently, the recommendation contained in the 2013 Report is no longer relevant.

8. With respect to Element C5, the 2013 Report recommended monitoring the new procedure for requests received from partners other than France, and more specifically monitoring resources and procedures to ensure that the competent authority continues to provide responses within an appropriate time-scale. During the period under review, Monaco received 329 EOI

requests. Monaco's response time statistics are fully in line with the standard. Indeed, Monaco responded within 90 days in 96% of cases, within 180 days in 3% of cases and within 12 months in less than 1% of cases. One request was withdrawn by the requesting jurisdiction, the equivalent of 0.3% of requests. Monaco's partners expressed their satisfaction with regards the quality of responses sent by Monaco. As such, the monitoring recommendation in the 2013 Report has been removed.

Main recommendation(s)

9. The main recommendations of this new review relate to the obligations introduced under the 2016 Terms of Reference in respect of the availability of information on beneficial owners of relevant legal entities and arrangements.

10. With respect Element A.1., a minor legal gap has been noted, such that the recommendation remains in the text. For partnerships, information on beneficial owners is available from notaries when any legal entity is constituted in Monaco. However, such information is not kept up to date; except if there is a change to the articles of association, which must be made by a notary. This information is also available when partnerships have a bank account in Monaco. There is a minor deficiency in Monaco's legal framework in relation to the updating of information on the beneficial owners of partnerships after they have been constituted before a notary, when these do not have a bank account in Monaco. It is recommended that Monaco ensures that information on the beneficial owners of trading partnerships is available in all cases.

11. Once again in respect of Element A.1, the report also introduced a recommendation on the monitoring of certain service-providers who are in possession of information on the beneficial owners of legal entities and arrangements. Although the SICCFIN has increased its audits of legal professions during the review period, on-site visits to certified accountants (*experts comptables*) and statutory auditors (*commissaire aux comptes*) who may be in possession of information on the beneficial owners of SAMs, only began at the end of the review period. Regarding the supervision of the three notaries exercising in Monaco during and after the peer review period, no onsite visit has been carried out by the services of the General Prosecutor (*Procureur Général*) who is in charge of the supervision of the officers of the Law (lawyers, bailiffs, and notaries) It is recommended that Monaco strengthens its monitoring of chartered accountants and notaries who are in possession of information on the beneficial owners of legal entities and arrangements in Monaco.

Overall rating

12. During the peer review period (1 October 2013 until 30 September 2016), Monaco received 329 EOI requests. The main EOI partner of Monaco during the period remains France (more than 85% of the EOI requests). EOI diversified in comparison to the previous peer review period with other EOI partners, being European or non-European.

13. Monaco has significantly improved its performance in the area of the exchange of information and has made changes to its legislation to comply with the recommendations of the 2013 Report. However, improvements are needed in relation to the new criteria for the availability of information on beneficial owners for Element A.1. Overall, in terms of its compliance with EOIR standards, Monaco receives a **Compliant** rating.

14. The Report was approved by the Peer Review Group at its meeting on 1 March 2018 and was adopted by the Global Forum on 30 March 2018. A follow-up report on the measures taken by Monaco to implement the recommendations made by the Peer Review Group should be produced by 30 June 2019, in accordance with the procedures adopted in the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
The legal and regulatory framework is in place .	The updating of information on the beneficial owners of partnerships is not ensured after they have been constituted before a notary, when these do not have a bank account in Monaco or have not engaged a certified accountant.	It is recommended that Monaco ensures that information on the beneficial owners of partnerships is available in all cases.

Determination	Factors underlying recommendations	Recommendations
EOIR rating: Largely Compliant	Although the SICCFIN has increased its audits of legal professions during the review period, on-site visits to certified accountants who may be in possession of information on the beneficial owners of SAMs, only began at the end of the review period. Regarding the supervision of the three notaries exercising in Monaco during and after the peer review period, no onsite visit has been carried out by the services of the General Prosecutor (<i>Procureur Général</i>) who is in charge of the supervision of the officers of the Law (lawyers, bailiffs, and notaries)	It is recommended that Monaco strengthens its monitoring of certified accountants, statutory auditors and notaries who are in possession of information on the beneficial owners of legal entities and arrangements in Monaco.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The legal and regulatory framework is in place .		
EOIR rating: Compliant		
Banking information and beneficial ownership information should be available for all account-holders (<i>ToR A.3</i>)		
The legal and regulatory framework is in place .		
EOIR rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>)		
The legal and regulatory framework is in place .		
EOIR rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)		
The legal and regulatory framework is in place .		
EOIR rating: Compliant		
Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)		
The legal and regulatory framework is in place .		
EOIR rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
The legal and regulatory framework is in place .		
EOIR rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
The legal and regulatory framework is in place .		
EOIR rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
The legal and regulatory framework is in place .		
EOIR rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner (<i>ToR C.5</i>)		
Legal and regulatory framework determination:	This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.	
EOIR rating: Compliant		

Overview of Monaco

15. This overview of Monaco offers important details on the legal system, tax regime, financial sector, recent developments in terms of anti-money laundering and terrorist financing and recent changes in Monaco.

Legal system

16. Monaco is a sovereign and independent state, according to the general principles of international law; the Government is based on the principle of hereditary, constitutional monarchy. All public authorities exercise their powers in accordance with the provisions of the Constitution and laws. The Monegasque legal system is based on civil law.

17. Executive power is exercised, under the authority of the Prince, by a Minister of State, assisted by a Government Council comprising of five Government Ministers, who are only accountable to the Prince for the Principality's administration. Each Government Minister is responsible for one of the ministries.

18. Legislative initiative lies both with the Prince and the National Council (Parliament) and, in accordance with article 66 of the Constitution; the law expresses the “agreement of wills of both the Prince and the National Council”.

19. The court system of the Principality consists of a Supreme Court and ordinary law courts. The former rules on whether laws are unconstitutional and on any abuses of power in administrative decisions, whereas the latter, i.e. the Court of First Instance, the Court of Appeal and the Court of Revision, rule on all other disputes.

20. As the Principality operates on the rule of law, the principle of the hierarchy of norms applies, in the following order: the Constitution; International treaties and agreements; Laws, Sovereign Orders; Orders issued by the Minister of State and the Director of Legal Services; Documents issued by the communal authority; and Other administrative decisions.

Tax system

21. The Monegasque tax system is based mainly on V.A.T., Corporate Profit Tax and transfer taxes.

22. The profit tax (ISB) juxtaposes to the principle of territoriality (companies operating in Monaco) two criteria drawn from the nature of the activity and the location of operations. Businesses (natural and legal persons) operating in Monaco engaging in an industrial or commercial activity and deriving more than 25 % of their turnover outside of Monaco are subject to **profit tax (ISB)** at a rate of 33.33%. Capital gains from the ongoing sale of operating fixed assets elements can, under certain conditions, benefit from an exemption on condition of reinvestment. Businesses established in Monaco with over 75% of their turnover in Monaco are not subject to corporate profit tax.

23. Transfer taxes are levied on goods and assets located within the Principality or having their base there, irrespective of the domicile, residence or nationality of the deceased or the donor.

Financial services sector

24. The Monegasque financial centre includes, in particular, banks, financial activities firms and mutual fund management companies. Aggregate turnover for the banking sector (including insurance) in 2015 amounted to EUR 949 million (897 million in 2014) and the banking sector accounts for 16.8% of Monegasque GDP.

25. At year-end 2016, the banking sector comprised 36 entities, all of which were subsidiaries or branches of European banks (European Union, Switzerland and Andorra). Out of the 36 entities in the banking sector, only 33 are banks. The three remaining entities are branches of French financial companies (companies specialised in short term loans to consumers). French law applies to all banks, including those incorporated in a jurisdiction other than France. As of 31 December 2016, the banking sector was composed of 18 banks incorporated in Monaco, 3 branches of non-French banks, 12 branches of French banks and 3 branches of French financial companies. At 31 December 2016, assets kept in Monaco totalled EUR 115.1 billion. Outstanding loans totalled EUR 22.8 billion. In addition, there were some 54 financial activities firms in the Principality at 31 December 2016, as well as 58 Monegasque funds (there are no investment companies with variable capital in Monaco) whose assets on that same date totalled EUR 4.26 billion. Other than managing Monegasque funds, financial activities firms also provided consultancy, order receiving and transmission, contract management

and foreign fund management services, managing assets of approximately EUR 25.9 billion at 31 December 2016.

26. Over the review period, the Monegasque banking sector has evolved as follows:

	2012	2013	2014	2015	As at 31/12/2016
Deposits*	32	32.9	36	40.1	42.8
Securities*	63.8	68.8	72.4	71.9	72.3
Total assets*	95.8	101.8	108.4	112	115.1
Banks and financial companies	39	38	38	37	36

* In billions.

27. The creation of a bank in Principality of Monaco requires:

- A licence granted by the French Prudential Control Authority (ACPR), the French banking regulator, which first seeks agreement of the Government of the Principality. A representative of the Monegasque government attends meetings of the ACPR college to review Monegasque matters.
- An administrative authorisation issued by the Minister of State.

28. In the case of financial activities (portfolio management, mutual fund management, receiving and transmitting orders and advising on those activities), a licence issued by the Financial Activities Supervisory Commission (CCAF), the Monegasque regulator, is necessary as well as an administrative authorisation issued by the Minister of State.

29. In terms of AML/FT monitoring, the financial sector as a whole is overseen by the SICCFIN, which validates the procedures implemented by the entities within the sector at the time of their incorporation before carrying out desk-based audits and on-site visits.

FATF Assessment

30. Monaco is assessed by the Council of Europe's MONEYVAL committee. Monaco's latest assessment was adopted at the 42nd plenary meeting of the MONEYVAL committee and the report was published in June 2014. On the availability of beneficial ownership information, the Moneyval report noted some shortcomings in the identification of beneficial ownership in practice, although the legislation in force is broadly in line with the FATF standard. The report also found that the degree of practical implementation of customer identification requirements by financial institutions was satisfactory. In terms of the retention of identification data and documents, the report

noted that the few weaknesses identified in the previous assessment were corrected but expressed some reservations about effectiveness. As for the designated non-financial businesses and professions, the legal framework is in line with the FATF standard, but the Report has identified some gaps in the supervision of certain professions. In conclusion, with some progress to be made in terms of effectiveness, the Moneyval report was generally positive regarding the legal framework implementing the relevant recommendations with respect to the availability of beneficial ownership information.

Recent developments

31. The draft Law strengthening the Anti-Money Laundering, terrorist financing and Corruption Mechanism was submitted to the National Council on 9 November 2017, in order to amend the existing Law and to add to the necessary elements to meet new international standards. This project transposes into Monegasque domestic law the content of the fourth European anti-money laundering directive 2015/849, which notably provides for the extension of the list of AML-regulated professionals, a definition of “beneficial owner”, but also the creation of a beneficial ownership register for both legal persons and trusts. The creation of a register of trusts requires amending the Trusts Act No. 214 of 27 February 1936. In addition, with a view to strengthening the mechanisms against terrorist financing, additional provisions must be inserted in Laws No. 56 of 29 July 1922 on foundations, as amended, and No. 1.355 of 23 December 2008 on associations and federations of associations. The provisions detail additional book-keeping obligations for those types of entities.

Part A: Availability of information

32. Sections A.1, A.2 and A.3 assess the availability of ownership and identity information for all relevant entities and arrangements, as well as the availability of accounting and banking information.

A.1. Information on legal owners, beneficial owners and identity

Jurisdictions must ensure that information on identity, legal owners and beneficial owners of all relevant entities and arrangements is available to their competent authorities.

33. The 2013 Report concluded that information on the legal ownership of joint-stock companies, partnerships, trusts and foundations were available in Monaco in accordance with obligations under commercial, tax and AML/FT laws. The monitoring of the implementation of these obligations was deemed to be adequate and Monaco was able to respond to all EOI requests on legal ownership during the 2009-11 review period. Legislative and practical compliance in terms of legal ownership continued throughout the new review period.

34. In Monaco, information on beneficial owners is available through the AML/FT obligations, which apply to financial institutions and all relevant service providers for the purposes of exchanging tax information. More specifically, information on beneficial owners is available:

- **From Monegasque financial institutions** where joint-stock companies, partnerships, trusts and foundations have a bank account with a financial institution in Monaco. According to Article 35-3 of the Commercial Code, SARLs must provide evidence of a bank account opened in their name with a Monegasque bank prior to registering in the RCI. This bank account obligation is monitored during the checks carried out by the DEE on SARLs.
- **From notaries** who are required to identify their clients and beneficial owners. Information on the beneficial owners of SAMs and SCAs is available from notaries at the time of constitution. In addition, the transfer and constitution of trusts from outside Monaco must

be via a notarised deed drawn up in Monaco. This source of information does not provide for updates to the information unless the client interacts with the notary subsequently.

- **From trustees** in the case of foreign trusts constituted in or transferred to Monaco. Monegasque trustees are subject to AML/FT obligations.
- **From certified auditors and certified accountants** in the case of SAMs and SCAs, as these must have their annual accounts audited by an official auditor or a statutory auditor who is also required to identify their clients and beneficial owners. Under their due diligence obligations, auditors must provide up-to-date information on the beneficial owners of their clients.

35. For partnerships, information on beneficial owners is available from notaries at the time of a legal entity's constitution in Monaco. However, such information is not kept up to date. This information is also available when partnerships have a bank account in Monaco. It is recommended that Monaco ensures that information on the beneficial owners of partnerships is available in all cases.

36. The report also introduced a recommendation on the monitoring of certain service-providers who are in possession of information on the beneficial owners of legal entities and arrangements. Although the SICCFIN has increased its audits of legal professions during the review period, on-site visits to certified accountants who may be in possession of information on the beneficial owners of SAMs, only began at the end of the review period. Regarding the supervision of the three notaries exercising in Monaco during and after the peer review period, no onsite visit has been carried out by the services of the General Prosecutor (*Procureur Général*) who is in charge of the supervision of the officers of the Law (lawyers, bailiffs, and notaries) It is recommended that Monaco strengthens its monitoring of certified accountants, statutory auditors and notaries who are in possession of information on the beneficial owners of legal entities and arrangements in Monaco.

37. Over the current peer review period (1 October 2013-30 September 2016), Monaco received 329 requests, of which only 38 related to ownership information. Peers were satisfied with the information received. Monaco was expressly asked to provide information on beneficial owners for 15 EOI requests and this information was provided to the satisfaction of the requesting peers. These requests – none of which came from Monaco's main EOI partner – related to beneficial ownership in accordance to the definition of the 2016 Terms of Reference.

38. The updated table of conclusions and ratings is as follows:

Legal and regulatory framework		
	Underlying factor	Recommendations
Deficiencies identified in the implementation of the legal and regulatory framework	The updating of information on the beneficial owners of partnerships is not ensured after they have been constituted before a notary, when these do not have a bank account in Monaco or have not engaged a certified accountant.	It is recommended that Monaco ensures that information on the beneficial owners of partnerships is available in all cases.
Conclusion: The element is in place.		
Practical implementation of the standard		
	Underlying factor	Recommendations
Deficiencies identified in the practical implementation of the EOIR	Although the SICCFIN has increased its audits of legal professions during the review period, on-site visits to certified accountants who may be in possession of information on the beneficial owners of SAMs, only began at the end of the review period. Regarding the supervision of the three notaries exercising in Monaco during and after the peer review period, no onsite visit has been carried out by the services of the General Prosecutor (<i>Procureur Général</i>) who is in charge of the supervision of the officers of the Law (lawyers, bailiffs, and notaries)	It is recommended that Monaco strengthens its monitoring of certified accountants, statutory auditors and notaries who are in possession of information on the beneficial owners of legal entities and arrangements in Monaco.
Rating: Largely compliant		

A.1.1. Availability of information on the legal ownership and beneficial owners of companies

39. The 2013 Report concluded that all elements of Monaco's legislative framework and its practical application ensured the availability of information on the legal ownership of companies. As such, the 2013 Report concluded that the A.1 element was determined to be in place and rated Compliant with the standard.

40. Monegasque legislation provides for three types of joint-stock companies:

- Monegasque joint stock companies (*la société anonyme monégasque – SAM*). As of 30 September 2016, there were 1 145 SAMs registered in the Directory of Commerce and Industry and 85 non-trading SAMs

registered in the Special Directory of Non-Trading Companies. The latter are SAMs of a particular type but remain subject to the same rules as the SAMs in terms of shareholder identification obligations.

- Partnerships limited by shares (*la société en commandite par actions – SCA*). As of 30 September 2016, there was 1 SCA registered in the RCI.
- Private limited liability companies (*la société à responsabilité limitée – SARL*). As of 30 September 2016, there were 2 013 SARLs registered in the RCI.

41. These companies and the Monegasque branches of foreign companies wishing to do business in Monaco require authorisation from the Minister of State, the conditions of which are applied strictly. On 30 September 2016, there were 216 branches of foreign companies established in Monaco. The branches of foreign companies are subject to the same requirements that apply to companies established in Monaco, including updates on legal ownership information. This legislation always requires a physical presence in offices and employees. It is therefore impossible to create a “letterbox” entity in Monaco, as companies that have no physical premises (headquarters) or do not have activities for a period of 6 months without having a legitimate reason risk having their authorisation revoked. Constant audits of companies established in Monaco, particularly checking that they are actual businesses, means it is no longer possible for shelf companies to exist in Monaco. Moreover, holding companies are prohibited in Monaco. Consequently, in all cases, companies established in Monaco are operational.

Requirements for identity and ownership information

42. As described in Section A.1 of the 2013 Report (see Report 2013, paragraphs 61 to 109), requirements on companies in relation to legal ownership and identity mainly fall under commercial and tax law. The following table¹ summarises legal record-keeping requirements of companies in terms of legal ownership.

-
1. The table sets out each type of entity and whether applicable legislation requires availability of information for “all” entities, “certain” entities or “none” of the entities. “All” in this context means that each constituted entity of this type must retain ownership information for all its owners (also in the case of bearer shares being issued) and that there are appropriate sanctions and retention periods. “Partially” in this context signifies that an entity must retain information with certain conditions. Please note that certain requests cover several categories of information.

Legislation governing information on the legal ownership of companies

Type	Corporate law	AML/FT law
SAM	All	Some
SCA	All	Some
SARL	All	Some
Foreign companies (subsidiaries)	All	Some

Obligations under company law

43. Information about legal ownership is essentially available from the companies themselves in the share register. The DEE’s checks in relation to this obligation show adequate monitoring on the part of the DEE to ensure the availability of information on the legal ownership of companies. Moreover, certain information on legal ownership is available from the RCI and DEE, during the lifetime of the companies.

Information available from the RCI and DEE

44. The process of setting up a company in Monaco is heavily regulated and it is comprised of several stages during which information on the legal ownership of companies is available:

- **Constitution of SAMs and SCAs before a notary:** In these instances, notaries always verify the identity of shareholders and beneficial owners (see A.1.1 availability of information on beneficial owners) in accordance with antimoney laundering requirements that apply in Monaco.
- **Administrative authorisation to do business:** This prior authorisation is necessary in order to register a company in the RCI. To issue the authorisation to do business, one of the DEE’s requirements is the disclosure of the identity of the legal owners (see paragraphs 69 to 77 of the 2013 Report). This information is not regularly updated after this process. The authorisation process is very meticulous and aims at ensuring the morality and reputation of the future shareholders and their competences, especially in sensitive sectors. The “morality and reputation” of shareholders is established through a clean certificate of criminal record and a police investigation that confirms this “morality and reputation”. In practice the analysis and the answer are always completed within the three-month time-frame. To perform its analysis, the DEE asks the Monegasque police to carry out an investigation into the “morality” of the persons implicated in the commercial activity (criminal record check).

- **Registration in the RCI.** Within two months of the administrative authorisation being issued, legal entities, including the subsidiaries of foreign companies, must register in the RCI or the Directory of Non-Trading Partnerships if they are non-trading. Only the identity of partners holding unlimited personal liability for company debts and partners or third parties invested with management or administrative power must be registered. The Department of Economic Development keeps information on these partners over the entire lifetime of companies and for thirty years after their removal from the Directory of commerce and industry (declaration of retention of nominative data approved by the *Commission de Contrôle des Informations Nominatives* during the implementation of the automated processing established pursuant to Law No. 1.165 of 23 December 1993). The 30-year retention period therefore also applies to companies that ceased to exist.
- **Subsequent changes.** All other changes to the articles of incorporation of SAMs and SCAs are subject to prior authorisation. However, they do not have to be registered with the RCI. Modifications to the articles of association of SARLs do not require a preliminary authorisation, except when it concerns the management of the SARL, a new shareholder, the modification of the object or the transfer of the registered office of the SARL (which is very rare in practice). The new shareholders of the SARLs must register with the DEE.

Information kept by companies

45. All shares issued by SAMs and SCAs must be entered in a share register. All transfers must be made through a transfer document and entered in the share register within one month of transfer. The transfer document must detail the identity and address of both transferor and transferee. All registers and transfer documents must be kept at the company's headquarters and be available to the DEE at any time. Upon verification (during tax audits or an investigation conducted by the business auditing division of the DEE), if the information is not kept at the headquarters sanctions will be applied. The Monegasque authorities have confirmed that, when requested, ownership information is provided by companies within a 90-day period in all cases. Corporate officers and the administrators of civil companies remain responsible for the maintenance of the records including the shareholders register for 10 and 5 years respectively, whether or not the company has ceased its activity or been liquidated.

46. In practice, since 2014, the business auditing division of the Department for Economic Development has audited the share registers of SAMs and SCAs. These audits are carried out on both types of legal entities. No SCA existed in 2014 and 2015 but one was incorporated in 2016, and was

controlled after the peer review period in 2017. Thus, these audits only took place on a sample of SAMs during the peer review period. These audits have started in 2014 and the statistics are as follows:

	Number of SAM registers audited
Year 2014	110
Year 2015	95
Year 2016	43

47. All of the SAMs audited complied with requirements on keeping a share register. As such, no sanctions were applied. These statistics show that around 10% of SAMs were audited in 2014, a figure which fell to under 5% in 2016. The Monegasque authorities explained that the reduction in the number of audits is due to the fact that no infringement of requirements on keeping a share register was recorded in 2014 and 2015. This trend continued in 2016. Considering that no infringement was identified in the 2014-16 period and that information on legal ownership has always been available to respond to information requests, the monitoring of these obligations appears to be adequate. Further, the control of the shareholder register is now systematically included during the controls carried out with each SAM and SCA.

48. The regular audits from the DEE concerning the verification of an actual physical activity (see paragraphs 86 and 87 of the 2013 Report) imply that the inactive or dormant companies cannot keep their authorisation to carry on business in Monaco where there is no activity for 6 months to 2 years depending on the type of companies. If they are inactive, they are brought before a Commission which decides whether to strike off the inactive company. The following statistics show the number of withdrawals of authorisations to do business for the period from 1 January 2013 to 30 September 2016.

	Companies brought before the Commission	Authorisation withdrawals
Year 2013	12	3
Year 2014	11	6
Year 2015	10	5
Year 2016 (until 30 September 2016)	12	4

Availability of legal ownership information in EOI practice

49. In practice, Monaco received 38 EOI requests on the legal ownership of companies and 15 requests on the identity of beneficial owners. The information was available in all cases, either from the tax administration

or from the company itself. The peers confirmed their satisfaction with the information received on the legal ownership of companies.

Availability of information on beneficial owners

50. According to the 2016 Terms of Reference, a new requirement of the EOIR standard involves making available information on the beneficial owners of companies. This availability is guaranteed by the application of Anti-Money Laundering and Terrorist Financing rules (AML/FT rules). All service providers relevant to the exchange of information on taxation and financial institutions are subject to identification requirements. Under company law and tax law, some beneficial ownership information is available where the direct shareholders are the beneficial owners. The following table summarises legal record-keeping requirements of companies in terms of beneficial ownership.

Legislation governing information on the beneficial ownership of companies

Type	Corporate law	AML/FT Law
SAM	Some	All
SCA	Some	All
SARL	Some	All
Foreign companies (subsidiaries)	Some	All

ALM/FT law requirements

51. Monegasque legislation on AML/FT is based on Law No. 1.362 of 3 August 2009 on Money Laundering, Terrorist Financing and Corruption (*Loi No. 1.362 relative à la lutte contre le blanchiment de capitaux, le financement du terrorisme et la corruption – AML/FT law*) and details of implementation are laid out in Sovereign Order No. 2.318 of 3 August 2009 (AML/FT Order). The AML/FT Order addresses questions of customer due diligence procedures and the organisation of monitoring functions.

Scope of AML/FT obligations

52. Under Monegasque legislation on AML/FT, several categories of professional are required to keep information on their beneficial owners and their clients.² Information on the beneficial owners of SAMs, SCAs and SARLs are available from at least one AML-obligated person:

- financial institutions for all SARLs (and for SAMs and SCA holding a bank account in Monaco). According to a specific requirement

2. Articles 1 and 2 of Law No. 1.362 of 3 August 2009.

under article 35-3 of the Commercial Code, all SARLs must open a bank account in their name with a Monegasque bank prior to registering in the RCI. This bank account obligation is monitored during the checks carried out by the DEE on SARLs.

- Certified accountant and Statutory auditors for all SAMs and SCAs. Their annual accounts must be certified by an official auditor.

53. Information is also available with notaries, but to a lesser extent as notaries do not necessarily have a continuous relationship with the companies which they assist for their incorporation. When a SAM or a SCA is constituted the notary intervention is mandatory, however it isn't an obligation for SARLs. This information is not kept up to date unless the company voluntarily has certain documents notarised.

54. The other AML-obligated professions cover all relevant professions for EOI, particularly in the insurance sectors, Trusts and Company Service Providers, tax and legal advisers, etc. notaries, bailiffs and chartered accountants (*experts comptables* and *comptables agréés*).

Customer identification and due diligence obligations

55. Designated businesses and professionals subject to AML/FT obligations are subject to the following:

- to identify and check the identity of customers and beneficial owners
- constant diligence, including reviews of all transactions and operations
- regular updating of records
- internal organisational measures (including designation of a person in charge of the fight against money laundering, terrorist financing and corruption)
- to report any suspicion of money laundering, terrorist financing or corruption.

56. Article 14 of the AML/FT Sovereign Order defines the beneficial owners of legal persons as:

- natural persons who ultimately possess or control, directly or indirectly, at least 25% of the shares or voting rights of the legal person; or
- natural persons who effectively exercise control over the capital or management of the legal person.

57. This is a broad definition and seems to cover aspects of the definition of the 2016 Terms of Reference. Moreover, article 3 of the AML/FT law

requires professionals to obtain a list of the directors of clients that are legal persons when carrying out identification procedures and subsequent updates.

58. The Order also offers further details on situations where ownership is divided between a bare owner and a usufructuary. In such cases, the 25%-threshold applies to the bare ownership and the usufruct if one or the other exceeds the threshold.

59. Under Article 13 of the AML/FT Order, professionals must take all reasonable measures to verify the identity of the beneficial owners. The identification obligation is wide-ranging as, “where the ownership of the client is exercised through a chain of ownership or any form of control other than directly, in addition to the individual economic beneficial owners, the professional must identify all of the persons who make up that chain”. Where the identity of beneficial owners cannot be verified, professionals are prohibited from establishing or continuing a business relationship with the client in question.

60. As such, the definition of beneficial owner seems to take into consideration all aspects of the definition in the Terms of Reference as it covers situations where control is exercised through an ownership chain or through indirect control and exercising control by means other than ownership (for example through personal connections with company directors or through the company’s finances).

61. The SICCFIN confirmed that during its on-site visits, auditors focus specifically on the means of determining the company’s beneficial owners. In particular, the SICCFIN confirmed that the 25% threshold should not be interpreted strictly by the professional and that, depending on the circumstances, persons possessing under 25% of the capital or voting rights should also be treated as beneficial owners provided that their shareholding affords them *de facto* control over the legal person.

Supervision by the SICCFIN

62. The SICCFIN indicated that supervision is operated through prevention operations with constant communication with the AML-obligated professionals and through auditing operations.

63. The SICCFIN’s key contact is either the professional themselves or one or more individuals designated by the professional as responsible for the implementation of the AML/FT law. The designation of a responsible person is compulsory when the professional has more than one employee. The AML/FT persons responsible are the SICCFIN’s contacts by law. Some establishments automatically designate one or more additional contacts to further strengthen the continuity of the mission assigned to them. Working in particular with the compliance team reporting to them, these persons responsible

must establish procedures for internal auditing, communication and the centralisation of information in order to oversee the effective implementation of customer due diligence obligations and economic background checks but also the implementation of operations based on a risk-based approach. Their tasks also include drawing up and sending suspicious transaction reports as well as responses to requests and questionnaires from the SICCFIN, drafting an annual report on AML/FT measures, training and awareness-raising for staff in these fields.

64. Desk-based audits rely on documents that designated businesses and professions subject to AML/FT obligations are required to send to the SICCFIN internal procedures, questionnaires and annual reports. The SICCFIN indicated that professionals are continuously audited:

- **Through the checking of internal procedures.** Upon becoming established in Monaco, the SICCFIN asks the professional to provide the name of one or more implementation managers within the establishment. The SICCFIN analyses internal AML/FT procedures. In 2016, the SICCFIN received 85 documents corresponding either to internal procedures for new professionals, or to changes in existing procedures sent by professionals already established. The Department sends its observations to the professional, who is required to modify existing procedures and send the amended version to the SICCFIN.
- **Through annual questionnaires.** Designated businesses and professionals are sent an annual questionnaire relating to, in particular, the activity, internal procedures, training, risk-based approach, the system of monitoring atypical operations and statistics for the previous calendar year. This information is a source of useful information for carrying out monitoring and setting up an annual programme of on-site visits by ranking them according to a risk-based approach. In general terms, the circulation of these questionnaires and resulting monitoring help to ensure constant preventative diligence.
- **Through the annual AML/FT report and an independent AML/FT report.** Designated businesses and professions must draw up or commission:
 - an AML/FT report and
 - an annual AML/FT evaluation report by a chartered accountant (*expert-comptable* or *comptable agréé*). In practice, professionals must submit these various regular reports to the SICCFIN within the first quarter of the year following the calendar year covered by the report.

65. On-site visits by SICCFIN agents are used to reinforce desk-based audits. Their aim is to check that AML/FT arrangements are in line with the

legal and regulatory obligations by which the professional is bound. They allow more in-depth investigations, particularly through the scrutiny of a sample of client and transaction files, according to the specific activity of the professional in question. This compliance check involves the formal analysis of internal procedures drawn up by the professional, but also the effectiveness of their implementation. This includes both know your client (KYC) and know your transaction (KYT) obligations. An in-depth analysis of the statistics is set out in paragraph 154. At the end of 2016, the banking sector had 36 entities, all subsidiaries or branches of European banks (see paragraph 25) and 36 trustees.

Number of audits carried out by SICCFIN	2013	2014	2015	2016
Banks and financial institutions	11	10	10	6
Portfolio management companies	11	17	12	7
C.S.P. Foreign asset management firms (<i>Sociétés de gestion de sociétés étrangères</i>)	10	16	12	1
Legal advisors	1	7	5	8
Trustees	1	-	-	-
Chartered accountants	-	-	-	3
Total	34	50	39	25

66. Although the SICCFIN has increased its audits of legal professions during the review period, on-site visits to certified accountants and statutory auditors who may be in possession of information on the beneficial owners of SAMs, only began at the end of the review period. Regarding the supervision of the three notaries exercising in Monaco during and after the peer review period, no onsite visit has been carried out by the services of the General Prosecutor (Procureur Général) who is in charge of the supervision of the officers of the Law (lawyers, bailiffs, and notaries). It is recommended that Monaco strengthens its monitoring of certified accountants, statutory auditors and notaries who are in possession of information on the beneficial owners of legal entities and arrangements in Monaco.

67. During on-site visits SICCFIN agents have very broad communication rights which entitles them, in particular, to ask the person subjected to the audit for any information, clarification or evidence necessary to fulfil their mission. Auditors may consult documents and evidence held by the establishment for the purposes of client identification and more generally the professional's knowledge of their business relationships. This approach includes gathering and analysing information on the client's economic background as well as how this fits in with other information known.

68. In terms of methodology, the SICCFIN begins by surveying the files based on sampling determined by taking into account the specificities of the professional's activity and their range of clients. During the audit, interviews are organised with the individual or individuals responsible for AML/FT and

those responsible for due diligence in practice. After the audit, the length of which varies depending on the activity and size of the establishment, a recap interview is organised with the director(s) and manager(s) of the structure.

69. After the audit, an audit report is sent to the professional cataloguing the auditor's findings. The professional may submit observations and objections. After the final report is sent, a letter is sent to the professional setting out any appropriate measures that must be taken to resolve any deficiencies recorded. A deadline may be set. In addition, if significant misconceptions or serious deficiencies are noted, an administrative sanction may still be imposed.

70. The legislative framework provides for a range of administrative penalties which may be imposed following an audit, where substantial deficiencies are recorded. Depending on the nature of complaints, the list of possible penalties is ranked as follows: a warning; a reprimand; a fine proportional to the seriousness of the infringement, the maximum amount of which cannot exceed EUR 1.5 million; prohibition from carrying out certain operations; temporary suspension of the authorisation to exercise; and withdrawal of that authorisation.

71. At the different stages of the administrative procedure the final decision on imposing a penalty (see paragraph 72) lies with the Minister of State who (except for a warning, which may be given directly by the SICCFIN Director) can also decide to publish the sanctions in Monaco's Official Journal. The publicity thus given to the reasons on which the ministerial decision is based reminds professionals of possible penalties for insufficient, or lack of, due diligence procedures for which they are responsible.

72. In 2016, two warnings were sent by the SICCFIN Director to two CSPs (Company Service Providers). In both cases, the deficiencies observed related to a failure to meet customer due diligence and screening observations (in particular owing to the fact this information has not been formalised or updated), the failure to identify politically exposed persons, or deficiencies in the risk-based approach. The table below sets out the number of administrative penalties imposed since 2013.

Administrative penalties imposed per year

Penalties	2013	2014	2015	2016
Warning	-	-	-	2
Reprimand	-	1	-	-
A fine	1	2	1	-
Publication (additional penalty)	-	-	3	-
Total	1	3	4	2

73. The SICCFIN delivers training and awareness-raising activities to professionals by organising or participating in either formal meetings, institutionalised through specialised committees, or informal meetings spontaneously requested by professionals and/or their representative associations.

74. The SICCFIN responds to individual requests from professionals wishing to obtain clarifications on the interpretation of texts or the extent of specific obligations. In 2016 more than forty requests of this type were logged. The periodic audits carried out by SICCFIN agents on the premises of professionals were also important vehicles for raising awareness. The interviews organised during these audits, or even subsequently, when drafting the audit report, with compliance leads, but also with the directors and managers of establishments are a means of identifying the obligations relevant to the activity of each professional in greater detail.

75. The purpose of the Liaison Committee on Anti-Money Laundering and Terrorist Financing, set up by the AML/FT Order, is to ensure the reciprocal exchange of information between Monegasque government departments which have AML/FT as part of their remit and designated businesses and professionals. Committee meetings are an opportunity to raise questions that are in the common interest with a view to improving the effectiveness of anti-money laundering measures implemented by designated businesses and professions. The SICCFIN indicates that FATF's periodic public announcements are systematically raised with the Committee in order to draw the attention of professionals to vigilance measures and other counter-measures agreed in plenary session. In concrete terms, these announcements result in lists of countries and/or legal or natural persons which should be subjected to enhanced scrutiny by Member states.

Introduced business

76. The AML/FT³ Law allows for the business to be introduced by third parties (the business introducers) and to use the identification of the clients and beneficial owners if the third party is a credit institution or a financial institution which meets these two conditions:

1. that the third party has itself met its duty of due diligence
2. that the third party is established in a State where the legislation includes provisions considered equivalent to those in the Monegasque legislation and that its compliance with these obligations is monitored through a similar supervision as the SICCFIN's supervision.

3. Article 4 of Law No. 1.362 of 3 August 2009

77. Article 17 of Sovereign Order No. 2.318 of 3 August 2009 setting out the applicable conditions of the AML/FT law includes additional conditions on the use of third parties:

- the professional must first check that the third party meets the aforementioned conditions under (1) and (2) and maintain the underlying documentation, and
- before entering into a business relationship, the third party must commit, in writing, to supply the professional with information allowing them to identify clients or beneficial owners who must be identified, as well as a copy of documents with which to verify their identity, and
- the third party must personally identify the client in the client's presence, and
- there must be no contractual relationship involving outsourcing or representation between the professional and the third party; otherwise the supplier or external agent is deemed to be a party of the professional.

78. Article 22 of the AML/FT Order explicitly states that, in the event that a third party is used, it is the professional's responsibility to check the identification of the client or beneficial owner and to ensure that identity checks have been performed completely and satisfactorily by the third party in accordance with the relevant legislation. It is also the professional's responsibility to proceed with any additional identification and verification checks and, where relevant, another identification and verification of the identity of the client or the effective beneficial owner. It is explicitly stipulated that the professional having used a third party remains responsible for identifying the client and verifying their identity.

79. In practice, the SICCFIN tests a sample of third party files in order to verify that the information on client identification is quickly available, accurate, up to date and relevant. The audits from the SICCFIN verify that there is a contract between the introducer and the relying party in which the relying party remains responsible for the identification of the client. The SICCFIN indicates that in practice there is only little introduced business and there has never been a case for sanction or warning.

Availability of information on beneficial owners in practice (as experienced by peers)

80. During the current review period, Monaco was asked to supply information on beneficial owners to at least 15 requests from 8 of its EOI partners who were satisfied with the quality of information received.

A.1.2. Bearer shares

81. Bearer shares cannot be issued under Monegasque legislation. See 2013 Report (paragraphs 108 to 115) for the background since the abolition of bearer shares in 2011.

A.1.3. Partnerships

82. Monegasque legislation distinguishes two categories of partnership according to their object:

- *Société en nom collectif* (S.N.C and the *société en commandite simple* (S.C.S.) whose object is the exercise of a commercial activity. The partners of SNCs are necessarily natural persons. As for the SCS, the general partners are necessarily natural persons (Article 27 of the Commercial Code) while the limited partners may be legal entities whose liability is limited to their contributions (Articles 30 and 31 of the Code of Commerce). As of 1 April 2017, 17 SNCs and 115 SCSs were registered in the RCI; and
- *Société civile immobilière* (S.C.I) and *société civile de moyens* (S.C.M), which are non-trading partnerships.

83. As stated in the 2013 Report, information on the legal ownership of partnerships must be produced then updated in the Directory of Commerce and Industry or in the Special Directory of Non-Trading Companies. The DEE keeps information on partners throughout the entire lifetime of partnerships and for thirty years after a partnership's removal from the Directory of Commerce and Industry (see paragraph 44).

84. Registration requirements for partnerships are exactly the same as registration requirements for the trading companies described under Section A.1.1. Information on legal ownership is also available from the tax administration as soon as the partnership is registered and is updated in tax returns.

Information on the beneficial owners of partnerships

85. Information on the beneficial owners of partnerships may be available from notaries at the time the company is constituted and from financial institutions where partnerships have a bank account in Monaco. The articles of association are either private or by notarial deed, but notary intervention is not required by law. There is no legal provision that requires partnership to maintain a bank account in Monaco in their name, but the Monegasque authorities indicate that in practice partnerships do maintain a bank account in Monaco in their name. Accordingly, there is a minor gap in Monaco's legal framework in relation to the updating of information on the beneficial owners of partnerships after they have been constituted before a notary, when

these do not have a bank account in Monaco or has not engaged a certified accountant. It is recommended that Monaco ensures that information on the beneficial owners of partnerships is available in all cases.

Monitoring and enforcement measures

86. Monitoring and enforcement measures are the same as those set out in A.1.1 Monitoring by the SICCFIN.

Availability of information on partnerships in EOI practice

87. Monaco received 4 EOI requests about the legal ownership of partnerships and was able to respond to each of these requests without any difficulty.

A.1.4. Trusts

88. While no trust per se can be constituted under Monegasque law, it is possible to create a trust in Monaco under foreign law or to transfer a trust. In both cases, the creation or transfer of a foreign trust must be carried out before a notary in Monaco. In these cases, trustees must have legal authorisation and be included in a public list. They are subject to the obligations under the AML/FT law. If the trustee is not established in the Principality, he or she must designate a local representative. Only with such prior registration may trustees act to manage assets entrusted to them by virtue of a foreign-law trust constituted in or transferred to Monaco.

Information on legal ownership effectively held by the tax administration

89. Seven new trusts were registered with the DSF in the period between 1 October 2013 and 30 September 2016. All trusts constituted under foreign law or transferred to Monaco must be constituted via a notarial deed and registered. As such, the deed constituting or transferring a trust in or to Monaco is available from the tax administration. Foreign trusts with rights in rem to a property located in Monaco (i.e. 29 trusts as of 30 September 2016 and 16 trusts as of 1 May 2017), and which therefore are registered with the DSF, all appointed an approved representative, which must each year notify of any changes, or absence of changes, in the beneficial owners of the trusts.

Information on legal and beneficial ownership held by trustees and service providers

90. Obligations under the AML/FT Law apply to trustees acting in a professional capacity. They must identify their clients (article 3 of the AML/FT law) and take all reasonable steps to verify their identity. The definition

of professional, as provided by article 1 and 2 of the Law, is very broad and includes a large number of professions and in particular notaries, bailiffs, accountants, lawyers and trust service providers (see A.1.1 Availability of beneficial ownership information).

91. The elements required for identification are:

- In respect of natural persons: first name, last name, date of birth and address. An official document showing a photograph must be provided (art 6 of the Sovereign Order);
- In respect of legal persons: company name, registered office, list of directors, knowledge of provisions governing the power to bind the legal person. A copy of an official registration document as well as the statutes of the legal entity must be provided (art. 7 of the Sovereign Order);
- The professional must certify the existence, the nature, the intended purpose and the management and representation arrangements of the trust concerned.

92. The beneficial owners of the trust must also be identified and this identity further verified (articles 3 and 5 of the AML/FT Law). When the client is a trust, beneficial owners must be understood as:

- when actual or future beneficiaries have already been designated, the natural persons who are the beneficiaries of the assets of the legal entity or of the trust, and
- when beneficiaries have not yet been designated, the group of persons for the principal interest of which a legal entity or a trust has been created or has an effect, and
- the natural persons who exercise control over the assets of a legal entity or of a trust, and
- the settlor(s) of a legal entity or of a trust, and
- if any, natural persons in the capacity of protector.

93. AML-obligated persons must verify the information using any probative written documents and must keep a copy. Moreover, they must also include the trust's ownership structure. Article 13 of the AML/FT states that if the ownership or control of the client is exercised through a chain of ownership or any other form of control other than directly, the professional must identify all persons who are part of that chain of ownership, in addition to any natural persons who are the beneficial owners. In the case of specifically designated beneficiaries of a trust, they must be identified as soon as possible and their identity must be verified at the latest when they intend to exercise

their rights under the trust deed. In any case, verifications must be carried out before the exercise of the rights under the trust deed.

94. Monegasque legislation clarifies that if the identity of beneficial owners cannot be verified; professionals cannot establish or maintain business relations with the client in question.

95. Nothing prevents individual trustees from acting in a non-business capacity in Monaco. In these instances, they do not have to be recorded on the special list compiled and updated by the Chief Justice of the Court of Appeal. However, Monaco's authorities have reported that they are not aware of such situations which, although theoretically possible, should only occur in exceptional circumstances. The existence of trustees acting in a non-business capacity has not affected EOI to date. It is recommended that Monaco continues to check whether this small legal gap has a negative impact on EOI in practice.

Monitoring and Enforcement measures

96. In practice, a list maintained by the Court of Appeal mentions the persons that are permitted to act as trustees in Monaco. This list is constantly updated. On 18 July 2017, there were 36 registered persons on the list, 18 of which were foreign entities having a legal representative in Monaco (who is usually a director of a financial institution, a Company Service Provider or a manager of a CSP). All of these people are subject to AML/FT obligations in their capacity as professional trustees.

97. The SICCFIN ensures that trustees meet their AML/FT obligations. The SICCFIN carries out regular checks to ensure that these obligations are met. If the legal person or the professional acting as a trustee is subject to AML/FT verification for its other professional activities, the verification of the AML/FT rules in relation to its trustee activities will be done at the same time as the verification of its other professional activities (see Element A.1.1). However, control of AML obligations by the SICCFIN can cover the trustee activities.

98. Anti-money laundering authorities, as well as notaries and chartered accountants have confirmed that although the business of trustee exists in Monaco, it is neither common nor developed.

Availability of fiduciary information in EOI practice

99. The Monegasque authorities indicated that they received two EOI request relating to a foreign trust managed from Monaco. These requests related to banking information. Monaco was able to reply to the requests without any difficulty.

A.1.5. Foundations

100. Work on the revision of the Terms of Reference concluded that public interest foundations did not fall within the scope of the evaluation of the terms of reference if they met the following criteria:

- Object of the foundation: the foundation must have a non-profit activity/be in the public interest/have no commercial purpose.
- Beneficiaries: the foundation has no identifiable beneficiaries.
- Distribution: the foundation does not distribute to its members/founders. All of its assets and liabilities are transferred to a public body or the State upon dissolution.
- Irreversibility: the sale of assets is irreversible.
- Tax exemption: the foundation may be exempt from tax if certain conditions are met.
- Government oversight: the foundation's constitution is subject to the government's approval.

101. The 21 existing foundations in Monaco must be run in the public interest and do not constitute relevant entities for the 2016 Terms of Reference.

A.2. Accounting records

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

102. The 2013 report concluded that, with regard to the keeping of accounting records, Monegasque legislation subjects legal persons and other entities to transparency obligations that comply with international standards, both in terms of the degree of standardisation imposed on accounting systems and the records to be kept as well as the retention period. However, the 2013 Report included a recommendation on monitoring the record-keeping obligations of non-trading partnerships (*sociétés civiles*) and trusts as these had been introduced at the end of December 2011. These entities are full covered by the oversight activities carried out by the DEE and the tax administration.

103. Since 2013, the legal framework on accounting obligations has not changed and remains compliant with the standard. Monaco implemented the monitoring recommendation by:

- increasing staffing in the business auditing division
- increasing the monitoring of the accounting obligations of joint stock companies, non-trading partnerships, and trusts. A number of measures were taken as described in paras 113 and seq).

104. The recommendation on monitoring has been removed given the monitoring measures taken by Monaco in the period under review and the availability of accounting information in practice during the period under review.

During the current review period, Monaco received 87 requests for accounting information and did not report any problem in obtaining this information in practice. Monaco's partners have confirmed that they are satisfied with the quality of accounting information received.

105. Consequently, Element A.2 is updated from “Largely Compliant” to “Compliant”.

106. The table updated with conclusions and ratings is as follows:

Legal and Regulatory Framework		
Conclusion: In place		
Practical implementation of the standard		
	Underlying factor	Recommendations
Deficiencies identified in the practical implementation of the EOIR		
Rating: Compliant		

A.2.1. General requirements and underlying documentation (ToR A.2.2)

107. The Monegasque legislation imposes accounting obligations which ensure compliance with the standard. There has been no change in the Monegasque legislation regarding the accounting requirements since the 2013 Report, whose paragraphs 172 to 198 provide a detailed description. The different types of law are analysed below.

Company law

108. Accounting obligations under company law differ slightly according to whether they are trading companies or not.

Trading companies and partnerships

109. Traders (*commerçant*), including joint stock trading companies, trading partnerships and branches of foreign companies, are required to keep a ledger book containing day-to-day records of operations, negotiations, occupations and endorsements of instruments and generally, everything that the

trader receives and disburses for any purposes, as well as an inventory book establishing an annual list of moveable and immovable assets and active and passive debts, which are referenced, initialled and approved either by a judge of the Court of First Instance or by the Mayor or Deputy Mayor (article 10 of the Commercial Code).

110. In Monaco, there is a requirement to register with the Directory of Commerce and Industry (RCI), according to the following rules:

- Joint stock companies (SAMs and SCAs) are also required to produce a balance sheet and a profit and loss account for each financial year. These documents must be filed with the Department for Economic Development within three months of the general meeting at which the accounts for the year are approved. The external auditors' report and a copy of their certification that the company's activity is compliant and its accounts in order must be filed at the same time. The highest penalty for a company's non-compliance with these obligations is the withdrawal of its administrative authorisation to do business.
- The managers of SARLS, SNCs and SCSs must file the balance sheet and the profit and loss account with the Directory of Commerce and Industry (article 51-7 of the Commercial Code).

111. Non-profit associations are subject to the same accounting requirements as trading companies.

Non-trading companies and associations

112. Whereas for traders and trading companies (whichever their legal form), the retention period of accounting information is 10 years, non-trading partnerships are required to keep accounting records at their headquarters for at least five years (Article 6 of Law No. 1.385 of 15 December 2011).

Trusts

113. A provision requiring the keeping of accounting records (including underlying documentation) is in place for trusts under article 7 of the Law No. 1.385 of 15 December 2011. Accounting records must be kept by the trustee.

114. As stated under section A.1.4, trusts may be constituted in or transferred to Monaco only by those persons who are permitted to do so under the laws of their country. The trust must be created via a notarial deed and meet the provisions of the foreign law by which it is governed. The table below gives an overview of the registration of the balance sheets and profit and loss accounts in the Directory of Commerce and Industry:

	Number of balance sheets received
Year 2013	7
Year 2014	18
Year 2015	9
Year 2016	13

115. Each year, foundations must submit their accounts to the Foundations Supervisory Commission. Foundations must as well keep and submit a balance sheet where all endowment funds are recorded, a profit and loss account and, where applicable, a fair market valuation of any assets (see paragraphs 194 and 196 of the 2013 Report).

General requirements

116. Strict legal rules in Monaco require legal persons (including companies, trading and non-trading partnerships, trustees and foundations) to keep accounting records at their headquarters. In addition, SAMs and SCAs must file the balance sheet and the profit and loss account with the DEE, and SARLs, SNCs and SCs must file their accounts with the RCI, while foundations must file their accounts with the Foundation Supervisory Commission. Moreover, legal and natural persons having a business activity and subject to corporate taxation in Monaco must file their accounts along with their tax return.

Tax legislation

117. The mandatory accounting requirements are the same for all companies, irrespective of the origin of their turnover. Under the tax law, the DSF holds accounting information through the annual VAT declarations required for all companies. With respect to the corporate income tax, businesses liable for corporate income tax must file an annual tax return with the DSF within three months of the close of each financial year, or, if no financial period ends within a given calendar year, by 1 April of the following year (article 23 of Sovereign Order No. 3.152 of 19 March 1964). Among other requirements, the accounting systems of Monegasque companies must allow net earnings for the year and the base for the tax liability to be calculated. This requirement applies only to legal and natural persons established in Monaco operating a business deriving over 25 % of their turnover outside Monaco, and to companies, whose object consists in receiving income from patents, trademarks, models, royalties from literary and artistic property, which are always subject to corporate income taxes.

118. In respect of turnover tax, all businesses are required to maintain an accounting system or, as the case may be, to keep a ledger with numbered pages containing daily entries, with no blanks or erasures, of the amounts of each operation, distinguishing between those that are taxable and those that are not.

119. Accounting documents and records that may be subject to communication rights and auditing by the administration must be retained within the territory of the Principality of Monaco for a six-month period from the date of the last transaction in the books or registers or the date on which the records were produced (article 80 of the Tax Code).

120. The Department of Tax Services has the power to check and rectify the returns submitted by businesses.

121. Recovery proceedings can be brought by the tax services until the end of the third year following that of the close of the financial year in which the event that triggered such proceedings occurred.

Enforcement and monitoring measures for keeping accounting records

122. In the case of SARLs, SNCs and SCSs, under article 51-13 of the Commercial Code, introduced by Law No. 1.331 of 8 January 2007 on companies, failure to produce accounting documents, to submit them to the shareholders meeting or to the Directory of Commerce and Industry is punishable by a six-month prison sentence and a fine of EUR 18 000 to EUR 90 000 (see paragraph 133 for their application in practice).

123. Regardless of whether SAMs and SCAs are subject to corporate income tax, under paragraph 1 of article 37 of Law No. 408 of 20 January 1945 amending the Order of 5 March 1895 on joint stock companies and partnerships limited by shares, particularly in relation to the nomination, attributions and responsibility of auditors, the lack of awareness on the part of any board member or manager of their accounting obligations set out in that text, is punishable by a fine of EUR 200 to EUR 600.

Document retention period

124. Under the standard, accounting records must be retained for at least five years.

125. For trading companies, the Monegasque Commercial Code imposes a 10-year record-keeping requirement. As for trusts, non-trading companies and partnerships as well as for foundations, they have a five-year record-keeping requirement, pursuant to Article 6 and 7 of Law No. 1.385 of 15 December 2011. A fine is applicable in case of default (article 26 of the Penal Code).

126. Administrators of partnerships under civil law, of companies not considered traders under the Commercial Code, trustees of foreign trusts and administrators of foundations failing to comply with these record-keeping requirements are subject to the sanction provided by article 26-4 of the Criminal Code, that is, a fine from EUR 18 000 to 90 000. No authorisation to constitute a foundation has ever been revoked in Monaco. There has never been a case of failure to comply with these requirements.

127. The retention period during which accounting records must be kept by Monegasque entities is fully compliant with the Terms of Reference.

Companies that have ceased their activities

128. The Department of Economic Development keeps balance sheets registered in the Directory of Commerce and Industry over the entire lifetime of businesses and for thirty years after their removal from the Directory (see paragraph 44).

129. The DSF also keeps the information received from non-trading companies and records are kept for 30 years after the company's removal from the register. These provisions relating to the DSF's retention obligations also apply to trusts.

130. Corporate officers and the directors of civil companies remain responsible for the maintenance of the accounting records for 10 and 5 years respectively, whether or not the company has ceased its activity or been liquidated.

A.2.1/A.2.2 Supervision activities and availability of accounting records in practice

131. During the period under review, Monaco conducted effective supervision activities to ensure the availability of accounting records and underlying records. Moreover, during the period under review, in practice Monaco was able to respond to 87 EOI requests on accounting records without difficulty.

Supervision activities by the Monegasque authorities

132. Monitoring activities were conducted to verify compliance with accounting requirements under commercial and tax law.

133. Activities aimed at supervising accounting obligations under commercial law are performed by the Business Auditing Division of the DEE. The table below shows the number of balance sheets registered and the number of criminal fines imposed on non-compliant persons for the years 2013 to 2016.

	Number of balance sheets registered	Number of criminal fines
Year 2013	2 453	6
Year 2014	2 661	3
Year 2015	2 820	0
Year 2016	2 937	0

134. A year-by-year comparison between the number of recorded balance sheets and the total number of existing companies subject to accounting obligations shows compliance percentages were 81% for 2013, 86% for 2014, 87% for 2015 and 88% for 2016.

135. The procedure in the event of a failure to comply with accounting obligations takes 4 to 5 months and leads to the suspension within 2 months of the declaration or authorisation to do business, followed by the removal of the company from the register.

136. For tax purposes, businesses liable for corporate income tax must file an annual tax return with the DSF within three months of the close of each financial year, or, if no financial period ends within a given calendar year, by the 1 April of the following year (article 23 of Sovereign Order No. 3.152 of 19 March 1964). Among other requirements, the accounting of Monegasque companies must allow for the net out-turn for the year and the base for the tax due to be calculated.

137. The following table sets out statistics on corporate profit tax audits carried out by the DSF.

Auditing measures	Until 30 September			
VAT – ISB	2013	2014	2015	2016
Number of files audited	29	31	18	4
Number of claims in restitution examined	1 726	1 707	1 845	1 289
Number of reminders sent for failing to submit a declaration	826	900	987	856

138. The DSF confirms that the businesses whose accounts have been examined by the DFS inspectors comply with the accounting bookkeeping obligations (including underlying documentation) set forth in the provisions of Articles 10 et seq. of the Commercial Code. The main tax-related offenses are represented by the late filing of returns (ISB/VAT), which is expressed by the number of reminders sent to non-compliant taxpayers (last line of the table).

Availability of accounting information in EOI practice

139. In the review period, Monaco received 87 EOI requests asking for accounting information, 83 of which were answered within 90 days and 4 within a period of 90 to 180 days.

A.3. Banking information

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

140. The 2013 Report concluded that all elements of Monaco's legal framework and its practical implementation ensured the availability of banking information. Consequently, element A.3 was determined in place and compliant. All requests for banking information were answered. These aspects have not changed since the 2013 Report and continue to comply with the standard.

141. The EOIR standard now requires information on beneficial owners (as well as on legal ownership) to be available in respect of account holders. The definition of beneficial owner of companies is broad and covers situations where control is exercised through an ownership chain or through indirect control and exercising control by means other than ownership (for example through personal connections with company directors or financing the company). The oversight of financial institutions seems adequate to ensure the availability of banking information, including the identity of the beneficial owners of bank accounts.

142. During the previous review period, the banking information requested by partner jurisdictions was available. During the current review period, Monaco received 175 requests for banking information. Monaco was able to provide the information in all cases with no delay.

143. The updated table of conclusions and ratings remains as follows:

Legal and Regulatory Framework
Conclusion: The element is in place.
Practical implementation of the standard
Rating: Compliant

A.3.1. Record-keeping requirements

144. In Monaco, the 33 banks (which include the branches and subsidiaries of foreign banks established in Monaco) are licensed and supervised (for prudential control) by the French authority, the ACP (*l'Autorité de Contrôle Prudentiel*) whilst AML/FT/CFT monitoring is performed by the SICCFIN

(Service d'Information et de Contrôle sur les Circuits Financiers – the Monegasque FIU).

145. The 2013 Report concluded that under Monegasque legislation banking information is available for 5 years, including both information of a financial and transactional nature and information on the customer's identity.

Accounting and transaction record-keeping obligations

146. Like any trading company, banks must keep accounts and retain all their accounting documents for 10 years. Under article 10 of Law No. 1.362 of 3 August 2009 on Money Laundering, Terrorist Financing and Corruption, financial institutions must in particular:

- keep a copy for at least five years after ending relations with regular or occasional customers of all probative documents successively used to establish and verify customer identity, as well as all documents collected for identification purposes
- keep, for a period of at least five years from the time of the transactions, a copy of records, account books, business correspondence and documents relating to the transactions carried out to ensure that they can be accurately reconstructed.

147. The SICCFIN can request an extension in case of an ongoing investigation. In case a bank is liquidated, the group (or the buying entity) must maintain the documentation for at least 5 years, and all information must be available should the SICCFIN require it.

Information on the beneficial owners of bank accounts

148. The 2016 Terms of Reference specifically require information on the beneficial owners of bank accounts to be made available. Banks are subject to the obligation to identify their clients and constant due diligence in terms of their business relationships. For banks, the duty of due diligence includes that of checking and, where relevant, updating identification data and other information within a specific times scale according to the degree of risk. The updating of identification data requires new data to be verified using evidence, a copy of which must be retained.

149. Customer identification and due diligence obligations are set out in section A.1.1 *availability of beneficial ownership information*.

Bank oversight in practice

150. The same procedures and penalties as those detailed under section A.1.1 apply to banks. Two types of verification are performed by the

SICCFIN: desk based audits and on-site visits in order to check that the banks keep up to date and retain all files relating to the accounts, as well as related financial and transaction information and in particular information on the beneficial owners of their clients, in accordance with AML/FT legislation.

151. Desk-based audits are performed every year based on a questionnaire and an annual report filed by the financial institution with the SICCFIN, but also on the analysis of the internal procedures established by the AML-obligated persons. On-site visits are carried out for various reasons, such as denunciations received by the SICCFIN concerning the institution or any issues that occurred since the last visit. On-site visits can also be randomly decided.

152. During the on-site visit, agents have access to all documents and files. They proceed by samples and interviews, but they also consider the types and amounts of transactions. They systematically verify customer due diligence requirements, whether the identity information is available in the files, including beneficial ownership, and whether it is updated. They also systematically verify trust activities performed by the institutions and the accounts of politically exposed clients. Both electronic and paper files are reviewed.

153. The SICCFIN drafts a report after each visit even if no recommendation or sanction is applicable. An on-site visit is scheduled to verify whether corrective measures have been implemented, as recommended. If it is not the case, the SICCFIN applies sanctions. For a description of the sanctions, please see paragraphs 70 to 72 of this report.

154. In 2013, 12 on-site visits of banks were carried out, 10 in 2014, 8 in 2015 and 6 in 2016. The SICCFIN indicated that this reduction in oversight of financial institutions between 2013 and 2016 is due to the fact that, with the same workforce, the SICCFIN carried out a greater number of audits of designated non-financial businesses and professions, with a steady increase in such audits, in order to meet the recommendations of the MONEYVAL Committee in particular⁴ (4th round report). The bulk of the work on the first national risk evaluation was done in 2016 and placed a high demand on the team of auditors: the second evaluation should not however prevent a return to a greater number of audits of financial institutions in 2018-19. Given the

4. Thus, the SICCFIN has audited 102 real estate agencies since 2013 (compared with 26 previously), which enabled the whole profession to be covered across the Monegasque territory, and carried out an awareness-raising campaign aimed at over 200 professionals (agents or representatives of real estate agencies) to encourage them to improve their due diligence. During this period, this focus on non-financial institutions included most major jewellery brands, previously not audited, all bureau de change, the casino through the *Société des Bains de Mer* and its gambling finance company, *la Société Financière d'Encaissement*, audited twice, and since mid-2016 a significant proportion of chartered accountants in Monaco.

50% drop in on-site visits at financial institutions in 2016 compared with previous years, it is recommended that Monaco puts in place the necessary resources to continue to ensure the continuity of its financial institution supervision programme.

155. Where the corrective measures prescribed by the SICCFIN have not been implemented by the bank or where the deficiencies are severe, the SICCFIN applies sanctions. In 2013, one institution was fined EUR 50 000. In 2014, two institutions were fined EUR 50 000 each and one institution was issued a warning which was made public. In 2015, one fine of EUR 100 000 was imposed and made public. The Monegasque authorities indicated that, for financial institutions, public disclosure is the most damaging sanction as it may have repercussions for their reputation.

156. The main problems revealed during the audits related to the failure to take into account SICCFIN recommendations, the poor practical application of internal procedures, insufficient reporting and the failure to respect the institution's anti-money laundering system. The SICCFIN indicates that penalties are efficient and generally corrective measures are implemented within the allocated time-frame. The SICCFIN estimates that the existing sanctions are efficient.

157. In addition to audits, awareness-building activities are organised by the SICCFIN. Regular meetings are thus organised with the financial institutions at the request of the *Association Monégasque des Activités Financières* (AMAF) to address specific themes and issues, such as the implementation of audits, the list of documents required for any on-site visits carried out by the SICCFIN, the conditions in which identification can be outsourced to external managers, information on the origins of the client's assets to be gathered by the professionals etc.

Availability of banking information in EOI practice

158. During the period under review (1 October 2013-30 September 2016), Monaco received 175 requests for banking information and responded to all requests without difficulty, which was confirmed by peers in their comments.

Part B: Access to information

159. Sections B.1 and B.2 assess whether competent authorities have the power to obtain information that is subject to an EOI request from any person within the territorial jurisdiction who possesses or controls such information and whether the rights and safeguards are compatible with an effective EOI.

B.1. Competent authority’s powers 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).

160. The 2013 Report examined the procedures in place for obtaining information in general as well as more specific rules for obtaining banking information. In general terms, these rules remain in place. Monaco nevertheless introduced a new exception to the prior notification requirement to address the recommendations from the 2013 Report (see section B.2).

161. During the period under review, Monaco responded to 329 EOI requests and had no difficulty in accessing the information requested. Monaco’s partners did not raise any problem in terms of access to information.

162. As was the case for the 2013 Report, Element B.1 was determined to be in place and rated Compliant. The table with conclusions and ratings remains as follows:

Legal and Regulatory Framework
Conclusion: In Place
Practical implementation of the standard
Rating: Compliant

B.1.1 Information on ownership, identity and banking information

163. As mentioned in the 2013 Report, there are two procedures to process incoming EOI requests: one for requests received from France (derived from institutional and historical links) and another one for requests received from all other treaty partners.

The Monegasque competent authority depends on the requesting jurisdiction

164. The Director of the Department of Tax Services (*Direction des services fiscaux*, Monaco’s tax authorities, the “DSF”), which reports directly to the Minister of Finances and Economy, acts as the competent authority for incoming requests received from France whether these requests relate to direct taxes, wealth tax or VAT. Within the DSF, requests are handled by the administrative assistance unit, in collaboration with other tax units (corporate tax unit, real estate tax unit, savings unit and VAT unit). The handling of incoming requests will be further described under section C.5 of this report.

165. For incoming EOI requests received from all jurisdictions but France, the Minister of Finances and Economy (*Conseiller de Gouvernement – Ministre des Finances et de l’Economie*) is the competent authority. The International Division of the Department of Finance and Economy (DFIN) is in charge of handling incoming requests in collaboration with the tax authorities, and the DEE. It is also competent for all international matters such as the negotiation of tax treaties and OECD-related work. If the information requested is not readily available within the DFIN, the information is gathered by the tax authorities (DSF), which will use its access powers to gather the information. The DFIN cannot access this information directly from natural persons and private entities but it can access the information through the DSF that is a service of the DFIN.

General access to information

166. Since the 2013 Report, there have been no significant changes to access to information in Monaco. There is no specific legal provisions granting specific powers to gather information for the competent authority, but rather the tax administration holds an access right (communication right), which covers all information, whoever the information holder. The access right is based on Sovereign Order No. 3.085 of 25 September 1945, which sets out a communication right and the general conditions for access by the tax authorities to information held by taxpayers or third parties – without limitations.

167. Sovereign Order no. 2.693 of 23 March 2010 completes this mechanism which allows for the tax administration to obtain:

- all information held by the government administrations, establishments and businesses under the control of the administrative authority
- any information held by the taxpayer
- any information held by third party (companies, banks, etc.), including information held by third party under the AML/FT legislation.

168. Finally, Sovereign Order 2.693, which sets out the procedure for EOI purposes, does not prohibit the gathering of information held under the Law on the fight against money laundering, provided that the tax authorities are required to have access to such information in order to comply with commitments entered into under international treaties signed by the Principality of Monaco. In such situations, article 3 of the Order explicitly provides for the possibility of gaining access to all information held by the AML-obligated persons listed in this article, including banks. Monaco meets the requirements from the Terms of Reference on access to information regarding beneficial owners, because the AML-obligated persons are required to provide information to the agents from DSF that have the level of at least tax inspector on the basis of Sovereign Order no. 3.085 of 25 September 1945, insofar the request from the DSF aims to ensure the execution of Monaco's requirements under its domestic law and international agreements.

Information gathering in practice

169. The process of information-gathering in practice differs according to whether the EOI requests come from France or other EOI partners.

170. The process of answering requests received from France has been in place for approximately 50 years. All EOI requests between France and Monaco are governed by the provisions of article 20 of the tax treaty of 18 May 1963. The historic relationship between France and Monaco was shown during the peer review period of the 2013 Report by the fact that 199 out of 202 EOI requests came from France. For the period under the current review, Monaco received 283 requests from France. The EOI requests from other EOI partners have increased also, from 3 EOI requests between 2009 and 2011 to 46 requests between October 2013 and September 2016.

Information gathered within the Monegasque authorities

171. When an EOI request is received, the person responsible for handling the request (either the administrative assistance unit for requests received from France or the persons in charge of EOI within the Department of

Finance and Economy for requests received from other jurisdictions) first considers whether the information is available within the files or databases of one of the government authorities.

172. Legal ownership information (and beneficial ownership information at the moment of incorporation) in relation to legal entities, including ownership of companies, and trading partnerships as well as all requests for authorisation (including requests that were rejected) is available internally through the DEE. Accounting information filed with this Department by trading companies and partnerships is also available. Information on real estate is available in the land registry maintained by the Department of Equipment, Environment and Urban Planning (DEEU) or in the files kept by the municipality.

173. The DSF also has direct access to a broad range of tax information. This includes information on professionals registered for tax purposes and on French nationals living in Monaco (e.g. salary, dividend, pension and other income) as well as information kept for VAT purposes. Information is also available in other databases such as information on lease agreements (including the lessor, tenant, and the rent) and on real estate ownership and transactions for both legal and natural persons.

174. No official procedure exists for these bodies to co-ordinate the transmission of information in response to requests. In practice, all public entities report to the Minister of State, all types of information are pooled and exchanged with ease within a matter of days of receiving the request from the competent authority. Ministers and Director Generals of departments meet every week (there are 6 Ministers, 5 Director Generals and one General Secretary in Monaco), which also helps to speed up the information exchange process. There are no instances of a department refusing to provide information to answer an EOI request to another. The Monegasque authorities have confirmed that in practice, administrations always provide each other with the information quickly and in the case of informal reminders, those are given by telephone and always result in a timely response.

External collection process for EOI requests received from France

175. If the information is not available internally, the administrative assistance unit will always send a letter to the person concerned to request the information (communication right⁵) and/or to a third party that is in possession of the information (for instance, a financial institution). This notice must detail: the information/documents requested, the other persons from whom

5. The “communication right” is the right for the tax administration to request any tax information and to force the person from whom the information is requested, to provide it, subject to penalties. Only tax inspectors can exercise this right.

the information has been requested (if the information is not solely requested from the person concerned), the legal basis, the fact that information must be provided to the DSF and that sanctions are applicable in case of failure to answer. A communication right can be exercised to collect any type of information including ownership, accounting or banking information (see below).

176. This notice provides for a 30-day deadline to answer (Order No. 2.693 article 5-2). In general, the administrative assistance unit official will follow up if no answer is received within 30 days. The first reminder is generally made by phone, or sent in another letter. In the case of natural persons, legal persons or organisations set out in Order no. 3.085 of 25 September 1945 on-site visits (on-site visits are not permitted for natural persons) may also be performed in the absence of a response. In practice, notification of on-site visits is always given a few days in advance but this prior notice is not mandatory by law. Monegasque tax authorities generally carry out four to eight on-site visits each year specifically to answer EOI requests (received either from France or from another jurisdiction). When a request concerns the address of a person, the tax authorities will ask the police for that information.

External collection process for EOI requests received from jurisdictions other than France

177. If the information is not available internally, and once the prior notification procedures are completed (see section B.2 below), the team in charge of EOI within DFIN will send a letter to the person concerned together with a letter to any third party that is in possession of the information giving a 30-day period to provide the information. After 30 days, if the information has not been provided, the EOI team will ask the administrative assistance unit of the DSF to collect the information from the person concerned and the third party (if any) exercising its communication right. At this stage, the collection process by the administrative assistance unit is the same as for requests received from France (see above), although this procedure has not yet been applied in practice, as no cases have been received requiring its complete use.

Access to banking information

178. Monaco has a long experience of access to banking information for EOI purposes. Banks in Monaco are aware of the process and have worked with the Monegasque authorities for many years. Monegasque authorities have confirmed that they can obtain banking information even if they do not have the bank account number, provided they have the name of the person and as far as possible the name of the bank. In practice the EOI requests received included both elements. Monaco does not have a central bank account

register. In those cases where Monaco receives an EOI request, which identifies the subject of the request, in accordance with the standard, but where the holder of the information may not be known by the requesting jurisdiction, the Monegasque authorities advise that in the case of a bank they would be able to reach all banking institutions through the Monegasque Association of Financial Activities (professional governing body of the banks) for a response. Furthermore, they can also access the information with only the bank account number. In respect of group requests on bank information, Monaco can access the bank information provided that the group request meets the conditions of foreseeable relevance set out in Article 26 of the OECD Model Convention.

179. Monaco's authorities have reported that they always swiftly obtain the information needed. In practice, Monaco indicated that requests for banking information from France were processed within 30 to 45 days. If a request for clarification is made, France responds within 15 days. Concerning requests from other jurisdictions, Monaco indicated an average handling time of 60 days, with the jurisdiction providing a response to a request for clarification within 90 days on average.

B.1.2. Accounting records

180. The powers described under section B.1.1 in relation to information other than that held by a financial institution may be used to obtain accounting information. Accounting records, in cases where Monegasque legislation requires that such data be held and kept, can be obtained in Monaco from the administrative authority responsible for issuing licences to operate a business – as in the case of trading companies – or directly from companies themselves. The conditions for obtaining the above-mentioned records apply here under the same conditions, and are subject to the same provisions in terms of access as well as to the same restrictions.

181. During the current review period, Monaco received 87 accounting information requests. Monaco obtained accounting records in all 87 cases.

B.1.3. Use of information-gathering measures in the absence of a domestic tax interest

182. To ensure compliance with EOI agreements, the DSF has the rights of disclosure and investigation set out in the provisions of Sovereign Order No. 3.085 of 25 September 1945 (see above). Monegasque legislation relating to access to information does not require that there be a domestic interest with regard to the gathering of information for the purposes of information exchange.

183. In the event that the obtained information is held by a person who is not required to have the information, the communication right may not be

impeded provided that its implementation allows “the application of laws and international treaty” which the Department of Tax Services is responsible for implementing (article 1.2 of Sovereign Order No. 3085 of 25 September 1945).

B.1.4. Enforcement measures aimed at obtaining access to information

184. Since the 2013 Report, Monaco has made no changes to its legislation on penalties for failing to respond to an EOI request. Any refusal to provide information may be punished by a fine (from EUR 10 000 to EUR 50 000) and if legal action is taken, offenders are served with a court order to resubmit the documents or items they had failed to provide (EUR 20 fine per day of lateness). The right to search, or enter into premises does not exist in Monegasque law, but agents from the tax administration can request that a seizure be executed.

185. Penalties for refusal to disclose information have to be imposed by the Court upon request from the General Prosecutor. It is possible, but generally not necessarily, to proceed with a tax audit to obtain the requested information, and administrative penalties may be applied directly by the tax authorities in these instances.

186. Monegasque legislation makes no provision for sanctions with regard to information which State administrations and establishments or bodies of any nature subject to the oversight of the administrative authority, which would not provide the requested information. However the risk of such entities refusing to provide information would appear to be non-existent for Monaco and never occurred in practice. The requested information between administrations is usually provided within 15 days (3 days if the request is of an urgent nature).

187. The Monegasque authorities have confirmed that the information requested has, on the whole, been provided. As during the period under review for the 2013 Report, Monaco has not reported any cases of requests going unanswered, nor of any penalties.

B.1.5. Secrecy provisions

188. There is no bank secrecy in Monaco, but professional secrecy exists for certain professions as set out in article 308 of the Criminal Code. This article provides that “any person who, by his or her position or profession, is the depository of the secret entrusted to him or her, and who discloses that secret information, other than in cases where the law obliges or permits him or her to do so, shall be punished by one to six months of imprisonment and fined the amount provided for in figure 3 of article 26 (from EUR 9 000 to EUR 18 000), or to only one of these two penalties”.

189. Further, article 11 of Sovereign Order No. 2.693 of 23 March 2010 provides that any person holding information who, acting in good faith, provides the Director of the DSF with documents and information requested by the latter in order to respond to a request for exchange of information is not liable for prosecution for breach of secrecy under article 308 of the Monegasque Criminal Code.

190. As set out in paragraph 254 of the 2013 report, lawyers cannot disclose information received during discussions with their clients or received by letters from their clients when defending the client. However, the professional secrecy of a lawyer is not applicable to other legal activities.

191. Monaco's authorities have reported that there have been no instances in which professional secrecy was invoked as grounds for refusing to provide information on request. This has also been confirmed by notaries, lawyers and accountants who indicated that they always provide information when requested by the tax authorities, provided that such information is not obtained in their capacity as legal representatives. It is clear from this that professional secrecy in Monaco cannot prevent its authorities from collecting information for EOI purposes and exchanging it with treaty partners. Accordingly, the rules on professional secrecy and their application in practice are in line with the standard.

B.2. Notification requirements and rights and safeguards

The rights and safeguards (notification, appeals) available to persons in the country to which the request is sent must be compatible with an effective exchange of information.

192. The 2013 Report concluded that regarding the notification and rights to appeal, the element was determined to be in place but some aspects of its legal implementation were in need of improvement. Indeed, it was emphasised that the prior notification procedure under Sovereign Order No. 2.692 of 23 March 2010 contained no exception, except for EOI requests from France; not even where the notification was likely to undermine the chances of success of the investigation conducted by the requested jurisdiction or where the information request was of a very urgent nature (the notification does not apply to French EOI requests).

193. It was also emphasised that Monaco's experience in terms of notification was too recent to ascertain that this procedure did not hinder or delay EOI. In light of these elements, it was determined that this procedure of notification without exception was not in line with the EOI standard. It was recommended that Monaco allows broader exceptions than those granted for requests from France, in particular where the notification jeopardises proceedings initiated by the Requesting State or where the requesting jurisdiction's request is urgent in nature.

194. The recommendations contained with the 2013 Report were implemented through an amendment to Sovereign Order No. 2.692 of 23 March 2010 made in June 2013 in order to provide for exceptions that would allow an effective exchange of information. These exceptions to the prior notification procedure were introduced before the beginning of the period under review, such that these exceptions were available during the period under review. In light of this legislative development, the 2013 recommendation is deleted and Element B.2 is determined as in place. During the period under review, Monaco applied the prior notification exception for 6 EOI requests at the request of the requesting jurisdiction.

195. The 2016 Terms of Reference introduced a new requirement in cases where a notification exception has been granted – in such cases there must also be an exception to post-notification by a specific deadline. Nevertheless, Monaco’s legislation does not provide for any post-notification procedure and therefore remains *de facto* compliant with the standard on this point.

196. The table updated with conclusions and ratings is as follows:

Legal and Regulatory Framework		
	Underlying factor	Recommendations
Deficiencies identified in the implementation of the legal and regulatory framework		
Conclusion: In place.		
Practical implementation of the standard		
	Underlying factor	Recommendations
Deficiencies identified in the practical implementation of the EOIR		
Rating: Compliant		

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

197. Rights and safeguards must not unduly prevent or delay effective exchange of information. As mentioned under B.1, as regards access to information, the handling of incoming requests differs depending on whether the request is made by France or by another jurisdiction. The procedure to collect and provide information is the same in both cases, except that with countries other than France a prior notification procedure applies (with suitable exceptions).

Notification prior to the exchange

198. In 2010, Monaco introduced compulsory prior notification for information exchanges under Sovereign Order No. 2.692 of 23 March 2010. In practice there are two notifications. One is sent to the taxpayer upon receiving the request from the requesting jurisdiction, the other is sent to the taxpayer and the holder of the information where the request has been deemed admissible. Unless an exception to the notification is accepted, the second letter is sent to the taxpayer even if there is no third-party holder of information external to the government. When this procedure is implemented, the competent authority only notifies the affected person that a request received from a requesting jurisdiction is under examination. No other information is shared. The 2010, 2011, 2012 and 2013 Reports on Monaco all constantly emphasised that there was no exception to this prior notification procedure except in the case of EOI requests from France. Successive reports found that the lack of exceptions was contrary to the standard and constituted a lack of compliance with effective exchange of information. Consequently, Element B.2 was determined in place, but certain aspects of its legal implementation needed improvement.

Exceptions to prior notification

199. Sovereign Order No. 2.692 of 23 March 2010 establishing a prior notification was amended in June 2013 so as to address the recommendation set out in the 2013 Report. Article 3.6 of the Sovereign Order now stipulates that, as an exception and provided that it is in the public interest, the prior notification procedure is not applicable in cases where a valid request on legitimate grounds is issued by the requesting State with evidence of the extreme urgency and in cases liable to result in loss or destruction of evidence, where the urgent review procedure under article 4.2 of the Sovereign Order would not be sufficient. Under this urgent review procedure, a requesting jurisdiction may ask that the request be answered in 60 days rather than 90. In addition, the notification procedure is not applicable where there are serious grounds to consider that such a procedure may be liable to result in irreversible damages or a proven threat to their investigation. Thus, if the requesting jurisdiction justifies its request for an exception the competent authority does not notify the subject of the request.

Post-notification

200. The 2016 Terms of Reference introduced a new requirement in cases where a notification exception has been granted – in such cases there must also be an exception to post notification by a specific deadline. Nevertheless, Monaco's legislation does not provide for a subsequent notification procedure, and hence complies de facto with the new requirement.

Notification procedure in practice

201. Sovereign Order n. 2.693 of 23 March 2010 on international cooperation on tax matters provides that the competent authority, the Minister of Finances and the Economy, is responsible for overseeing the investigation of EOI requests made by the competent authority of a foreign requesting state, in accordance with the treaties and agreements.

202. Except specifically requested by the EOI partners, the Competent authority informs the subject that a request has been received from a requesting jurisdiction; but does not specify the content of the request. This notification is made by registered post with a request for proof of receipt. The letter invites the subject of the request to communicate their written observations within 15 days of the date on which the notification was first presented.

203. During the period under review, Monaco received six EOI requests which included a request to make an exception to the prior notification procedure. In these six cases, Monaco agreed not to implement the prior notification procedure.

204. Subsequently, the Minister submits their opinion on the admissibility of the request to the Minister of State who decides on the outcome. In the event of a positive outcome and if no request for an exception to the prior notification procedure has been received and is admissible, then the Minister of Finances and the Economy notifies the subject by recorded delivery letter with proof of receipt, of this decision and the fact that the holder of the information is ordered to submit it to the Department of Tax Services.

205. In the same format, the Minister of Finances and the Economy also notifies the holder of the information of this decision and of their obligation to submit the information and evidence requested of the Department of Tax Services by the requesting State (SO Article 6.2).

206. The subject may appeal the order before the Court of First Instance within thirty days of receiving their notification (see below Rights and appeals against EOI).

Rights of appeals against EOI

207. The 2013 Report highlighted that notification is accompanied by the possibility of judicial recourse for the persons concerned by the EOI. This appeal is ad hoc, suspensive and must be brought before the Court of First Instance within 30 days. In accordance with article 850 of the Civil Procedure Code, the competent authority gives its comments within 30 days and the Court hands down a ruling within 30 days which may be appealed within 15 days and is also suspensive. Where the EOI request is appealed, the requesting State is notified of the appeal and the time-frame for the

proceedings. In the event that the Court rejects the exchange of information and only partially accepts the request, the requesting State is notified and reasons are given. Once the ruling is handed down, the person is served with an injunction and must provide the information immediately.

208. The court rules within thirty days as in litigation proceedings, in accordance with the provisions of article 850 of the Civil Procedure Code. The hearing takes place and the ruling is handed down in the court chamber. Hearings and the decisions from the Court are made public.

209. Under Order no. 2.693 (article 8), the appeal is suspensive and the Court of Appeal rules within 30 days.

210. Monaco has stated that in practice two appeals have been brought at the end of 2015/beginning 2016. The claims were rejected and the right to further appeal was not exercised. In both cases, the two requests of the requesting jurisdiction were found to be in conformity with the provisions of the Tax Information Exchange Agreement, because they were in line with the criterion of the foreseeable relevance of the requested information. In addition, it was clarified that (i) Monaco should, in this case, exercise only a control of the apparent relevance of the request without the need for completeness of supporting evidence and that (ii) the disclosure of the information requested was not contrary to Monegasque Public Order.

211. Monaco responded to both requests in less than nine months, including the time for appeals. Consequently, it can be confirmed that during the peer review period, the notification and appeals procedure did not hinder or unduly delay EOI, because it was completed in a timely manner in practice.

212. The creation of an exception to systematic prior notification has not changed the appeal procedure to which the EOI request is entitled.

Part C: Exchanging information

213. Sections C.1 to C.5 assess the effectiveness of Monaco’s network of information exchange instruments – whether these instruments offer adequate scope for the exchange of information, whether they cover all the relevant partner jurisdictions, i.e. that there are adequate provisions to ensure the confidentiality of information received, whether the jurisdiction’s network of EOI instruments respects the rights and safeguards of taxpayers and whether Monaco is able to provide the information requested within a reasonable time-frame.

C.1. Exchange of information mechanisms

Information exchange mechanisms should provide for effective exchange of information.

214. The 2013 Report concluded that Monaco’s exchange of information instruments network was compliant with the standard. To date, Monaco’s network of bilateral agreements includes 33 agreements, of which 32 are in force. Monaco has stated that discussions are under way with all of these jurisdictions to strengthen bilateral relations but since the signature of the Multilateral Convention (which entered into force on 1 April 2017 in Monaco), many jurisdictions no longer wish to finalise agreements that are being negotiated or to begin new negotiations.

215. Monaco signed the Multilateral Convention on 13 October 2014, which entered into force on 1 April 2017. In addition to being Party to the Multilateral Convention, Monaco has signed six new information exchange agreements since 2013. To date, Monaco has EOI relations that comply with the standard with 115 jurisdictions. During the peer review period, Monaco had 28 bilateral agreements in force and peer input on the peer review period confirmed that Monaco applied an interpretation of the foreseeable relevance in line with the standard and with the commentary to article 26 of the OECD Model Convention.

216. The EOIR standard currently includes a reference to group requests in accordance with paragraph 5.2 of the Commentary to article 26 of the OECD Model Convention. Moreover, the foreseeable relevance of a group request must be sufficiently proven and the information requested must make it possible to determine the compliance of the taxpayers within the group. Although Monaco has not received group requests, this eventuality has been added to its EOI Manual. There are no legal or practical barriers to group requests.

217. In conclusion, no deficiency was identified in the implementation of the legal framework of Element C.1, nor in the implementation in practice. Element C.1 is rated Compliant.

218. The table with conclusions and ratings remains as follows:

Legal Framework
Conclusion: The element is in place
Practical implementation of the standard
Rating: Compliant

Other forms of EOI

219. Monaco will exchange information automatically with partner jurisdictions as Monaco has committed to the application of the Common Reporting Standard for the automatic exchange of information. Monaco will exchange financial information for the first time at the latest in September 2018 on the basis of the Multilateral Convention and on the basis of the Protocol signed with the European Union. In addition, Monaco is a member of the inclusive framework of the BEPS project (prevention of erosion of the tax base and transfer of profits) since May 2016 and has committed from the outset to adopt all mandatory measures⁶ and to exchange with other partners jurisdictions further information including the country-by-country reports for which Monaco signed on 2 November 2017 the Multilateral Agreement between Competent Authorities for the exchange of country-by-country reports.

C.1.1. Foreseeable relevance standard

220. EOI instruments must allow information to be exchanged on request where the “foreseeable relevance” of the request is shown. The 2013 Report concluded that all TIEAs and DTCs signed by Monaco contain provisions

6. In this context, Monaco signed on 7 June 2017 the multilateral Convention for the Implementation of Measures on Tax Conventions to Prevent Base Erosion and Profit Shifting («MLI»). «).

capable of allowing the exchange of foreseeably relevant information for the application of domestic legislation.

221. In practice, Monaco applies the commentary to article 26 of the OECD Model Convention in interpreting the standard of foreseeable relevance. Monaco only requires the information contained within the agreements and refers to the OECD commentary in this respect. Thus, the requesting party, notwithstanding group requests or other specificities, must supply by letter:

- the identity of the subject of the request
- the period to which the EOI request refers
- the nature of the information requested
- the tax purpose of the request for information
- the reasons that suggest that these explanations are foreseeably relevant
- the reasons that suggest that the information requested is held by the requesting party
- the name and address of any person who, there may be grounds for thinking may hold or control the requested information.

222. The request must also include a statement that the request complies with the laws and administrative practices of the requesting party and a statement that the requesting party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

223. The competent authority initially considered that five of the 46 requests received from jurisdictions other than the main EOI partner did not meet the foreseeable relevance conditions of the standard. After communicating with the requesting jurisdictions and receiving clarification, the competent authority only rejected one single request out of the 46 (see element C.5).

224. Monaco's partners commented that the application by Monaco of foreseeable relevance was compliant with the standard in their exchanges of information.

Group requests

225. Monaco's procedures for handling group requests are very similar to those for an individual request and since May 2017 have been detailed in the EOI Manual.

226. In the case of group requests, Monaco plans to apply the commentary of article 26 of the OECD Model Tax Convention. A group request would be accepted by the Monegasque competent authority on the condition that the requesting State provides a detailed description of the group. Even if the subjects are not named they must be identifiable as must any facts and circumstances resulting in the request. The request must also include an explanation of the applicable Law and the reasons for believing that the taxpayers in the group subject of the request have not complied with that Law, supported by a clear factual evidence base.

227. Moreover, it is necessary to show that the information requested would help to determine the tax compliance of the taxpayers in the given group and that there is a reasonable possibility that the information is relevant at the time of the request.

228. Monaco states that the Agreement with Italy contains specific provisions agreed in advance by the two jurisdictions to recognise group requests which are required to comply with the OECD common reporting standard, as stipulated in the 2012 commentary on article 26 of the OECD Model Tax Convention, on the basis of the conduct of Italian clients who, it is suggested, have attempted to exempt themselves from their tax obligations from the date on which the Agreement was signed.

229. During the period under review, Monaco did not receive a group request.

C.1.2. Exchange of information in respect of all persons

230. The 2013 Report concluded that none of Monaco's EOI agreements restrict the jurisdictional scope of the exchange of information in respect of certain persons, for example, those considered to be resident of one of the contracting parties. No issues were raised during the period under review on this matter.

231. Furthermore, the agreements entered into since the 2013 report also do not contain any restricting provisions in this respect. However, the 2013 Report mentions that the tax treaty with Mali does not explicitly provide for the exchange of information with respect to all persons, due to a provision being inadvertently placed in another article. Monaco has since been in contact with Mali to have the text corrected. Monaco indicated that an amendment was signed with Mali on 21 November 2013 and entered into force on 1 August 2016 so that the tax treaty with Mali would be interpreted and applied in practice with respect to all persons, even if it is not explicitly stated, in light of the commentary to Article 26 of the OECD Model Convention.

232. Monaco indicated that the EOI requests received by the Monegasque competent authority relate mostly to non-residents for tax purposes and therefore do not have any tax impact domestically. The peers did not raise questions about the practical implementation over the review period.

C.1.3. Obligation to exchange all types of information

233. 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.

234. The 2013 Report concluded that the provisions made in all treaties signed by Monaco are similar or broader than those in the Model TIEA. Some of them explicitly provide for the possibility of exchanging information regarding shares, units and other interests held in companies listed on the stock exchange and in collective funds and investment vehicles. Since 2013, new agreements signed with South Africa, Italy, Guernsey, the United Kingdom, Liechtenstein and the Czech Republic comply with the standard, particularly in respect of the exchange of all types of information.

235. In practice, Monaco exchanged information held by financial institutions, nominees and persons acting as trustee.

C.1.4. No condition imposing the existence of a domestic tax interest

236. 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 powers although these must be invoked solely for the purposes of obtaining and providing information to the requesting jurisdiction.

237. The 2013 Report concluded Monaco could exchange information without necessarily having a domestic tax interest in obtaining the requested information. The new EOI agreements of Monaco also provide for EOI in the absence of conditions requiring the existence of a “domestic tax interest”.

238. Monaco has indicated that the requests received by the Monegasque competent authority relate mostly to persons who are not liable for any taxes in Monaco and as such have no implications for taxation locally. In most cases, these are requests aimed at obtaining banking information for the purposes of investigating a person who is domiciled for tax purposes in a jurisdiction with which Monaco has an information exchange agreement.

239. Request from the French tax administration relating to a person not liable to pay any tax in Monaco and which, moreover, have no implications for taxation locally, represent on average 74% of all requests received under the tax convention of 18 May 1963 for the period from 1 October 2013 to 30 September 2016 (i.e. 208 requests out of 283).

C.1.5. No condition imposing the principle of dual criminality

240. The principle of dual criminality provides that assistance can only be provided if the case under investigation (and giving rise to the request for information) could constitute a criminal case under the laws of the requesting country if it had occurred in the requesting country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

241. The 2013 report concluded that the network of EOI agreements signed by Monaco do not contain any provisions aimed at restricting exchanges through the application of the dual criminality principle. Additional agreements entered into by Monaco since then do not include provisions for dual criminality.

C.1.6. Information exchange in civil and criminal tax cases

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

243. The 2013 Report concluded that the agreements signed by Monaco allow both civil and criminal tax information to be exchanged. Additional agreements signed by Monaco since then also include provisions for the exchange of information in civil and criminal cases.

244. Most of the requests Monaco received were in civil cases, but some related to criminal cases. Monaco has responded to both types of requests without distinction of treatment.

C.1.7. Providing information in the specific form requested

245. According to the Terms of Reference, exchange of information mechanisms should allow for the provision of information in the specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent possible under a jurisdiction’s domestic laws and practices.

246. The Monegasque competent authorities have confirmed that they are willing to provide information in the specific form requested to the extent permitted under Monegasque laws and administrative practices. In addition, according to the comments received from Monaco’s treaty partners, there do not seem to have been any instances where Monaco was not in a position to provide the information in the specific form requested or in the requested format.

C.1.8. Existence of an agreement in force

247. The 2013 Report stated that a network of bilateral agreements on the exchange of information with Monaco covered 27 jurisdictions, 3 of which were not yet in force (Belgium, Mali and Mauritius). Since 2013, agreements with Mali and Mauritius have entered into force, and since the Multilateral Convention came into force on 1 April 2017, Belgium and Monaco have been in a position to exchange tax information in compliance with the standard.

248. Since 2013, Monaco has signed 6 new EOI agreements with South Africa, Italy, Guernsey, the Czech Republic, Liechtenstein and the United Kingdom (all being also party to the Multilateral Convention). Monaco’s network of bilateral exchange of information agreements now covers 32 jurisdictions, of which 31 tax conventions and tax information exchange agreements compliant with the standard have entered into force (the only agreement that is not yet in force is the agreement with Belgium).

EOIR mechanisms

	Bilateral EOI relationships
Total number of bilateral EOI relationships	32
Number of DTTs/TIEAs signed (but ratification pending), i.e. not in force	1
Number of DTTs/TIEAs signed and in force	31
Number of DTTs/TIEAs signed (but ratification pending) and compliant with the standard	1
Number of DTTs/TIEAs signed (but ratification pending), i.e. not compliant with the standard	0
Number of DTTs/TIEAs in force and compliant with the standard	31
Number of DTTs/TIEAs pending in force and not compliant with the standard	0

C.1.9. Effective exchange under domestic law

249. Monaco has implemented the legal framework to ensure the effectiveness of its EOI instruments.

C.2. Mechanisms for exchanging information with all relevant partners

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

250. The 2013 Report concluded that Element C.2 was in place but certain aspects of its legal implementation needed improvement. In 2013, the network of treaties containing provisions regarding the exchange of information did not cover all of those jurisdictions who had indicated that they would like to enter into such a relationship with the Principality. As such, the 2013 Report had recommended that Monaco enter into agreements for exchange of information (irrespective of form) with all relevant partners, meaning those partners who are interested in entering into an information exchange agreement with it, including Italy, Poland and the United Kingdom.

251. Since 2013, Monaco has endeavoured to comply fully with this recommendation. Monaco has signed information exchange agreements with Italy and the United Kingdom. The TIEA with the United Kingdom was signed on 23 December 2014 and entered into force on 22 April 2015. The TIEA with Italy was signed on 2 March 2015 and the agreement was ratified by Monaco on 28 April 2015. It entered into force on 4 February 2017.

252. The TIEA with Poland has been initialled but certain articles needed to be updated before the signature. In the meantime, Poland and Monaco can exchange information under the Multilateral Convention which entered into force in Monaco on 1 April 2017.

253. Monaco signed the Multilateral Convention on 13 October 2014 and ratified it on 14 December 2016. The Multilateral Convention entered into force in Monaco on 1 April 2017, adding 83 bilateral relations to the Monegasque treaty network.

254. Monaco continues to negotiate tax agreements with or information exchange agreements; including with parties to the Multilateral Convention; namely, Malta, Liechtenstein, Spain, Cyprus,⁷ Mexico, New Zealand and the Slovak Republic.

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

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United

255. Negotiations are under way with Montenegro and Kenya.

256. In conclusion, Monaco has implemented the recommendation in the 2013 Report such that it can be removed. However, if approached by a jurisdiction which is not a Party of the Multilateral Convention, Monaco is ready to conclude a bilateral EOI agreement. As the standard ultimately requires that jurisdictions establish an EOI relation up to the standard with all partners who are interested in entering into such relation, Monaco is recommended to maintain its negotiation programme so that its exchange of information network continues to cover all relevant partners. Element C.2 is now in place and rated compliant.

257. The table updated with conclusions and ratings is as follows:

Legal and Regulatory Framework		
	Underlying factor	Recommendations
Deficiencies identified in the implementation of the legal and regulatory framework		
Conclusion: The element is in place		
Practical implementation of the standard		
	Underlying factor	Recommendations
Deficiencies identified in the practical implementation of the EOIR standard		
Rating: Compliant		

C.3. Confidentiality

The information exchange mechanisms of countries should have adequate provisions to ensure the confidentiality of information received.

258. The 2013 Report concluded that Monegasque national law, the EOI agreements concluded by Monaco and the procedures in practice ensured the confidentiality of information exchanges, is in compliance with the standard. Since the 2013 Report, Monaco has strengthened its practical confidentiality rules to comply with the requirements of the standard in terms of the

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.

automatic exchange of information. Monaco has not identified any confidentiality issues and its partners have not mentioned any problems in terms of the confidentiality of their exchanges of information with Monaco. Consequently, Element C.3 remains in place and rated compliant with the standard.

259. The table updated with conclusions and ratings remains as follows:

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

C.3.1. Information received: disclosure, use and safeguarding measures

260. The information exchanged is subject to the rights and safeguards contained within the provisions of information exchange agreements. Thus, all agreements entered into by Monaco follow the principles laid down by international standards in terms of confidentiality.

261. Although, owing to the date on which they were signed, the tax treaties signed with France on 1 April 1950 and 18 May 1963 contain no specific chapter on confidentiality, these two agreements nevertheless specify that exchanges are exclusively between the tax administrations of the two States. Thus, in practice, the implementation of Franco-Monegasque tax treaties is based on OECD principles both in terms of the confidentiality of exchanges and their tax purpose.

262. Under Monegasque law, the confidentiality of tax information exchanged is protected both through specific provisions on professional secrecy and the code of conduct for State officials and civil servants.

263. In terms of professional secrecy, under the provisions of article 1 of Sovereign Order No. 3.085 of 25 September 1945, as amended, on the rights and responsibilities of tax officials, officials of the Department of Tax Services are bound by professional secrecy under the conditions and subject to the penalties set out under article 308 of Criminal Code. In the case of state officials, professional secrecy is reinforced in the additional code of conduct, in particular in their employment contract.

264. The 2016 Terms of Reference clarified that while the rule remains that information exchanged may not be used for other than tax purposes, an exception exists if the source authority of the information permits the use of the information for non-tax purposes, in accordance with the amendment made to the OECD Model Tax Convention which introduces in Article 26 this element which previously appeared in the commentary thereto. Monaco confirms that the requesting jurisdiction may request authorisation from the Monegasque Competent Authority to use the information for non-tax purposes.

Processing the EOI requests

265. In practice, when a request is received, it is registered and confidentially and anonymously filed in the records (through a numbering system). The request is kept under lock and key at the offices of the Competent Authority. Access to the buildings as well as the computer area is restricted to authorised persons. The building is under surveillance and authorised persons require a special magnetic card to enter the premises.

266. The same type of security measures also exist at the DSF (DSF officials were reminded of rules on organisation and confidentiality in an internal memorandum dated 28 February 2017). All requests received from France are treated confidentially and are filed as such, both electronically and on paper. The requests stored on the electronic system are only accessible by the officials responsible for handling such requests and the Director of the department.

267. The only persons with access to the requests are those responsible for handling incoming requests (EOI division of the Department of Finance and Economy or the administrative assistance unit of the DSF). They are, like all civil servants in Monaco, bound by professional secrecy subject to sanctions for default.

Penalties for a failure to meet confidentiality obligations

268. The improper disclosure of confidential information is prohibited under article 308 of the Criminal Code and is punishable by a six-month prison sentence and a fine of between EUR 9 000 and 18 000. Any exception to this general rule which would free the official of their duty of secrecy must be interpreted strictly.

269. Thus, in the event of the wrongful disclosure of confidential information, penalties may be applied in the requesting State and Monaco has stated that it would apply the OECD commentary which stipulates that the requested jurisdiction may suspend administrative assistance until the requesting State meets its confidentiality obligations.

270. No sanctions for breach of professional secrecy have been applied as there has never been a breach of confidentiality obligations neither for domestic nor for EOI purposes.

C.3.2. Confidentiality of other information

271. With regard to other information exchanges, the provisions described above apply ipso facto.

Confidentiality in practice

272. The 2013 Report did not raise any questions about confidentiality in practice. During the current review period, no difficulties were reported by Monaco's partners.

273. The developments below describe the confidentiality measures taken in practice.

274. The Department of Finance and Economy as well as the DSF regularly raise awareness of people in contact with tax information exchange files; notably regarding their obligations in terms of discretion and professional secrecy.

275. In order to implement the procedures introduced by the Department of Finance and Economy, a departmental practical guide reminds request handlers of the procedures to follow and to follow the OECD Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes.

276. Any visitors must make a prior request for authorisation in order to enter the building which allows the checking of the identity of the person as well as a log of their movements from when they enter to when they leave the building.

277. Outside of opening hours (8.30 a.m.-6.30 p.m.) a motion-sensor alarm is in operation on the premises and it directly notifies the police of any break-ins. Moreover, at the Department of Finance and Economy on the third floor of the Ministry of State, an individual confidential code allows authorised persons to access their offices.

278. To log in to their workstation the authorised person must identify and enter their PIN code in order to access the I.T. resources. The procedures relating to the degree of security of passwords are regularly updated in line with the latest standards to ensure optimal secure access to computer systems.

279. Requests for administrative assistance received by the DSF are never kept in an electronic format (hard copies only).

280. **Procedure in the event of a breach of confidentiality.** Civil servants, State officials and service providers are bound by professional secrecy and ignorance of this obligation is both a disciplinary and criminal offence under the conditions and subject to the penalties contained within article 308 of the Criminal Code. In practice, to date, no breach of confidentiality obligations on the part of DFIN or DSF officials have been observed.

281. In the event of a breach of this obligation, an investigation would be carried out and a report produced.

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

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

282. 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.

283. The 2013 report (in paragraphs 315 to 320) concluded that the mechanisms provided for in international agreements and the applicable domestic legislation in Monaco guaranteed the rights and safeguards of taxpayers and third parties. Since 2013, there have been no changes and Monaco's EOI partners have not mentioned any difficulties in terms of their exchanges in relation to the rights and safeguards of third parties.

284. The table with conclusions and ratings remains as follows:

Legal and Regulatory Framework
Conclusion: The element is in place.
Practical implementation of the standard
Rating: Compliant

C.5. Timeliness of response to requests for information

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

285. For an efficient exchange of information, the jurisdiction must request and promptly supply information under its EOI network. In particular:

- *Responding to requests*: the jurisdiction must be able to respond to requests within 90 days of the receipt either by supplying the information requested or providing an update on the status of the request.
- *Resources and organisation procedures*: the jurisdiction must have put in place resources and organisation procedures to ensure the quality of requests and the quality and timeliness of responses.
- *Restrictive conditions*: EOI assistance must not be subject to disproportionate, unreasonable and excessively restrictive conditions

286. The 2013 Report included a monitoring recommendation as the organisational process had only been put in place recently and had not been sufficiently tested in practice. During the period under review, Monaco received 329 EOI requests. Monaco's response time statistics are fully in

line with the standard. Indeed, Monaco responded within 90 days in 96% of cases, within 180 days in 3% of cases and within 12 months in 0.6% of cases. One request was withdrawn by the requesting jurisdiction, the equivalent of 0.3% of requests. Monaco's partners expressed their satisfaction with regards the quality of responses sent by Monaco.

287. With regards to Monaco's response times during the period under review, the procedure introduced for requests received by partners other than France is operating effectively. As such, the recommendation included in the 2013 Report is deleted.

288. During the period under review, Monaco sent its main partner (France) a total of 9 EOI requests, which confirmed its satisfaction with the quality of the information requests received. Moreover, Monaco changed its EOI Manual in April 2017 in order to formalise the procedure and criteria to follow when EOI requests are sent to a treaty partner other than France.

289. Given Monaco's compliant statistics on responses to the 329 EOI requests received during the period under review, the quality of responses to the EOI requests and the quality of EOI request sent by Monaco, Element C.5 is rated Compliant.

290. The updated table of conclusions and ratings is as follows:

Legal and regulatory framework 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 implementation of EOIR in practice.		
	Underlying factor	Recommendations
Deficiencies identified in the practical implementation of the EOI		
Rating: Compliant		

C.5.1. Timeliness of response to requests for information

291. During the period under review (1 October 2013 to 30 September 2016), Monaco received a total of 329 EOI requests. The table below illustrates the number of EOI requests relating to the ownership, accounting and banking records and all other types of information. Some EOI requests related to more than one type of information and can therefore be counted in several categories of information.

	From 1/10/2013 to 31/12/2013	2014	2015	1/2016 to 30/09/2016	Total
Information on ownership	9	13	9	7	38
Accounting information	5	30	26	26	87
Banking information	16	44	74	41	175
Other types of information	10	11	14	15	50

292. The most significant partners for Monaco for the period under review (in terms of the number of exchanges between them) are France, and to a lesser extent, Sweden, the Netherlands, India and Argentina. For reasons related to the length of the EOI relationship, the vast majority of the EOI activities is with the French tax administration (85% of the EOI requests).

293. The timeline to answer EOI requests is set out by Sovereign Order No. 2.693 to 90 days. For the period under review, the number of requests where Monaco's response time was under 90 days, under 180 days, under one year or over one year, are set out in the table below.

Response time statistics

	2013		2014		2015		2016		Total	
	Num.	%	Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	37	100	93	100	111	100	88	100	329	100
Full response: ≤90 days	37	100	88	94.6	107	96.4	84	95.5	316	96.0
≤180 days (cumulative)	37	100	91	97.8	109	98.2	87	98.9	324	98.4
≤1 year (cumulative)	37	100	91	97.8	109	98.2	87	98.9	324	98.4
>1 year	-	-	-	-	2	1.8	-	-	2	0.6
Status updated within 90 days (for responses sent after 90 days)	-	-	3	100	4	100	3	100	10	100
Refusal for valid reasons	-	-	1	1.1	-	-	1	1.1	2	0.6
Not obtained and required information not communicated	-	-	-	-	-	-	-	-	0	-
Request withdrawn by the requesting jurisdiction	-	-	1	1.1	-	-	-	-	1	0.3
Requests still pending at date of review	-	-	-	-	-	-	-	-	-	-

294. Monaco counts each new request received as one request, irrespective of the number of information requests made and the number of taxpayers covered. (e.g. a single request aimed at obtaining various information on one or more Monegasque businesses with business links with one or more clients established on the requesting jurisdiction counts as one unit). A follow-up request aimed at obtaining information not covered by the initial request is counted as a new unit. A reminder for information already covered in a previous request which was only partially satisfied is not counted as an additional unit.

295. Monaco's response time statistics are fully compliant with the standard. Indeed, Monaco responded within 90 days in 96% of cases, within 180 days in 3% of cases and within 12 months in 0.3% of cases. One request was withdrawn by the requesting jurisdiction, the equivalent of 0.3% of requests.

296. Monaco indicated that EOI requests requiring a handling time of over 90 days were exclusively from France and related to the net wealth tax covered by article 20 of the Franco-Monegasque Tax Treaty of 18 May 1963. The handling deadline for this type of request may be extended in the event of additional requirements in order to estimate the market value of real estate in the Principality of Monaco (identifying relevant points of comparison, real estate market research, and assessing the rental return of the property in question).

297. For the period under review, Monaco made five requests for clarification (i.e. 1.5% of the total number of EOI requests received). Following these requests, Monaco responded to four of the five requests and rejected a single request. The Competent Authority rejected this request as it was based on elements obtained unlawfully. One jurisdiction had received information from Monaco in an international letter rogatory and, without the authorisation of the Monegasque authorities and contrary to the confidentiality clause under the agreement, shared this information with a third-party jurisdiction which, on the basis of this information had submitted a request to Monaco. This position was accepted by the requesting third-party jurisdiction when explained to them, including at a meeting.

Internal procedures to update EOI partners regarding the status of their EOI requests

298. Monaco responded to EOI requests within 90 days in 96% of the cases during the peer review period. Where a request requires a longer processing time than 90 days, the requesting jurisdiction is informed of the status of its EOI requests, the processing time for the requests and the timeframe for the response.

299. The peer input indicates that peers are satisfied by the status update practice of the Monegasque competent authority.

C.5.2. Resources and organisation procedures

300. The Competent Authority is the Minister of Finances and Economy (*Conseiller de Gouvernement-Ministre des Finances et de l'Economie*) and, for historical reasons, for requests made by France, the Competent Authority is Director of the Department of Tax Services (DSF).

301. The Competent Authority is clearly designated in all information exchange agreements, which are available on a publicly accessible website, as well as in Sovereign Order No. 2.693 of 23 March 2010 on international co-operation in tax matters and on the OECD website on the secured portal of Competent Authorities of the Global Forum members. In addition, the competent authority of Monaco participates to the meetings of the competent authorities organised by the Global Forum, thereby meeting their counterparts.

302. In the EOI unit of the DFIN, three persons are in charge of processing EOI requests received from other jurisdictions than France. They are also in charge of the work in collaboration with the OECD and the negotiation of EOI agreements. For requests received from France, the administrative assistance unit within the DSF is staffed with three persons.

Process for requests received from France

303. When an EOI request from France is received by the Director of the DSF, the incoming request is given to the administrative assistance unit that registers the request in the system with the date of receipt and the name of the request handler. The EOI Unit is composed of three staff members. A paper file is also created and confidentially archived. The official verifies whether the request is complete, valid, was sent by the partner's competent authority, and contains all information and material needed and that it is foreseeably relevant.

304. If the information is available internally (to the DSF or another administrative department), the information is obtained internally by an informal process within 15 days in practice. If the information is not available internally, the administrative assistance unit sends a letter to the person concerned and/or to a third party that might be in possession of the information, to request the information (communication right) giving a 30-day deadline to answer. The communication right includes the information/documents requested, the other persons to whom the information has been requested (if the information is not solely requested from the person concerned), the taxation years, the agreement on which the request is based, the fact that information must be provided to the DSF and the fact that sanctions will be applied in case of default to answer. The answer is usually received within 30 days.

305. Once the information is received by the administrative assistance unit, the request handler verifies the information to make sure it is complete, which is generally the case. The information is then reviewed by both the Deputy of the Director and the Director of the department before the response is sent to the requesting authority. This verification process takes approximately one week.

Process for requests received from other jurisdictions

306. When an EOI request from jurisdictions other than France is received by the Minister of Finance, the request is transferred to the EOI division of the Department of Finance and Economy (DFIN) to be registered and treated. Requests are recorded in a chart that enables the Director of the DFIN to closely monitor the procedure and ensure that all steps and deadlines are followed. This chart also allows statistics to be drawn in order to monitor the performance with regard to the handling of incoming EOI requests.

307. Requests received at the DFIN are systematically checked to determine the validity of the request. Upon receiving a request, the identity of the Competent Authority in the requesting jurisdiction is always checked using the portal of Competent Authorities on the OECD website. The Competent Authority will then rule on the admissibility of the request and hence rule on the foreseeable relevance of the request.

308. Requests received in French and English are treated as such and are not translated. Answers are always provided in French with a courtesy translation in English. As soon as the request is received, a prior notification is sent to the person concerned (by registered mail with acknowledgement of receipt) and the person concerned has 15 days in which to give comments (as explained under Section B.2).

309. The EOI request is sent to the DSF to verify whether the request is complete, in the same manner as for requests received from France. The conformity of the EOI request is verified by the inspector in charge of the administrative assistance upon review from the deputy director. The DSF provides its answer within 48 hours and an acknowledgement of receipt is sent to the requesting jurisdiction by the EOI division. In cases where the DSF is of the opinion that the incoming request should not be handled because the conditions stipulated in the applicable agreement are not met, the requesting jurisdiction is informed and the procedure comes to an end. No further analysis of the validity of the request is needed in such cases. In the review period, only one request was rejected for the reasons set out in C.5.1.

310. If the EOI request is incomplete, the Monegasque authorities first try to find the information by themselves, otherwise they will ask the requesting jurisdiction for additional information the same way as for requests received from France.

311. If the request is complete, it is then examined by the Minister of Finance to determine whether it is valid. To do so, the Minister of Finance is assisted by a consultative commission and takes into account any comments made by the person concerned. The commission is purely consultative. Its conclusions are for the purposes of informing the Minister of State and are not binding. The consultative commission generally discusses issues around

interpretation and the types of documents that can be requested. The conclusions of the commission are transmitted to the Minister of Finance who then submits an opinion to the Minister of State.

312. The Minister of State then either decides

- that the request meets the conditions of the agreement and the information must be exchanged (if available internally) or be collected from the person or the third party (if not available internally), or
- that the request does not meet the conditions of the agreement and should be rejected, in which case the rejection must be on solid grounds and is generally validated by the Department of Legal Affairs with the decision communicated to the requesting party within 40 days.

313. The validation process has to be completed within 45 days of the reception of the request (this deadline is reduced to 20 days if the requesting jurisdiction indicates that the request is urgent). In practice, these shortened deadlines are respected due to the limited number of persons concerned and due to the fact that they are all in the same location. Once the validation process is over, the collection process can start.

314. If the information is available internally, the EOI division has to wait for the expiration of the 30-day period during which the person concerned has the right to appeal, before sending the information to the requesting jurisdiction.

315. If the information is not available internally, the EOI division of the DFIN will send a letter to the person concerned together with a letter to any third party that is in possession of the information giving a 30-day deadline for providing the information. At the end of the 30 days, if the information has not been provided, the EOI division will ask the administrative assistance unit of the DSF to collect the information from the person concerned and the third party (if any) using its communication right. Once the information has been received by the administrative assistance unit and has been verified, it is transferred to the EOI division of the DFIN that verifies the information before sending the answer to the requesting jurisdiction.

316. If the information collected is not complete, the Monegasque authorities attempt to obtain the additional information in order to send a complete answer to the requesting jurisdiction, except when the 90-day deadline is imminent or in case of emergency. In such cases, a partial answer is sent to the requesting jurisdiction before the 90-day deadline before they continue the process to obtain the missing information.

317. Monaco has also considered a possible increase in the number of EOI requests in the future with the implementation of the first automatic

exchanges of information, and stands ready to process them using the current administrative procedure, or to amend it by involving the DSF in the event this procedure is no longer fit for purpose, so as to respect the 90-day time-frame set out in the Sovereign Order.

Procedure for obtaining the information requested

318. The procedure to access information is set out in Section B.1. Access to information.

Verification of information gathered

319. The quality of information collected is checked in two stages:

- At the DFIN, the information collected is checked to ensure that information is exhaustive and relevant prior to it being shared with the requesting country by the Competent Authority. The inspector responsible for administrative assistance at the DSF, or, where relevant, the specialist inspector having handled the request, ensures that the information collected is exhaustive and relevant, overseen by a Deputy Director.
- Ultimately, requests are submitted for signature by the Competent Authority or by the Director of the DSF who carries out a final appraisal of the file.

320. In all of these circumstances, in principle the Department of Tax Services' procedure allows the information requested by the requesting country to be gathered and sent within 90 days. The statistics during the period under review confirm the effectiveness of this procedure with 96% of requests answered within 90 days.

321. Upon the final answer, Monaco requests systematically to the requesting jurisdictions to provide feedbacks on the information sent and the quality of the responses provided. The Monegasque authorities indicated that when provided the feedback is always positive.

Outgoing requests

322. Monaco sent EOI requests during the period under review only to its main partner.

323. In the case of auditing of taxpayers within the Principality, overseen by the Department of Tax Services, the decision to send a request for assistance to the competent authority in France is taken by the lead inspector after consultation with the deputy Director in question.

324. Since April 2017, the EOI Manual describes the content and quality of the request, as well as how it should be drafted, checked, transmitted and followed up. This request, in writing, must contain the following information:

- the identity of the subject of the audit or investigation: name, date of birth (for natural persons), marital status, NIF (where relevant) and address
- indications on the information sought, in particular the nature and format in which the Monegasque competent authority wishes to receive it
- the tax purpose of the request for information
- the reasons which suggest that the requested information is held by the requested party or is in the possession or under the control of a person within the jurisdiction of the requested party
- insofar as they are known, the name and address of any person who, there may be grounds for thinking, may hold or possess the requested information
- a statement specifying that:
 - the request complies with the legislative and regulatory provisions and the administrative practices of the Principality of Monaco
 - if the information requested falls within the jurisdiction of the Principality of Monaco, the Monegasque competent authority may obtain the information under national law
 - the request complies with the tax agreement in force on which it is based
- a statement specifying that the Monegasque competent authority used all resources available on the territory of the principality to obtain the information except those which would give rise to disproportionate difficulties.

325. The draft request for assistance is submitted to the approval of the Deputy Director who checks its quality and compliance with the principle of foreseeable relevance. The request made by the Monegasque competent authority must be drafted in French in simple, clear language. It may be accompanied, if necessary, by a translation into the language of the requesting party. The draft request for assistance is subject to the prior approval of a Deputy Director and, after finalisation, to the signature of the Department of Tax Services. Having been finalised, the request for assistance is signed by the Director of Tax Services and sent by post.

326. During the period under review, Monaco sent a total of 9 EOI requests to its main partner, broken down as follows:

	2013 (from 1 October)	2014	2015	2016 (up to 30 September 2016)
Total number of requests made	1	2	5	1
Total number of requests for clarification received	0	0	0	0

327. Following these requests, Monaco received no requests for clarification. Its main partner confirmed that it was satisfied with the quality of EOI requests sent by Monaco.

C.5.3. Unreasonable, disproportionate and excessively restrictive conditions for EOI

328. The exchange of information must not be subject to unreasonable, disproportionate or excessively restrictive conditions. No factor or problem has been identified which might be deemed unreasonable, disproportionate or excessively restrictive.

Annex 1: List of in-text recommendations

Issues may have arisen that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. However, in order to ensure that the Global Forum does not lose sight of these “in text” recommendations, they should be listed in an annex to the EOIR report for ease of reference.

- **Element A.1:** The existence of trustees acting in a non-business capacity has not affected EOI to date. It is recommended that Monaco continues to check whether this small legal gap has a negative impact on EOI in practice.
- **Element A.3:** Given the 50% drop in on-site visits at financial institutions in 2016 compared with previous years, it is recommended that Monaco puts in place the necessary resources to continue to ensure the continuity of its financial institution supervision programme.
- **Element C.2:** However, if approached by a jurisdiction which is not a Party of the Multilateral Convention, Monaco is ready to conclude a bilateral EOI agreement. As the standard ultimately requires that jurisdictions establish an EOI relation up to the standard with all partners who are interested in entering into such relation, Monaco is recommended to maintain its negotiation programme so that its exchange of information network continues to cover all relevant partners.

Annex 2: List of EOI mechanisms in Monaco

1. International bilateral information exchange agreements

EOI partner	Type of agreement (DTT, TIEA, other)	Date signed	Date ratified by the assessed jurisdiction	Entered into force
Andorra	TIEA	18/09/2009	27/5/2010	16/12/2010
Argentina	TIEA	30/10/2009	07/07/2010	07/08/2010
Austria	TIEA	15/09/2009	19/05/2010	01/08/2010
Australia	TIEA	01/04/2010	19/07/2010	13/01/2011
Bahamas	TIEA	18/09/2009	28/07/2010	18/02/2011
Belgium	TIEA	15/07/2009	Pending	Pending
Czech Republic	TIEA	31/07/2014	10/02/2016	02/03/2016
Denmark	TIEA	23/06/2010	20/08/2010	06/10/2010
Faroe Islands	TIEA	23/06/2010	20/08/2010	07/05/2011
Finland	TIEA	23/06/2010	20/08/2010	20/11/2010
France	Double Taxation Treaty	18/05/1963	10/08/1963	19/08/1963
Germany	TIEA	27/07/2010	25/11/2010	09/12/2011
Greenland	TIEA	23/06/2010	20/08/2010	13/04/2012
Guernsey	Double Taxation Treaty	14/04/2014	19/03/2015	09/05/2015
Iceland	TIEA	23/06/2010	20/08/2010	23/02/2011
India	TIEA	31/07/2012	17/04/2013	03/04/2013
Italy	TIEA	02/03/2015	28/04/2015	04/02/2017
Liechtenstein	TIEA	21/09/2009	14/06/2010	14/07/2010
	Double Taxation Treaty	28/06/2017	27/10/2017	21/12/2017
Luxembourg	Double Taxation Treaty	27/07/2009	03/05/2010	03/05/2010
Mali	Double Taxation Treaty Protocol	13/02/2012	12/04/2012 + amendment 21/11/2013	01/08/2016

EOI partner	Type of agreement (DTT, TIEA, other)	Date signed	Date ratified by the assessed jurisdiction	Entered into force
Mauritius	Double Taxation Treaty	13/04/2013	16/05/2013	08/08/2013
Netherlands	TIEA	11/01/2010	27/05/2010	01/12/2010
Norway	TIEA	23/06/2010	31/12/2010	30/01/2011
Qatar	Double Taxation Treaty	16/09/2009	03/05/2010	15/05/2010
Saint. Kitts and Nevis	Double Taxation Treaty	17/09/2009	22/07/2011	01/12/2011
San Marino	TIEA	29/07/2009	10/05/2010	10/05/2010
Samoa	TIEA	07/09/2009	23/06/2010	20/02/2013
Seychelles	Double Taxation Treaty	04/01/2010	7/05/2010	01/01/2013
South Africa	TIEA	18/09/2013	06/11/2014	30/12/2014
Sweden	TIEA	23/06/2010	20/08/2010	26/12/2010
United Kingdom	TIEA	23/12/2014	19/03/2015	22/04/2015
United States	TIEA	08/09/2009	11/03/2010	11/03/2010

2. Convention on Mutual Administrative Assistance in Tax Matters (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 amended Convention)⁸. The Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

Monaco signed the Multilateral Convention on 13 October 2014 and ratified it on 14 December 2016. The Multilateral Convention entered into force in Monaco on 1 April 2017. Monaco can exchange information with the other Parties to the Multilateral Convention.

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

As at 8 January 2018, the amended Convention is also in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curacao (extension by the Netherlands), Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Guatemala, Guernsey (extension by the United Kingdom), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Kingdom and Uruguay.

In addition, the following are the jurisdictions that have signed the amended Convention, but where it is not yet in force: Bahamas, Bahrain, Brunei Darussalam, Burkina Faso, Dominican Republic, El Salvador, Gabon, Jamaica, Kenya, Kuwait, Morocco, Peru, Philippines, Qatar, Turkey, United Arab Emirates and the United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

3. EU Directive on Administrative Cooperation and fight against VAT fraud

Monaco can exchange information relevant for indirect taxes upon request with EU member states under Council Regulation (EU) No. 904/2010 of 07/10/2010 (administrative cooperation and fight against VAT fraud, via France).

Annex 3: Methodology for the review

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

The present assessment is based on information made available to the assessment team, including, in particular information exchange agreements, legislation and regulations in force or entering into force at 8 January 2018, the implementation of Monaco’s exchange of information on request based on the requests sent and received during the three-year review period from **1 October 2013 to 31 September 2016**, Monaco’s responses to the EOIR questionnaire, the comments provided by the jurisdiction partners in response to the peers’ questionnaire as well as information supplied by Monaco’s authorities during the on-site visit which took place from 25 to 27 April 2017 in Monaco.

Laws, regulations and other material received

Constitution of 17 December 1962 (as amended by Act No. 1.249 of 2 April 2002)

International treaties

Conventions concluded with France

Convention entre la France et la Principauté de Monaco tendant à éviter les doubles impositions et à codifier les règles d’assistance en matière successorale du 1^{er} avril 1950

Convention fiscale entre la France et la Principauté de Monaco du 18 mai 1963

Convention franco-monégasque du 14 avril 1945 relative au contrôle des changes, et accords interprétatifs :

- a. échange de lettres du 18 mai 1963 relatif à la réglementation bancaire dans la Principauté
- b. échange de lettres du 6 avril 2001 concernant la surveillance harmonisée des établissements de crédit,
- c. échange de lettres du 20 octobre 2010 remplaçant l'échange de lettres du 27 novembre 1987

Convention franco-monégasque sur le contrôle des changes du 14 avril 1945 et échanges de lettres

Convention douanière franco-monégasque du 16 mai 1963

Échange de lettres du 27 novembre 1987

Accord monétaire du 29 novembre 2011 conclu entre la Principauté de Monaco et l'Union européenne, remplaçant la Convention monétaire conclue le 24 décembre 2001

Tax treaties and TIEAs, in force or not, signed with other states

Accord d'échange de renseignements conclu entre la Principauté de Monaco et le Royaume de Belgique le 15 juillet 2009

Convention fiscale conclue entre la Principauté de Monaco et le Grand-duché de Luxembourg le 27 juillet 2009

Accord d'échange de renseignements conclu entre la Principauté de Monaco et Samoa le 7 septembre 2009

Accord d'échange de renseignements conclu entre la Principauté de Monaco et les États-Unis le 8 septembre 2009

Accord d'échange de renseignements conclu entre la Principauté de Monaco et la république d'Autriche le 15 septembre 2009

Convention fiscale conclue entre la Principauté de Monaco et l'État du Qatar le 17 septembre 2009

Convention fiscale conclue entre la Principauté de Monaco et St-Kitts et Nevis le 17 septembre 2009

Accord d'échange de renseignements conclu entre la Principauté de Monaco et la Principauté d'Andorre le 18 Septembre 2009

Accord d'échange de renseignements conclu entre la Principauté de Monaco et le Commonwealth des Bahamas le 18 septembre 2009

Accord d'échange de renseignements conclu entre la Principauté de Monaco et la Principauté du Liechtenstein le 21 septembre 2009

- Accord d'échange de renseignements conclu entre la Principauté de Monaco et la République de Saint-Marin le 29 septembre 2009
- Accord d'échange de renseignements conclu entre la Principauté de Monaco et la République Argentine le 30 octobre 2009
- Convention fiscale conclue entre la Principauté de Monaco et la République des Seychelles le 4 janvier 2010
- Accord d'échange de renseignements conclu entre la Principauté de Monaco et le Royaume des Pays-Bas le 11 janvier 2010
- Convention entre la Principauté de Monaco et la République du Mali en vue d'éviter les doubles impositions et de prévenir l'évasion fiscale en matière d'impôts sur le revenu le 13 février 2012
- Accord d'échange de renseignements conclu entre la Principauté de Monaco et l'Inde le 13 July 2012
- Convention fiscale conclue entre la Principauté de Monaco et l'Île Maurice le 13 avril 2013

Codes

- Article 10 du Code de Commerce
- Article 308 du Code pénal

Tax legislation

- Annexe au Code des Taxes sur le chiffre d'affaires
- Ordonnance Souveraine n° 3152 du 19 mars 1964 instituant un impôt sur les bénéfices
- Ordonnance Souveraine n° 10.324 du 17 octobre 1991 relative à l'impôt sur les bénéfices – régime des entreprises nouvelles
- Ordonnance Souveraine n° 10.325 du 17 octobre 1991, modifiée, relative à l'impôt sur les bénéfices – crédit d'impôt recherche
- Ordonnance Souveraine n° 373 du 26 janvier 2006 relative aux rémunérations des dirigeants
- Ordonnance sur l'enregistrement, le timbre, le droit de greffe et les hypothèques du 29 avril 1828
- Ordonnance-loi n° 155 portant simplification de certaines formalités en ce qui concerne l'enregistrement et les hypothèques du 17 juin 1931
- Loi n° 223 portant codification et modification des droits d'enregistrement, de timbre et d'hypothèque du 27 juillet 1936

- Loi n° 276 portant réforme en matière de droits de mutation par décès du 2 octobre 1939
- Ordonnance-loi n° 389 sur la déclaration des successions en ligne directe du 20 juin 1944
- Loi n° 474 portant réforme en matière de droit d'enregistrement et de timbre du 4 mars 1948
- Loi n° 580 portant aménagement des droits d'enregistrement et d'hypothèques du 29 juillet 1953
- Loi n° 704 modifiant le régime fiscal des mutations à titre gratuit entre époux du 5 juin 1961
- Loi n° 842 tendant à modifier le régime des droits d'enregistrement applicable aux opérations immobilières soumises à la taxe sur la valeur ajoutée du 1er mars 1968
- Ordonnance n° 101 du 26 juin 2005 portant application de l'accord conclu entre la Principauté de Monaco et la Communauté Européenne prévoyant des mesures équivalentes à celles que porte la directive 2003/48/CE du Conseil en matière de fiscalité des revenus de l'épargne sous forme de paiement d'intérêts signé à Bruxelles le 7 décembre 2004
- Loi n° 1.300 relative à l'escroquerie fiscale applicable aux revenus de l'épargne payés sous la forme d'intérêts du 15 juillet 2005
- Ordonnance n° 3085 du 25 septembre 1945 relative aux droits et devoirs des agents des services fiscaux

International tax co-operation legislation

- Ordonnance souveraine n° 2.693 du 23 mars 2010 relative à la coopération internationale en matière fiscale
- Arrêté ministériel n° 2010-159 du 23 mars 2010 portant application de l'Ordonnance Souveraine n° 2.693 du 23 mars 2010 relatif à la coopération internationale en matière fiscale

Companies legislation

- Ordonnance du 05 mars 1895 sur les sociétés anonymes et en commandite par actions
- 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

Ordonnance n° 3.167 du 29 janvier 1946 réglant l'établissement du bilan des sociétés anonymes et en commandite

Loi n° 721 du 27 décembre 1961 instituant le Répertoire du Commerce et de l'Industrie

Ordonnance Souveraine n° 2853 du 22 juin 1962 portant application de la loi n° 721 du 27 décembre 1961 instituant un Répertoire du commerce et de l'industrie

Loi n° 1.144 du 26 juillet 1991 concernant l'exercice de certaines activités économiques et juridiques

Loi n° 1.282 du 7 juin 2004 modifiant certaines dispositions relatives aux sociétés par actions,

Loi n° 1.331 du 8 janvier 2007 relative aux sociétés

Loi n° 1.385 du 15 décembre 2011 portant diverses mesures en matière de mise à jour de la législation sur les sociétés anonymes, les sociétés civiles, les trusts et les fondations

Arrêté ministériel n° 2012-182 du 5 avril 2012 portant application de la loi n° 1.385 du 15 décembre 2011 portant diverses mesures en matière de mise à jour de la législation sur les sociétés anonymes, les sociétés civiles, les trusts et les fondations

Financial activities legislation

Loi n° 1.338 du 9 juillet 2007 sur les activités financières

Loi n° 1.339 du 9 juillet 2007 relative aux fonds communs de placement et aux fonds d'investissement

Ordonnance Souveraine n° 1.284 du 10 septembre 2007 portant application de la loi n° 1.338 du 7 septembre 2007 sur les activités financières

Ordonnance Souveraine 1.285 du 10 septembre 2007 portant application de la loi n° 1.339 du 7 septembre 2007 relative aux fonds communs de placement et aux fonds d'investissement

Anti-money laundering legislation

Loi n° 1.362 du 3 août 2009 relative à la lutte contre le blanchiment de capitaux, le financement du terrorisme et la corruption

Ordonnance Souveraine n° 2.318 du 3 août 2009 fixant les conditions d'application de la loi n° 1.362 du 3 août 2009 relative à la lutte contre le blanchiment de capitaux, le financement du terrorisme et la corruption

Ordonnance souveraine n° 3.450 du 15 septembre 2011 portant modification de l'Ordonnance souveraine n° 2.318 du 3 août 2009 fixant les conditions d'application de la loi n° 1.632 du 3 août 2009 relative à la lutte contre le blanchiment de capitaux, le financement du terrorisme et la corruption

Trusts legislation

Loi n° 214 du 27 février 1936 (portant révision de la loi n° 207 sur les trusts du 12 juillet 1935) modifiée par la loi n° 1.216 du 7 juillet 1999

Ordonnance souveraine n° 14.346 du 2 mars 2000 portant application de la loi n° 1.216 du 7 juillet 1999 portant modification de la loi n° 214 du 27 février 1936 sur les trusts

Loi n° 1.385 du 15 décembre 2011 sur les trusts

Foundations legislation

Loi n° 56 du 29 janvier 1922 sur les fondations

Ordonnance souveraine n° 3.449 du 15 septembre 2011 portant application de l'article 13-1 de la loi n° 56 du 29 janvier 1922 sur les fondations, modifiée

Authorities met during the onsite visit

Representatives of the Ministry of Finance

Representative of the Department of Foreign Affairs

Representatives of the Department of Tax Services

Representatives of the Service d'Information et de Contrôle sur les Circuits Financiers – Financial Circuits Supervisory and Monitoring Service (SICCFIN)

Representatives of the Supervisory Authority for professionals including:

- a representative of the notaries
- a representative of the Chartered Accountants

Representatives of the Direction of the Budget and Treasury

Representatives of the Department of Economic Development

Current and previous reviews

Phase 1 and 2 of the review were carried out in accordance with the Terms of Reference adopted by the Global Forum in 2010 (2010 Terms of Reference) and the methodology used in the first round of evaluation. The Principality of Monaco was already assessed on its legal and regulatory framework and its practical implementation in Phase 2 in 2012. The 2013 Report was published in May 2013 (with no rating) and in 2013 (with a rating).

The information for each of Monaco's reviews is set out in the table below.

Summary of reviews

Review	The assessment team	Legal framework from	Period under review	Date adopted by the Global Forum
Phase 1 (2010) report	Shauna Pittman, advisor in the Canadian tax administration; Kamlesh Varshney, Director in the Indian tax administration; and Rémi Verneau for the Global Forum Secretariat.	June 2010	N/A	September 2010
Phase 1 (2011) first supplementary report		August 2011	N/A	October 2011
Phase 1 (2012) second report	Shauna Pittman, advisor in the Canadian tax administration; Manon Hélie, Manager in the exchange of information service of the Canadian Revenue Agency; Sukesh Kumar Jain, Director in the Foreign Tax and Tax Research Division, Ministry of Finance, Government of India; and two representatives of the Global Forum Secretariat, Mélanie Robert and Rémi Verneau.	July 2012	N/A	October 2012
Phase 2 (2013) report	Manon Hélie, Manager, Exchange of Information Services Section of the Canadian Revenue Agency; Sukesh Kumar Jain, Director in the Foreign Tax and Tax Research Division, Ministry of Finance, Government of India; Mélanie Robert and Rémi Verneau for the Global Forum Secretariat.	End of May 2013	2009 to 2011	May 2013 (final rating in November 2013)
Second round review report	Aurore Arcambal; Tax Legal Consultant, Seychelles, Rodrigue Ossi, Deputy Director Legislation and litigation, Gabon and Séverine Baranger, Secretariat of the Global Forum.	January 2018	October 2013 until the end of September 2016	March 2018

Annex 4: Jurisdiction’s response to the report⁹

First of all, Monaco would like to thank the evaluation team and the Secretariat for the quality of this very comprehensive report, which reflects perfectly the current situation with regard to the Principality’s transparency in tax matters.

Monaco agrees with all of the ratings and recommendations proposed by the evaluation team and endorsed by the members of the Peer Review Group, but wishes to emphasize again certain points.

For A1, for which Monaco is rated “Largely compliant”, a small gap has been identified and a recommendation has been made regarding the need to ensure that information on the beneficial ownership of partnerships is available in all cases.

In this regard, Monaco wishes to point out that a draft law was submitted to its legislative assembly on 9 November 2017. This draft law aims to update and strengthen the mechanisms against money laundering, the financing of terrorism and corruption, in accordance with the Principality’s international commitments, and to ensure that it complies with the 4th Directive, which provides, in particular, for the creation of a register of beneficial owners.

For point A2, Monaco was pleased to note that the measures taken following the previous evaluation cycle made it possible to obtain the “Compliant” rating.

Regarding the addition requested by the Peer Review Group following its examination of the Draft Report for item B1, Monaco wishes to ensure that, for requests in which the bank holding the required information is not specified, the procedure referred to in the report will be implemented in strict compliance with the provisions of the standard regarding confidentiality and respect for personal data.

9. This Annex presents the jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s view.

Similarly, item B2, which was rated “Partially Compliant”, is now “Compliant” following the amendment of the Monegasque texts to introduce exceptions to the taxpayer’s notification in accordance with the standard.

With regard to point C5 on the quality and promptness of requests and replies, Monaco notes with satisfaction that the “Compliant” rating confirms the efficiency of the legal and practical methods for the exchange of information on request by Monaco, and this despite a significant increase in the number of requests and their complexity.

Finally, Monaco considers that the overall rating of “Compliant” is an acknowledgment of the progress made since the Round 1 evaluation and will continue to adjust, as necessary, the texts and practice to comply with the OECD Global Forum standard in order to maintain the quality and timeliness of the responses as outlined in this draft report, reiterating that once the law will have been passed by its legislative assembly, the recommendation on A1 will have been addressed.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information
on Request MONACO 2018 (Second Round)**

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 140 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.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, please visit www.oecd.org/tax/transparency.

This report contains the 2018 Peer Review Report on the Exchange of Information on Request of Monaco.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264291157-en>.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases.

Visit www.oecd-ilibrary.org for more information.

OECD publishing
www.oecd.org/publishing



ISBN 978-92-64-29114-0
23 2018 13 1 P

