GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

AUSTRIA

2018 (Second Round)

OECD

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

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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(reflecting the legal and regulatory framework as at July 2018)

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 150 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.

Abbrevations and acronyms

ADG	Administrative Assistance Implementation Act
AG	Joint-stock company
AML	Anti-Money Laundering
AML Act	Act on the Prevention of Transfer of Criminal Proceeds
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
BAO	Federal Fiscal Code
CDD	Customer Due Diligence
CLO	Central Liaison Office for International Co-operation – the Austrian EOI Unit
CSD	Central Securities Depository
DTC	Double Tax Convention
EOI	Exchange of information
EOIR	Exchange of information on request
EStG	Income Tax Act
FATF	Financial Action Task Force
FBG	Austrian Business Register Act
Firmenbuch	Business Register
Finanzstrafgesetz	Fiscal Offences Act
FMA	Financial Market Authority
FM-GwG	Financial Market – Anti Money Laundering Act
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes

Genossenschaft	Co-operatives
GesbR	Civil Law Partnership (*Gesellschaft bürgerlichen Rechts*)
GmbH	Limited liability company
KontRegG	Account Register and Account Inspection Act
Multilateral Convention (MAC)	The multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended
PRG	Peer Review Group of the Global Forum
NO	Notarial Code
RAO	Solicitor-Advocates' Code
TIEA	Tax Information Exchange Agreement
Treugeber	the economic owner of assets held in a Treuhand
Treuhand	Austrian fiduciary relationship
Treuhänder	Trustees
UGB	Entrepreneurial Code
VAT	Value Added Tax
WiEReG	Beneficial Owners Registry Act
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference (ToR)	Terms of Reference related to Exchange of Information on Request (EOIR), as approved by the Global Forum on 29-30 October 2015.

Executive summary

1. This second round report analyses the implementation by Austria of the standard of transparency and exchange of information on request for tax purposes, for both the legal implementation of the standard as well as its operation in practice in respect of EOI requests received during the period from 1 October 2014 to 30 September 2017, against the 2016 Terms of Reference. It concludes that Austria is overall Largely Compliant with the international standard. In 2015, the Global Forum conducted a supplementary review of Austria for its implementation of the standard against the 2010 Terms of Reference, and found that Austria was rated Largely Compliant overall. This was an upgrade from an overall Partially Compliant rating received in 2013.

Comparison of ratings for First Round Report and Second Round Report

Element		First Round Supplementary Report (2015)	Second Round EOIR Report (2018)
A.1	Availability of ownership and identity information	LC	LC
A.2	Availability of accounting information	C	C
A.3	Availability of banking information	C	C
B.1	Access to information	LC	LC
B.2	Rights and safeguards	C	C
C.1	EOIR Mechanisms	LC	LC
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	C	C
C.4	Rights and safeguards	C	C
C.5	Quality and timeliness of responses	C	C
	OVERALL RATING	**LC**	**LC**

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

Progress made since previous review

2. In 2015, Austria was found Largely Compliant with the international standard of transparency and exchange of information on request. In particular, the legal and regulatory framework was in place to ensure the availability and access to information on legal ownership of relevant entities, accounting information and in most cases to banking information. However, the practical implementation of effective abolition of bearer shares and availability of accounting information in fiduciary relationships required monitoring. In addition, Austria was recommended to bring all remaining deficient EOI relationships to the standard to fully allow exchange of banking information and to monitor that new or recently amended EOI relationships in practice allow banking information to be exchanged. Austria made progress on these two areas.

3. First, Austria had put in place in 2011 and 2015 new provisions to prohibit the issue of bearer shares together with sanctions and incentives. The 2015 Report recommended, under element A.1, to monitor the effective implementation of the new provisions. The monitoring process has continued, but as enough time has elapsed without any outstanding issues, the recommendation is now removed.

4. With regard to availability of accounting records, the 2015 Report recommended that Austria clarifies that reliable accounting records are kept in the case of fiduciary relationships in any situation, especially as there are no record keeping requirements when the Treugeber or settlor is not resident in Austria and all assets held through the fiduciary relationship are located outside Austria. The Austrian authorities have further clarified that they have never encountered any case in practice combining a non-resident Treugeber and assets held through the fiduciary relationship located outside Austria. In light of the above absence of materiality in practice after close monitoring, the recommendation of the 2015 Report is removed.

5. Second, Austria has continued to update its treaty network to address the recommendations made in the 2015 Report under elements B.1, C.1 and C.2 to bring the 21 EOI-relationships that did not allow banking information to be exchanged to the standard. Since the first round review, Austria has signed and ratified 4 new DTCs, one TIEA and 2 Protocols to existing DTCs. However, Austria has only partially addressed these recommendations because 16 EOI relationships continue not to allow exchange of banking information. Therefore, the recommendations in elements B.1 and C.1 are updated to reflect this new situation. As both the total number of EOI relationships to the Standard and EOI-relationships that allow banking information to be exchanged have continued to increase, the network can be seen broad enough to justify deleting the same recommendation given in connection to element C.2.

6. Despite this limited progress with regard to the amount of deficient EOI-relationships, Austria has still performed well in amending the most relevant relationships. This conclusion is supported by the fact that the amount of declined cases that concerned banking information diminished from 44 out of 70 cases (during the 2015 review) to 7 out of 144 cases during the current review period. Many of these 7 cases related to EOI relationships which were not in line with the standard for the requested period but were since then brought to the standard for more recent tax periods. Only 3 cases relate to one EOI-relationship where there is still not a legal basis in line with the standard in force. In all cases where a new or amended treaty was applicable, Austria exchanged the full banking information. Therefore, the only identified issues in exchanging banking information based on new or renegotiated treaties are related to acceptable legacy issues where the amended treaty does not apply to tax periods that predate the amendment. Therefore, as these legacy issues do not require further monitoring, the first round monitoring recommendation is deleted from element B.1.

Key recommendation(s)

7. The present 2018 Report issues three key recommendations to Austria: one is a continuation to the 2015 recommendations on bringing all remaining deficient EOI relationships to the standard, and the two others relate to new issues: monitoring the implementation of the newly introduced Register of Beneficial Ownership and monitoring that the competent authority can access all relevant information held by lawyers and notaries.

8. As noted above, Austria has renegotiated some of its treaties to allow banking information to be accessed and exchanged. However, 16 EOI-relationships out of the 21 which were identified deficient in the 2015 review continue not to be in line with the standard. These deficiencies have impacted to Austria's ability to access banking information (element B.1) and to exchange it (element C.1). In addition, 10 of these EOI-relationships limit exchange of information to the application of the treaty or require providing the name and address of the holder of the information in Austria. These deficiencies can impact on the exchange of all types of information when such information is not needed to apply the provisions of the treaty but more broadly to the administration or enforcement of domestic tax laws. Therefore, Austria is recommended to continue to further amend its EOI network to the standard with all relevant partners.

9. Regarding beneficial ownership information, a new requirement introduced in 2016 in the EOIR standard, the information is available through two sources. The most comprehensive source is a Beneficial Ownership Register, which is operational from 1 June 2018. The Register is designed

with robust obligations for legal entities and AML-obligated persons, and effective penalties. The information has also been available for some time through Austria's AML/CFT framework. Although it has a broad coverage, legal entities and arrangements are not required to engage an AML-obligated person who would record their beneficial ownership information in all cases and during their entire lifetime. These gaps are addressed by the Beneficial Ownership Register. However, because the effectiveness of the Register in practice could not yet be evaluated; Austria is recommended to monitor its implementation in practice.

10. The scope of professional secrecy of lawyers and notaries seems to be in line with the standard and the competent authority can use its general access powers to request these professionals to provide information for EOI purposes. However, professionals met during the onsite visit had not such a clear and positive view on this matter and since there have been no cases in practice where lawyers or notaries were requested to provide information, the practical application of the rules should be monitored so that they allow EOI in line with the standard in all cases.

Overall rating

11. The overall assigned rating for Austria remains Largely Compliant.

12. As indicated above, Austria fully addressed the recommendation made in the 2015 Report with regard to the elimination of bearer shares. However, the requirements on beneficial ownership information introduced by the 2016 ToR were taken into account when assigning a new rating on availability of ownership information. The evaluation of its implementation in practice was not possible since the Register is only in force from 1 June 2018. Therefore, although Austria successfully addressed the recommendation made in the 2015 review, element A.1 continues to be rated Largely Compliant.

13. The amount of partners with which Austria's ability to obtain and exchange banking information is limited has diminished with regard to partners that in practice exchange banking information with Austria. However, the improvement is not significant enough to justify an upgrade in ratings for elements B.1 and C.1. In addition, as stated above, access to information held by lawyers and notaries should be monitored, which has an impact on element B.1. Thus, elements B.1 and C.1 continue to be rated Largely Compliant.

14. Generally Austria's access powers are broad and allow provision of good quality information to the satisfaction of its partners – mainly other EU Member States and neighbouring Switzerland. Austria continues to have in place a very effective EOI programme with complete replies provided to EOI partners in 80% of over 1 534 EOI requests received during the review period

within 90 days. Accordingly, Austria is valued by its exchange of information partners on effectiveness, quality and reliability of exchange of information.

15. As was the case in the 2015 Report, all other elements are rated Compliant. In the view of the above, the overall assigned rating for Austria is Largely Compliant.

16. This report was approved at the PRG meeting on 10-13 September 2018 and was adopted by the Global Forum on 12 October 2018. A follow up report on the step undertaken by Austria to address the recommendations made in this report should be provided to the PRG no later than 30 June 2019 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place		
Largely Compliant	Although Austria's AML/CFT framework has a broad coverage, legal entities and arrangements are not required to engage an AML-obligated person who would identify and verify their beneficial ownership information in all cases and during their entire lifetime. These gaps are addressed by the Beneficial Ownership Register, which is designed with robust obligations for legal entities and AML-obliged persons and effective penalties. However, its efficiency in practice could not be assessed as it is only fully effective with effect from 1 June 2018.	It is recommended that Austria monitors the implementation of the Beneficial Ownership Register in practice.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place		
Compliant		
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place		
Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place, but certain aspects of the legal implementation of the element need improvement	Restrictions on access to bank information provided for by Austria's domestic legislation are still applicable in respect of 16 out of Austria's 144 EOI relationships.	Austria should continue to further amend its EOI network to bring it to the standard with all relevant partners.
Largely Compliant	Although there are sufficient general access powers available to the tax authority which seem to allow access to information held by legal professionals, the interaction of these powers with professional secrecy of lawyers and notaries has not been tested in practice. This concern is strengthened by the fact that the representatives of the lawyers did not clearly indicate that they would in practice be in position to provide information to the tax authority when requested.	Austria should monitor access to information held by professionals who can claim legal professional privilege so that the requested information can be obtained in line with the standard.

Determinations and Ratings	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 *(ToR B.2)*		
The legal and regulatory framework is in place		
Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place, but certain aspects of the legal implementation of the element need improvement	Restrictions on access to bank information provided for by Austria's domestic legislation are still applicable in respect of 16 out of Austria's 144 EOI relationships. In addition, 10 of these deficient EOI relationships also limit EOI to the application of the treaty or require providing the name and address of the holder of the information in Austria.	Austria should continue to further amend its EOI network to bring it to the standard with all relevant partners.
Largely Compliant		
The jurisdiction's network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
Compliant		
The jurisdiction's mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place		
Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework determination:	This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.	
Compliant	Although under the review period Austria provided timely replies in 80% of cases within 90 days it only provided status updates in 20% of cases where it took longer to reply.	Austria should ensure that it provides status updates in all cases where it takes over 90 days to provide the reply.

Overview of Austria

17. This overview provides some basic information about Austria that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of Austria's legal, commercial or regulatory systems.

Legal system

18. Austria is a parliamentary democratic republic established as a federal State comprising nine Länder (states). These Länder exercise all of the rights which have not been assigned to the Federation (Bund). The Federation's Legislative power is exercised by the Parliament which is constituted of two chambers, the Nationalrat (Chamber of Representatives) and the Bundersrat (Chamber of States). All Nationalrat members are directly elected on a proportional basis for a five year term. The Nationalrat takes precedence over the Bundesrat except when the rights of the Länder are concerned. Each Land also has its own parliament which exercises the legislative powers within its own domestic competence, the Landtag.

19. The Bund's Executive power belongs to the government led by the Bundeskanzler (Federal Chancellor). The Bundeskanzler is appointed by the Bundespräsident (President of the Federation) elected for a six year term by direct universal suffrage. The Bundespräsident is the head of the State, head of army and represents Austria abroad. The Bundeskanzler exercises all functions that are not assigned to the Bundespräsident by the Constitution.

20. The Austrian legal system is founded on Roman law, also known as civil law. The hierarchy of sources is ordered as follows: the Federal Constitution of 1920 as amended, international treaties with constitutional rank (e.g. the European Convention on Human Rights), laws and, in turn, regulations. All tax treaties signed by Austria are directly incorporated into the domestic law. Even though tax treaties, after incorporation into domestic law, are formally at the level of ordinary statutory law, they are regarded as "lex specialis" and consequently have supremacy over ordinary statutory law.

21. Judges are independent in the exercise of their functions. They are appointed by the Bundespräsident.

Tax system

22. The power to legislate in tax matters comes at the Federal level. Tax matters are regulated by the Federal Fiscal Code (hereafter BAO) which addresses procedural aspects, and by special laws such as the Income Tax Act (EStG), the Corporation Tax Act (KStG) and the Value-Added Tax Act (UStG). In Austria, income is subject to two main taxes: income tax for individuals and corporate tax for companies.

23. Individuals are subject to unlimited tax liability when they have their residence in Austria and are liable to tax on their worldwide income. Individuals that are not deemed to be residents of Austria for tax purposes are taxed on income from Austrian sources only. Income such as salaries or income from capital is subject to a withholding tax while other income is subject to a taxation scale comprising four rates, from 0% to 50%.

24. All legal entities organised under private law (e.g. joint stock companies, limited liability companies, foundations, and co-operatives) as well as public entities carrying on commercial activity are subject to corporation tax. When these entities are resident in Austria for tax purposes, i.e. when they have their seat or place of effective management in Austria, they are liable to tax on their worldwide income while when the entities are not tax resident in Austria, their Austrian tax liability is limited to income from Austrian source. The corporate tax is levied at the nominal rate of 25% with a minimum tax of EUR 3 500 for joint stock companies and EUR 1 750 for limited liability companies.

25. As a member of the European Union, Austria is a member of the European common value-added tax (VAT) system. The normal rate of VAT is 20% and the reduced rate 10%.

Financial services sector

26. In 2017, the Austrian financial sector comprised 628 credit institutions, 88 insurance companies, 60 investment firms, 51 investment services companies, 12 pension funds and 8 corporate provident funds.

27. Out of the 628 credit institutions licensed in Austria at the end of 2017, a total of 482 (76.8%) belonged to the co-operatives (Raiffeisen and Volksbanken) and savings banks (Sparkassen) sectors, which are predominantly small, rural banks servicing the local population (SME financing and retail savings and current accounts). In contrast, in terms of (unconsolidated)

assets held, the Austrian banking industry is dominated by just three large banking institutions, i.e. Erste Group, UniCredit Bank Austria and Raiffeisenbank International, which together account for 27% of the total banking sector.

28. Regarding the banking sector, the consolidated balance sheet of Austrian credit institutions (supervised in Austria) amounted to EUR 962 billion (260.7% of GDP) by 30 June 2017, which marked an increase of 2.4% since the beginning of the year. Banks hold total domestic assets in the volume of EUR 737 089.05 million, whereas their foreign assets sum up to EUR 306 615.4 million.

AML Framework

29. The Financial Market Authority (FMA) serves as the integrated supervisor of all financial institutions and activities. It is an autonomous institution under the law which is placed under direct parliamentary control. Its functions include issuing regulations, granting licences, authorising acquisitions/holdings as well as supervising and enforcing prudential and AML/CFT, requirements. It is responsible for conducting specific AML/CFT examinations in financial activities which are in its remit. The FMA's supervision encompasses credit institutions, insurance undertakings, payment institutions, e-money institutions, investment service providers, and alternative investment fund managers regarding compliance with AML/CFT legal requirements.

30. The Oesterreichische Nationalbank (OeNB), Austria's Central Bank, assists the FMA in prudential banking supervision. It is responsible for off-site analysis and on-site examinations with regards to bank's compliance with prudential requirements. The OeNB is also the responsible authority for monitoring credit and financial institutions and payment institutions for compliance with targeted financial sanctions.

31. Local district authorities are responsible for the licensing and prudential supervision of all activities conducted under the GewO (Trade Act), including insurance intermediaries. Their function includes checking compliance with AML/CFT measures and issuing administrative sanctions for regulatory breaches.

FATF Assessment

32. The most recent FATF assessment on AML/CFT is the Mutual Evaluation Report (MER) Austria 2016 adopted by the FATF at its June 2016 Plenary. Immediately after June 2016, Austria started developing an Action Plan in accordance with the FATF Follow-up procedures. In this report, Austria received a largely compliant rating on Recommendation 10

regarding CDD of financial institutions and on Recommendation 17 on Introduced Business. However, Recommendation 22 on DNFBPs (Designated Non-Financial Business Professions) was rated Partially Compliant due to deficiencies on CDD to be carried out by notaries, lawyers and accountants. Recommendations 24 and 25 were rated Partially Compliant as well.

33. Austria indicates that in a whole of government approach the Action Plan was adopted unanimously by the Council of Ministers on 4 October 2016. The Action Plan contains 15 points and depicts a roadmap for addressing the deficiencies identified by the MER with respect to enhancing effectiveness as soon as possible.

34. By implementing the EU's 4th anti-money laundering directive, essential improvements had already taken place. Since June 2016 Austria adopted 13 new AML/CFT laws or made amendments to existing AML/CFT legislation respectively. In addition, there are also three new co-ordination arrangements in place since June 2016: the new National AML/CFT co-ordination committee as well as two inter-agency information sharing and co-operation agreements.

35. Austria's 1st Enhanced Follow-up Report was adopted by the FATF in November 2017. As the first country in the 4th Round of FATF mutual evaluations, Austria requested re-ratings of technical compliance ratings. The FATF asserted that Austria had made progress to address the technical compliance deficiencies identified in its MER in relation to 12 Recommendations. As a result, Austria was upgraded in relation to, amongst others, Recommendation 10 from largely compliant to compliant and Recommendation 22 from partially compliant to largely compliant.

Recent developments

36. All AML/CFT provisions have been incorporated into one financial supervisory law: the Financial Markets AML Act (FMAMLA), which applies equally to credit institutions and financial institutions with effect from 1 January 2017. It facilitates supervision by the Financial Market Authority (FMA), being the relevant AML/CFT supervisor of financial institutions.

37. Austria also introduced a Beneficial Owners Registry in 2017, in line with the European Union Directive 2015/849 (4th AML Directive). The Beneficial Owner Registry Act provides for a uniform definition of beneficial owner (see A.1.1 Beneficial Ownership information on companies for further details).

Part A: availability of information

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

A.1. Legal and beneficial ownership and identity information

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

39. The 2015 Report concluded that the legal and regulatory framework of Austria and its implementation in practice ensured the availability of legal ownership and identity information for companies, partnerships and trusts. Since then, there has been no change in this respect.

40. The 2015 Report focused at length on the issue of bearer shares for unlisted Joint-stock companies (AGs). Austria had addressed the recommendation on bearer shares made in a previous review report in 2011 by abolishing them, but since the abolition had had full effect from 1 January 2014, Austria was recommended to monitor the process. Since the 2015 Report, no bearer shares could be issued, the existing bearer shares were cancelled, and no issue arose in practice. Sufficient time has now passed to consider the issue as fully addressed.

41. Overall, the availability of legal ownership information is generally adequately ensured through the combination of supervisory and enforcement measures taken by the Firmenbuch (Business Register) at the time of registration, and by the Austrian tax authorities through tax filings and audits. This supervision is adequate and the few EOI requests for legal ownership information were answered satisfactorily, as confirmed by peers.

42. Under the 2016 ToR, beneficial ownership on relevant entities and arrangements should be now available. In Austria, the legal framework is fully in line with this requirement through two complementary avenues: (1) the AML/CFT framework and (2) the Beneficial Ownership Register.

1. Under the AML/CFT framework, beneficial ownership information on legal entities and arrangements is available with AML-obligated persons that they engage. AML-obligated persons include financial institutions, lawyers, notaries, accountants and tax advisers, such that the scope of AML-obligated persons is rather broad. In addition to a broad AML coverage, under specific rules set out in the report, most legal entities have a relationship with an AML-obliged person (i.e. notary or an Austrian financial institution), who must identify their beneficial owner(s) under the customer due diligence requirements. The supervision of the implementation of these obligations is robust.

   The AML/CFT framework provides for definitions of beneficial owners which are in line with the standard. The only gaps under that framework are for those legal entities and arrangements which are not required to engage and maintain a relationship with an AML-obliged person. This would be the case of partnerships and foreign trusts which are not administered by a professional Austrian-resident trustee.

2. Under the newly-established Beneficial Ownership Register, all Austrian legal entities and arrangements, except for foreign companies, civil law partnerships and silent partnerships, must provide the identity of their beneficial owners to the Register. Nevertheless, it has been found in the 2013 Report that silent partnerships are not covered by the Terms or Reference A.1.3 as they are not entities. These may however be covered by the AML/CTF framework where the silent partnership conceals beneficial ownership "through other means". Civil law partnerships in Austria do not have legal personality. There are tax requirements on the partners, who must report the income of the civil law partnership to the tax authorities.

43. The Beneficial Ownership Register being in full effect only since 1 June 2018, Austria is recommended to monitor its implementation.

44. During the current peer review period Austria received 1 534 requests, 23 of which related to legal ownership and identity information (i.e. 1.5% of the requests covered ownership information) and none on beneficial ownership. Peers were generally very satisfied with the information received. Austria has not been expressly asked to provide beneficial ownership information.

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

Legal and Regulatory Framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice	Although Austria's AML/CFT framework has a broad coverage, legal entities and arrangements are not required to engage an AML-obligated person who would identify and verify their beneficial ownership information in all cases and during their entire lifetime. These gaps are addressed by the Beneficial Ownership Register, which is designed with robust obligations for legal entities and AML-obliged persons, adequate supervision and effective penalties. However, its efficiency in practice could not be assessed as it is only fully effective with effect from 1 June 2018.	It is recommended that Austria monitors the implementation of the Beneficial Ownership Register in practice.
Rating: Largely Compliant		

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

46. As described in the 2015 Report, Austrian law provides for four types of companies:

1. *Aktiengesellschaft* (AG) – joint stock company (1998 Stock Corporation Act). The minimum capital stock is EUR 70 000 and a notarial deed is required for the formation. A supervisory board is obligatory; general meetings of shareholders (*Hauptversammlung*) must be held annually. As of 30 September 2017, there were 1 405 AG registered with the Firmenbuch.
2. European Company (SE). The essential objective of legal rules governing SEs is to enable companies from different Member States to merge or to create a holding company. As of 30 September 2017, there were 31 SE registered with the Firmenbuch.
3. *Gesellschaft mit beschränkter Haftung* (GmbH) – limited liability company (GmbH Act of 6 March 1906). The minimum capital is EUR 35 000

and a notarial deed is required for the formation. Most foreign owned businesses in Austria operate in this legal form. As of 30 September 2017, there were 150 161 GmbH registered with the Firmenbuch.

4. *Genossenschaft* – co-operatives – regulated by the Co-operative Act of 9 April 1873 as amended. Co-operatives should not aim to make profits in the first place but to assist their members. A co-operative society can be founded with limited (which is the rule) or unlimited (which is rare) liability. As of 30 September 2017, there were 1 741 co-operatives registered with the Firmenbuch.

Legal ownership and identity information requirements

47. The 2015 Report concluded that legal ownership information in respect of domestic and foreign companies is required to be available in line with the standard. There are no changes in the relevant rules or practices since then.

48. The four types of Austrian companies are required to maintain information on their owners under both commercial and tax law requirements. The availability of this information is ensured primarily by a centralised system of company registration, corporate record keeping requirements and statutory tax filing requirements. In addition, AML obligated service providers are required to be involved in the formation of companies in Austria, and they also have an obligation to identify the owners of their clients. The following table[1] shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

Legislation regulating legal ownership of companies

Type	Company Law	Tax Law	AML Law
AG	All	Most	Some
SE	All	Most	Some
GmbH	All	Most	Some
Co-operatives	All	Most	Some
Foreign companies (tax resident)	Some	All	Some

1. The table shows each type of entity and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” in this context means that every entity of this type created is required to maintain ownership information for all its owners (including where bearer shares are issued) and that there are sanctions and appropriate retention periods. “Some” in this context means that an entity will be required to maintain information if certain conditions are met.

49. Each of these regimes is subject to appropriate oversight by the various authorities.

Company law requirements

50. The Firmenbuch, under the Ministry of Justice, is responsible for handling matters concerning the registration of companies and keeps some but not all legal ownership information. As described in the 2015 Report, legal ownership information of GmbHs, as well as the identity of any subsequent shareholders pursuant to a transfer of shares must be registered with the Firmenbuch. For an AG and SE, the same applies where there is only one shareholder. For a co-operative there is no requirement to provide shareholder information at all.

51. The Firmenbuch monitors amongst others the filing of annual accounts and imposes sanctions. The table below summarises the figures obtained during the peer review period, which show a compliance rate above 95% and the percentage of sanctions applied.

Firmenbuch compliance

	2014	2015	2016
Required disclosure	137 370	141 084	141 651
Disclosure on time	134 011	137 839	138 382
Percentage	*97.55%*	*97.7%*	*97.69%*
Imposed sanctions	3 359	3 245	3 269
Percentage	*2.45%*	*2.3%*	*2.31%*
Late disclosure	2 330	2 223	1 613
Still open on 9 March 2018	1 029	1 022	1 656

52. As shown in the above table, the compliance rate is very high and sanctions are applied on non-compliant entities. In addition, non-compliant entities may be struck-off from the Firmenbuch if they keep failing to comply with their filing requirements.

53. All GmbHs, AGs, SEs and co-operatives must keep an updated share register. It is the duty of the members of the executive board to keep them in line with the legal requirements. The only sanctions available for inaccurately keeping the share register are civil sanctions that can be triggered by the shareholders.

Tax law requirements

54. Any new business must register with the tax authority within one month. Ownership information on the founders is disclosed at the registration with the tax administration together with other documents (Forms Verf 15 or Verf 24; e.g. in the case of the business being carried on by a company: articles of association, the opening balance sheet, an identification card of a managing director; see the 2015 Report for more detail).

55. There is no requirement to list the shareholders in the annual tax returns; except for foreign companies (see below). Ownership information on shareholders is however available with the tax administration upon distribution of dividends to shareholders, as such distribution entails the filing of a dividend distribution form for withholding tax purposes. The discovery of a taxpayer's failure to submit such returns can lead to the imposition of fines. In addition, the proper record keeping of the shareholder register is regularly verified in the course of tax audits (see A.2. Accounting requirements).

Foreign companies

56. Every foreign company with a branch in Austria must be registered in the Firmenbuch. A foreign company without a branch but doing business in Austria must apply for a TIN and the company has to provide proof of the registration in the foreign country and to identify every shareholder. In practice, this paper form is stored at the local tax authority either in the paper-file of the taxpayer or electronically scanned in the electronic-file of the taxpayer.

57. According to section 120 Federal Fiscal Code (BAO) a taxpayer has to inform the local tax authority during a month of change of circumstance in respect of taxes and this provision is also applicable for a change of shareholders. Failure to comply with this obligation is sanctioned by a fine not exceeding EUR 5 000 (s. 111 BAO).

58. The Austrian authorities have reported that the ownership information of foreign companies is very relevant for tax purposes, as this information is sought for withholding tax reasons (being interest payment on shareholder loans, dividend distributions or royalty payments) or in a transfer pricing audits. The verification of the information in the shareholder register is monitored by the local tax authority mostly as part of regular audit and on-site visits. Austria indicates that it is not possible to provide statistics on the specific breaches regarding this obligation, as this item is part of the whole audit procedure (for more detail on audit practice see section A.2 Accounting Records).

59. Unlike the previous peer review period where it received two requests on foreign companies, Austria did not receive EOI requests regarding foreign companies resident in Austria during the current peer review period.

Nominees

60. Under Austria's AML/CFT framework the term nominee may apply to several circumstances. Hence, nominees in terms of AML/CFT are monitored under two main provisions:

- Credit and financial institutions, prior to entering a business relationship, are required to ask the potential customer if he/she intends to conduct the business relationship or the transaction for his/her own account, or for the account of or on behalf of a third party. If so, the customer must provide the credit institution or financial institution with evidence of the *Treugeber*'s identity, and credit institutions and financial institutions must ascertain and verify the identity of the *Treugeber*.
- Clients of credit institutions or financial institutions are obliged to disclose their beneficial owner(s) (see A.1.1 *Beneficial ownership information*). Credit institutions and financial institutions must take risk-based and appropriate measures to verify the beneficial owner's identity. In the case of legal persons or trusts, this also includes taking risk-based and appropriate measures in order to understand the ownership and control structure of the customer.

61. In the course of its AML/CFT supervision (both on- and off-site), the FMA routinely checks credit and financial institutions' compliance with the above requirements (see A.3 Supervision activities carried out by the FMA).

62. Although being a nominee is not forbidden per se under Austrian law, according to the tax records, it is not common. Professionals met during the onsite visit confirmed the extremely narrow scope of nominee ownership. To the best of their knowledge, non-professional nominees are not likely to exist in Austria. For the period under review (1 October 2014 to 30 September 2017), peers did not report issues regarding to nominee ownership information. Austria's tax authorities advised that they have received one incoming request dealing with nominees and were able to provide the requested information in this case.

Retention period and Companies that ceased to exist

63. According to the Commercial Code (s. 212), business owners (including legal persons) have to retain all their business documents seven years at least after the end of the accounting year in which they were created. This obligation also covers share registers.

64. For liquidated companies, there are similar legal obligations to preserve records. Unless otherwise agreed in the articles of association or in a shareholders' resolution, the managing director (s) become liquidators (so-called "born" liquidators). The liquidator replaces the manager, represents the

company externally and conducts the business until the company is deleted from the Firmenbuch (sect. 89 Limited Liability Company Act (GmbHG), sect. 206 para 1 Stock Corporation Act (AktG)). Generally, to strike off a company from the register, a formal liquidation is required. Only in the case that a company gets struck off ex officio – which is possible in the case of absence of assets – a formal liquidation does not take place. In that case, the company is considered dissolved. Nevertheless, the general retention obligation according to sect. 212 Commercial Code applies (7 years).

65. The share register has to be retained for the entire duration of the stock company; in case of liquidation the share register has to be retained for seven years in a place designated by the Commercial Court (Sect. 214 para 2 Stock Company Act; see also Sect. 157 para 2 of the Commercial Code; Sect. 93 para 3 of the Limited Liability Company Act)). The place of storage of the share register of the stock company is determined by the Firmenbuch Court (Sect. 214 para 2 Stock Company Act). The custodian can be e.g. a bank or a notary. The costs of storage are borne by the company. The liquidators are responsible to care for the storage in time (before the termination of the company), otherwise they are subject to a fine up to EUR 3 600 (Sect § 258 para 1 Stock Company Act). The costs of storage are borne by the company (from the remaining assets).

66. Although the place of storage is not explicitly regulated by law, this has not been an issue in practice and there are no judicial decisions or jurisprudential statements on this issue. Since the local jurisdiction of the Firmenbuch Court refers to Austrian territory only, it is most likely that the Commercial Court will pick a place within Austria. This can also be concluded from Sect. 214 para 3 Stock Company Act, where the inspection of the company's books and records is granted to the shareholders or the creditors in important cases. The court can only ensure this right if the place of storage is within the domestic territory.

67. Information that was once recorded in the Firmenbuch remains available even after their deletion ("deleted entries") (Sect. 31 Firmenbuch Act "Firmenbuchgesetz – FBG") but this does not cover all ownership information of all companies. In addition, any information recorded by the tax authority has to be kept as long as necessary for tax matters but at a minimum ten years (which is the statute of limitations in tax matters). For tax matters or other matters, records have to be hold for at least seven years or as long as they are necessary for the tax assessment (absolute statute of limitations is ten years). Despite this, the records have to be kept as long as they are necessary for proceedings pending with a court, where the holder is

party (this includes civil and criminal tax cases).[2] For example, if a criminal tax case have been pending for seven years, the records must be kept until the end of the proceedings.

68. There are no data available regarding "inactive companies" as such, as companies that do not carry out activities must fulfil their legal obligations with the Firmenbuch (e.g. filing of financial accounts etc.). The Firmenbuch strikes out non-compliant companies, which do not respond to notices after a certain period of time (see A.2 *Oversight and enforcement mechanisms* and *Supervision activities by the Commercial Court*). With this strike off, companies cease to exist.

Availability of legal ownership information in Practice in relation to EOI

69. Austria has received 23 requests for legal ownership information. 13 requests related to companies and 10 related to other types of entities. Austria indicated it could answer all the requests regarding legal ownership information from the information they accessed in the Firmenbuch. Peers confirmed that the legal information requested was available and no issue was raised regarding the quality and accuracy of the information provided.

Availability of beneficial ownership information

70. Under the 2016 ToR, a new requirement of the EOIR standard is that beneficial ownership information on companies should be available. In Austria, this aspect of the standard is met through (1) the recently introduced Beneficial Ownership Register under Company Law and (2) the AML/CFT legal framework. Each of these legal regimes is analysed below. The following table shows a summary of the legal requirements to maintain beneficial ownership information in respect of companies:

Legislation regulating beneficial ownership information of companies

Type	Company Law	Tax Law	AML Law
AG	All	None	Some
SE	All	None	Some
GmbH	All	Some	Some
Co-operatives	All	Some	Some
Foreign companies (tax resident)	None	Some	All

2. The relevant legal provisions in Austrian law are Section 132 of the Federal Tax Code (BAO) for tax matters or Section 212 Commercial Code (UGB) for other matters.

The creation of a national beneficial ownership register

71. Austria introduced with the Beneficial Owner Registry Act[3] a national register of beneficial owners, in line with the requirements of Directive 2015/849 (4th AML Directive). The Beneficial Ownership register, introduced in 2017, has full effect since 1 June 2018.

72. This Beneficial Ownership register includes the beneficial ownership information of all legal entities in Austria (including general and limited partnerships (OG and KG), foundations, co-operatives, and associations), trusts arrangements if they are managed from within Austria and arrangements of similar nature to trusts. The register is administered by the Registry Authority, which is established by the Federal Ministry of Finance. However, the Beneficial Ownership register is run by the Federal Agency Statistics Austria as the service provider of the Register Authority. The Beneficial Ownership register is based on the Firmenbuch, as the legal source of data. The Firmenbuch consists of (1) data of the Firmenbuch, (2) the register of associations and (3) the supplementary register for others. Hence, these registers consist of all the core data of the legal entities that have to be registered.

The Beneficial Owner Registry Act provides for a definition of beneficial owner, which is in line with the standard.

73. The data concerning the beneficial owner has to be reported online via a dedicated portal (*Unternehmensserviceportal*). Through the registration on this official platform, each legal entity, legal arrangement and their beneficial owner(s) must be clearly identified. The registration and reporting can be carried out by the entity and arrangement itself or by legal professionals reporting on behalf of the legal entities.

Obligations on the reporting legal entities and the beneficial owners

74. Article 3 of the Beneficial Ownership Act requires the legal entities to identify their beneficial owner(s), to take appropriate measures to verify the beneficial owner's identity and to ensure that they are convinced that they know who the beneficial owner is. This includes taking the appropriate measures to understand the ownership and control structure.

75. Another important obligation is to provide beneficial ownership information to AML-obligated persons for which they are customers.

3. Wirtschaftliche Eigentümer Registergesetz – WiEReG (BGBl. I Nr. 136/2017, vom 15. September 2017 Law establishing a registry of beneficial owners of corporate and other legal entities and trusts (Federal Law Gazette I No. 136/2017, 15 September 2017).

76. The above-mentioned reporting obligations also entail the maintenance of the copies of the documents and information that are required to comply with the due diligence requirements for at least 5 years after the beneficial ownership by the natural person has ended. In addition, the legal entities must carry out a review of the due diligence at least once a year, and check whether the beneficial owners listed in the Register are still up-to-date. In practice, the Austrian authorities indicate that the Registry Authority may check on a case-by-case basis and request at any time all information and documents from the reportable legal entity that document the entities fulfilment of its due diligence obligations. If the legal entity has failed to comply with this obligation and has not reported changes to the Beneficial Ownership Register within four weeks after obtaining knowledge of the changes, this constitutes a breach of the notification obligation pursuant to Article 15 BORA and will be punished as a financial offence, investigated and punished by the Fiscal Penalty Authorities.

77. Article 2 of the Beneficial Ownership Act sets out a definition which is in line with the standard and reproduces the provisions of the 4th AML Directive. Under this definition, the beneficial owner is identified as:

1. any natural person who directly or indirectly owns more than 25% of the shares of the company
2. any natural person who directly or indirectly exercises control over this legal entity. Control is considered to exist in the case of a shareholding of 50% plus one share or an ownership interest of more than 50%, held either directly or indirectly. Furthermore, control shall also be deemed to exist when the criteria pursuant to Article 244 para. 2 UGB are met,[4] or where a function is exercised within a trust or a foundation acting as the ultimate legal entity. Otherwise control can be exercised as a trustor or where a comparable person exercises control by means of a trustee relationship or a comparable legal relationship.

4. This article lays down the control criteria to establish whether the parent company must prepare consolidated financial statements and a group management report (parent company), as follows:

1. there is a majority of the voting rights over the subsidiary, or

2. the company has the right to appoint or dismiss the majority of the members of the administrative, management or supervisory body and at the same time is a shareholder; or

3. has the right to exert a controlling influence, or

4. has the right to decide on the basis of a contract with one or more shareholders of the subsidiary, as voting rights of the shareholders, insofar as they are required with their own voting rights to reach the majority of votes, when appointing or dismissing the majority of members of the management or a supervisory body.

3. If the above two categories cannot be identified, then the natural persons that belong to the top management level of the company, but only once all possible means have been exhausted and where no grounds for suspicion exist, that no person above-mentioned in a) and b) can be identified.
4. By the most recent amendment of the Beneficial Owner Registry Act, published on 14 June 2018, in the Federal Law Gazette Nr. I 37/2018, the definition of beneficial owner has been extended to include control through other means, by amending the § 2 (1) (a). This definition of control through other means will be in force as of 1 August 2018. With this amendment, control will also include cases, such as the financing of the entity or informal nominees.

78. To ensure a close collaboration between the legal entities and the legal and beneficial owners, article 4 of the Beneficial Ownership Act obliges legal and beneficial owners of legal entities to make all necessary documents and information available to ensure compliance with the due diligence requirements. If the beneficial owner is not complying with these requirements, the obliged legal entity is subject to the penal provisions pursuant to Art. 16 BORA if the beneficial owner does not answer or provide the information in full. Furthermore, if the legal entity has deliberately breached the notification obligation to the Beneficial Ownership Register, it can be punished by the fine of up to EUR 200 000 and by a fine of up to EUR 100 000 if it has been breached in a grossly negligent manner (Art. 15 BORA). In addition, if the legal or beneficial owner is not willing to provide the documents and information available to ensure compliance with the legal entity's due diligence requirements, the legal or beneficial owners may be punished as a supplementary offender. This means that the above-mentioned fine is also applicable to the legal or beneficial owner that does not comply with the requirement to make all necessary documents and information available.

79. According to Art. 28a (Tax Offences Act – Finanzstrafgesetz (FinStrG)), financial offences under the BORA also lead to a corporate fine under the Association Responsibility Act ("Corporate Criminal Law" – Verbandsverantwortlichkeitsgesetz (VbVG)).

80. In addition, on the side of the legal entity, it may file a civil lawsuit against its legal and beneficial owners who did not provide the documents and information to ensure compliance with the legal entity's due diligence requirements on the legal basis of Art. 4 BORA. Austria indicates there is already one case where a legal entity has brought a legal action against its legal owners because the legal entity has not received any information from this legal owner about the legal entity's beneficial owners.

81. Austria indicates that if it is not possible for the legal entity to determine its beneficial owners due to the lack of involvement of the legal and/or beneficial owners and despite exhaustion of all other means, the members of the top management are considered to be subsidiary beneficial owners and are reported to the Beneficial Ownership register as such (because it is not possible to file an empty BO report to the Beneficial Ownership register). If an entity has to report the management as secondary beneficial owners because the primary beneficial owners refuse to report to the legal entity, there is no legal obligation to the entity to report their inability to the Registrar. However to prevent a serious punishment some legal entities informed the Registrar of their inability to identify the beneficial owners.

82. A different obligation applies to obliged entities: If they are not able to meet their due diligence obligations (e.g. determine and check the beneficial owners of a client), they must end the existing business relationship with their client immediately (Art. 7 Financial Markets Anti-Money Laundering Act – Finanzmarkt-Geldwäschegesetz (FM-GwG)). This is the case when it is not possible to determine the clients' beneficial owners due to the lack of involvement of the legal and/or beneficial owner. Accordingly, the legal entity as the obliged entity's client may face the termination of any business relationship with the obliged entity if it is not able to determine its beneficial owners.

83. Article 5 of the Beneficial Ownership Act establishes the detailed information about the beneficial owners to be provided to the Register. It requires not only the identification information of the individual ultimate beneficial owner(s), but also the ultimate legal entity or arrangement up the chain below the individual beneficial owner(s). In the case of direct beneficial owners (natural persons), the forename and surname, in the case that they do not have a civil place of residence in Austria, the number and type of the official photo identification document; date and place of birth; nationality and civil place of residence abroad. In the case of individual beneficial owners who own their ownership indirectly through a chain of legal entities, all the above-mentioned information must be provided, and in addition:

- where the ultimate legal entity is a domestic legal entity: its identification number, as well as its holding in terms of number of shares, voting rights or the holding of the beneficial owner in the ultimate legal entity
- where the ultimate legal entity is a foreign legal entity: the name and address of the registered office of the legal entity, the legal form, the identification details pursuant to the identification number and register (i.e. the number of the entity in the Firmenbuch and the information, that this is the Firmenbuch number) and the identification registry as well as the holding of shares, voting rights or the holding of the beneficial owner in the ultimate legal entity.

84. In addition, the nature and scope of the beneficial interest for every beneficial owner must be provided (e.g. structure and whether the beneficial owner is a member of the senior management).

85. The legal entity must submit the data within four weeks of first being entered into the respective identification register. Amendments to the information supplied must be submitted within four weeks of obtaining knowledge of the change. The data about a beneficial owner of a company will be maintained 10 years following the termination of the beneficial ownership of the company.

Beneficial ownership Register in practice

86. In practice, the legal entities and the Counsels acting on behalf of their clients (e.g. notary, lawyer or tax advisers) report online the beneficial ownership information to the Register. The legal entities have their own password and can update their own data. They are liable for the data put into the Register. When notaries, lawyers or tax advisers update the information for their clients, they are also responsible for the data and must formally confirm that the data is correct.

87. The Beneficial Ownership Act has designed measures to ensure effectiveness through (i) the involvement of legal professionals, and (ii) the automated alignment with the Central Residence/civil Register, Firmenbuch and Register of Associations and the supplementary register for other affected parties.[5]

88. With respect to the involvement of legal professionals, campaigns have been carried out to inform them about their obligations and to ensure their involvement as a service for legal entities. AML-obliged entities can make remarks to correct wrong data for updates, on the basis of which the register authority can approach a legal entity to demonstrate the accuracy of the beneficial ownership information.

89. The automated alignment with other registers aims at ensuring that beneficial owners and legal entities can only be reported if their data is also contained in other public registers. In the case of beneficial owners without a registered residence in Austria (i.e. not mentioned in any of the listed registers), a copy of the passport will have to be uploaded via the dedicated portal. The Austrian authorities indicated that the automated alignment is made on a real time basis. If, for example, a person with a main residence address in

5. The Supplementary Register for other affected parties is a register, where all legal entities are registered that are not registered in any other register (e.g. in the Firmenbuch, Register of Associations) but need a clear identification (e.g. for a digital identity of the legal entity).

Austria is entered as a beneficial owner, there is a real time check with the Central Residence Register in the background if the entered person has a valid main residence in Austria. If, for example, the name of the person has been misspelled, the form will display an error message for the user, that no person with this name has been found in the Central Residence Register. The same applies to legal entities or associations where the same real time check is made with the respective registers. The Austrian authorities confirmed that with this automated alignment it is not possible to report a person that has a main residence in Austria with wrong details (e.g. wrong main residence address, wrong date of birth or if it is a person with no main residence in Austria at all etc.), or to report an Austrian legal entity with wrong details (e.g. wrong address, name, legal form or if it is a legal entity that is not registered in Austria at all etc.). The responsibility to ensure that the data in the respective registers is accurate and up-to-date is with the respective authorities. In the central residence register the best data available is stored concerning the Austrian nationals. The surname, forename and the date and place of birth of Austrian nationals should be 100% correct and the same as in Austrian passports.

90. The Austrian authorities indicate that the final deadline for the first-time reports ended on 15 August 2018. During the review period only a few remarks were added on the Register. So far the legal entities have not been approached by the Registry Authority, because after receiving a report about a remark, the legal entity is given appropriate time (4 weeks) to react to this remark. The obliged entities are not able to correct wrong data – they can only set a remark if they – during the course of their own due diligence obligations – come to the conclusion that the data in the Beneficial Ownership register is not correct. Corrections can only be made by the legal entities or their legal representatives (if the legal entity delegated the reporting to a legal representative) or the Registry Authority.

91. Automatic coercive penalties will apply if there is no reporting at all, as well as additional penal provisions up to EUR 200 000 for deliberate breach and up to EUR 100 000 for grossly negligent breach. In case of breach, the register informs the tax authorities which will apply the penalties. The Austrian authorities indicates that the first round of the automatic coercive penalties has already been started. The Tax Authority has received a list of legal entities that have not yet reported their beneficial owners to the Beneficial Ownership Register. The list has been generated by the service provider of the Beneficial Ownership Register, the Statistic Austria, and was extracted from the database that includes all data of the Beneficial Ownership Register. Currently there are 8 600 legal entities on this list. In this process, the legal entities have been informed that that they are obliged to report their beneficial owners under penalty of EUR 1 000 with a three month extension to fulfil the obligation. If a report is submitted within this period, the penalty

will not be imposed. This is taken into account automatically. If there is no report within this first three month period, the penalty is set and an increased penalty (plus EUR 4 000) is imposed together with three more months extension to fulfil the obligation. If, after this second extension period, no report has been submitted to the Beneficial Ownership Register, this constitutes a breach of the reporting obligation pursuant to Article 15 BORA and will be punished as a financial offence, investigated and punished by the Fiscal Penalty Authorities. If the reporting obligation has been breached deliberately the legal entity may be punished with a fine of up to EUR 200 000, if it has been breached in a grossly negligent manner it may be punished with a fine of up to EUR 100 000.

92. The interaction between the AML/CFT requirements and the use of the Beneficial Ownership register for AML-obliged entities is clarified in Articles 9 and 11 of the Beneficial Ownership Act. Access is granted to the obliged entities (complete lists of credit institutions, tax advisers, DNFBPs) listed in article 9 and to listed authorities. These include, amongst others, the Registry Authority, the Financial Intelligence Unit (*Geldwäschemeldestelle*), the FMA, the Bar Association within the scope of its supervision of attorneys; the Austrian Chamber of Notaries (*Notariatskammer*) within the scope of its supervision of notaries; the Chamber of Professional Accountants and Tax Advisors (KWT; *Kammer der Wirtschaftstreuhänder*) within the scope of its supervision of external auditors and tax advisors; the law enforcement authorities, public prosecutors and criminal law courts; the fiscal penal authorities and the Federal Fiscal Court (*Bundesfinanzgericht*) for purposes under fiscal penal law; and the Federal Government's tax authorities and the Federal Fiscal Court (*Bundesfinanzgericht*) for tax law purposes, where this is expedient and appropriate for the purpose of collection of taxes. The competent authority therefore has access to the register for domestic and EOI purposes.

93. Austria explained that obliged entities will have access to the entire database, but in principle they usually should only access their own clients and all legal entities which are within the same ownership or control structure. If the counsel would check other clients, this would constitute an offence. The law also prohibits them to exclusively rely on the information contained in the Register in the application of their AML due diligence towards customers (see below).

94. Although the Beneficial Ownership Register is designed with robust obligations for legal entities and AML-obliged persons, and adequate level of penalties, its efficiency in practice could not be assessed as it is only fully effective with effect from 1 June 2018. Accordingly, it is recommended that Austria monitors the implementation of the Beneficial Ownership Register in practice.

AML/CFT framework

95. Under the AML/CFT framework, beneficial ownership information on legal entities and arrangements is available with AML-obligated persons which are engaged by them. AML-obligated persons include amongst others financial institutions, lawyers, notaries, accountants and tax advisers, such that the scope of AML-obligated persons is rather broad. In particular, GmbH and AG must be incorporated via a notarised deed and open an Austrian bank account (Sect. 10 para 3 Limited Liability Company Act (GmbHG) and Sect. 29 para 1 Stock Corporation Act (AktG)). However, there is no obligation to keep the bank account, and transfers of shares must be notarised only for GmbH, so that there is no guarantee that an AML-obligated person will regularly perform due diligence to ensure that the BO information collected is up to date. Despite the limited obligation to engage with an AML-obliged person, the Austrian authorities indicate that in practice most companies do. In particular, the Austrian authorities indicate that the overwhelming majority maintains a bank account in Austria. In addition, tax advisers or accountants are used by nearly every company and legal entity, especially when one take into account that companies have a filing obligation of their annual statement to the Registrar of the Firmenbuch. Notaries, lawyers, real estate agents and even insurance broker are AML-obliged persons as well. Given that, companies and legal entities are frequently in contact with AML-obliged persons. Therefore, the Austrian authorities opine that the coverage is nearly 100%.

96. The FMAML Act, which applies to banks and which was introduced in 2017, adopts the definition of beneficial owners contained in the Beneficial Ownership Act. When it comes to civil law notaries the provisions concerning maintaining legal ownership and identity information concern notaries` duties in the fight against and the prevention of money laundering (section 165 Criminal Code) or financing of terrorism (section 278d Criminal Code). According to Section 36b para 4 Notarial Code, the notary must take appropriate measures to check the identity of a beneficial owner. In the case of legal entities, trusts, companies, foundations and comparable structures this would include measures to come to understand the specific ownership and control structure. However, the definition of beneficial owner(s) of legal entities set out in § 36d of the Notarial Code is not fully in line with the standard, as it does not cover "control through other means". This gap is now addressed by the Beneficial Ownership Register, which must contain the beneficial owners of all legal entities and arrangements, except for civil law partnerships, foreign companies and silent partnerships.

97. The supervision by the FMA of the financial institutions is set out in Section A.3. Oversight activities and enforcement provisions to ensure the availability of banking information.

98. The supervision of notaries is carried out by the competent regional notarial chamber (made up of notaries). There are three types of reviews:

- Regular reviews (audits) in notarial offices carried out every 4 to 5 years by the competent regional notarial chamber, according to § 154 NO.
- Additional reviews (unannounced) are carried out on a random basis and focus mainly on escrows. Austrian authorities indicate that additional reviews (carried out on a random basis) cannot take place in an intensity comparable to regular reviews. As an example, One regional chamber carried out 38 regular reviews and 6 additional reviews in 2017.
- In special cases (when a reason for a special review occurs) extraordinary reviews are carried out (often unannounced, depending on the case). The purpose of extraordinary reviews is to examine immediately the notarial office in reaction to an individual suspicion of a possible deficiency when such a suspicion has suddenly arisen.

99. The review includes verifying whether notaries comply with the AML/CFT provisions. The reviews of the notarial offices according to section 154 Notarial Code (carried out by the competent regional notarial chamber) include whether notaries comply with the provisions serving to prevent or fight money laundering or terrorist financing and therefore refer to all provisions serving to prevent or fight money laundering or terrorist financing. In addition, the compliance with Section 36b Notarial Code (identifying the beneficial owner according to the definition in Section 36d Notarial Code) is examined. According to Section 36b (4) of the Notarial Code, the notary "must take appropriate measures to check the identity of a beneficial owner". The notary can carry out different kinds of researches and consult the register of beneficial owners. If the regional Chamber of Civil Law Notaries detects facts related to ML or TF, it must report its suspicion to the A-FIU (§154 NO) and the notary might be subject to criminal sanctions. If a notary culpably violates a statutory obligation in the context of AML/CFT, he/she is in breach of a professional duty that will be sanctioned as a major disciplinary offence by the higher regional court, as the disciplinary court, after hearing by the senior public prosecutor, or as a minor disciplinary offence by the competent regional Chamber of Civil Law Notaries (§ 155 NO). Concerning the distinction between minor offences and disciplinary offences, the Austrian Chamber of Civil Law Notaries refers to Section 156 Notarial Code which distinguishes between an intentional violation of professional duties and other minor offences.

100. The scale of sanctions for major offences ranges from a written reprimand or a fine of up to EUR 50 000 (if it is a serious, repeated or systematic violation of the provisions of the Notarial Code concerning AML/CFT, fine

up to the amount of EUR 1 000 000) to suspension from office for up to one year or to debarring from office. Sanctions for minor offences include cautioning on the professional duties, admonition in writing or admonition in writing in combination with a fine of up to EUR 10 000 (§158 NO).

101. The Austrian chamber of civil law notaries provides statistics concerning the reviews carried out in notarial offices. These statistics also include the cases of deficiencies and procedures concerning the violation of disciplinary duties. At present, there are 510 notaries in Austria. Generally, about 20% of the notaries are reviewed each year.

Reviews of notarial offices carried out and sanctions applied

	1.10.2014-31.12.2014	1.1.2015-31.12.2015	1.1.2016-31.12.2016	1.1.2017-30.9.2017
Number of reviews	17	102	99	53
Objections by the review team [a]	3	8	9	8
Disciplinary fines	-	EUR 2 000	1 pending	-

Note: a. The Austrian chamber of civil law notaries does not have access to the files of the regional notarial chambers concerning reviews and procedures relating to violations of professional duties. So the individual “objections” cannot be specified.

102. The supervision of notaries by the regional Chambers has improved greatly during the peer review period. In addition to a step increase in the number of reviews, the Association of notaries has organised trainings regarding AML/CFT requirements and has amended its manual and issued guidelines for notaries. In particular, the Austrian chamber has informed all notaries and candidate notaries several times about the provisions concerning the new register of beneficial owners and also made amendments in the “guidelines” (Recommendation of the Austrian Chamber of Civil Law Notaries on the Prevention of Money Laundering and Terrorist Financing). Besides, special new seminars for notaries and candidate notaries, organised by the Austrian Notarial Academy, concerning this new register were held.

103. In light of the above, the supervision of notaries appears to be adequate to ensure the availability of beneficial ownership information when they are involved in the incorporation, or changes to ownership, of companies.

104. In practice, all notaries use one single bank (the *Notartreuhandbank AG*) to carry out the transactions for the clients (e.g. escrows). That bank also examines both customer data and money transactions relating to money laundering and terrorist financing. The Association of Notaries indicated that this bank carries out its own CDD and does not rely solely on the CDD information provided by the notary.

Availability of beneficial ownership information in practice in relation to EOI

105. During the current review period Austria was not expressly asked to provide beneficial ownership information.

A.1.2. Bearer shares

106. The 2015 Report focused at length on the issue of bearer shares because Austria had abolished bearer shares for unlisted AGs in 2011, but with full effect from 1 January 2014. A detailed description of the previous rules, the transitional rules and the oversight and enforcement measures taken for this abolition is set out in paragraphs 60 to 86 of the 2015 Report. The conclusion was that Austria had addressed the recommendation on bearer shares, but since the abolition had been recent, a monitoring recommendation was introduced. Since the 2015 Report, the monitoring process has continued, but little monitoring has been necessary as no bearer shares could be issued, the existing bearer shares were cancelled, and no issue arose in practice. Sufficient time has now passed to consider the issue as fully addressed.

107. Bearer shares in the form of paper shares to the bearer no longer exist in Austria, but AGs can still issue bearer shares certified by global certificate(s) for the purpose of being listed. Both company law and stock exchange regulations require that the global certificates are continuously deposited with a central securities depository. The global certificate issued by the AG on the existence of certified bearer shares does not contain the names of the shareholders but contains details of the bank where the individual certificates are deposited. The bank where the share certificates are deposited keeps the ownership details in respect of the bearer shares under the AML/CFT law (see section A.3 of this report). Thus, for listed AGs, identity details in relation to the owner of all shares are known.

108. As at 30 June 2014, the following numbers of global shares were deposited at the Oesterreichische Kontrollbank: for 103 listed companies, a total number of 151 global certificates representing bearer shares were deposited.

109. The numbers of global certificates deposited are higher than the numbers of companies because it is admissible that a company issues more than one global certificate (e.g. one during its formation, another one during a capital increase).

A.1.3. Partnerships

110. The 2015 Report found that the rules regarding the maintenance of ownership information in respect of partnerships in Austria were in accordance with the standard and were effective in practice.

111. There are three main forms of partnerships that can be established in Austria:

- *Offene Gesellschaft* – OG – general partnership (ss.105 to 188 Entrepreneurial Code (UGB))
- *Kommandit Gesellschaft* – KG – limited partnership (ss.105 to 188 UGB)
- Gesellschaft bürgerlichen Rechts – GesbR – Civil Law Partnership.[6]

112. On 30 September 2017, there were 20 303 general partnerships and 43 955 limited partnerships. Whereas OG and KG have to be registered with the Firmenbuch, GesbR, which do not have legal personality, do not have to register. However if the GesbR performs entrepreneurial activities and the annual turnover exceeds EUR 700 000, it must be converted into a partnership in the form of an OG or a KG and be registered with the Firmenbuch (Sect. 8 para 3 and Sect. 189 Commercial Code – UGB).

113. Austrian legislation also allows for the creation of a *stille Gesellschaft* (silent partnership). Silent partnerships are not subject to any registration requirements. The silent partnership has no legal capacity and no legal personality. The silent partnership is a vehicle for the participation by a "silent partner"– via the consignment of assets – in an enterprise carried on by another, e.g. a sole proprietor, a partnership, a limited liability company (GmbH) or a joint stock company (AG). The 2013 Report found that this arrangement can be characterised as a contract, and like a contract, its existence is not disclosed to the public. As these arrangements cannot act as separate entities from their partners and cannot hold real estate or assets, and as they have no income or credit for tax purposes, do not carry on business, they cannot be compared to a limited partnership. Hence, these arrangements were found to fall outside of the scope of the Terms of Reference.

114. As all partnerships carrying on business in Austria or receiving income from Austrian sources are relevant entities for tax purposes, this means that these partnerships, whether established in Austria or in a foreign jurisdiction, are subject to all tax requirements, including the filing of the tax form Verf 60, which lists the name of the partners (see A.1.1 legal ownership information requirements).

115. These entities are required to maintain information of their owners under both commercial and tax law requirements. In addition, AML obligated

6. The GesbR has no legal capacity and no legal personality. It consists of two or more individuals who wish to combine their knowledge (and property) in a particular field. Each individual is jointly and individually liable. It is established by written, oral or implied agreement between the partners, who may act in their own name (undisclosed partnership) or on behalf of the partnership.

service providers are required to be involved in the formation of legal entities in Austria, and these service providers also have an obligation to identify the owners of their clients. Each of these regimes is subject to appropriate oversight by the various authorities. Finally, with effect from 1 June 2018, ordinary and limited partnerships must provide the identity of their beneficial owners to the Beneficial Ownership Register.

Availability of identity information

116. OG and KG in Austria must provide the identity of their partners upon registration and this must be updated in the Firmenbuch.

117. In addition, OG, KG and GesbR have filing obligations under Austrian tax law. Thus, revenue authorities receive information on partners in a partnership on an annual basis. Any change in the facts that are of significance for tax purposes must also be disclosed within one month of the event to revenue authorities. This includes information on the identity of the partners, as partnership profits are taxed within the hands of the partners. These different avenues ensure the identify information of all partners is available in all circumstances.

118. As in the case of companies, the tax authorities carry out on-site inspections of partnerships. The number of full audits, onsite visits, special audits regarding VAT and wages on partnerships amounted to 8 549 in 2014, 7 771 in 2015, 7 440 in 2016 and 4 869 from January to September 2017. The authorities report that in practice, partnerships provide details of the respective contributions of the partners very consistently.

Availability of beneficial ownership information

119. There are two avenues to avail of beneficial ownership information in Austria: (1) the Beneficial Ownership Register and (2) the AML/CFT framework.

120. As explained in A.1.1 for companies, the Beneficial Ownership Act requires all legal entities listed in Article 2, including OG and KG, to identify their beneficial owner(s), to take appropriate measures to verify the beneficial owner's identity and to ensure that they are convinced that they know who the beneficial owner is. Article 6 of the Beneficial Ownership Act lists the exceptions applicable to providing beneficial ownership information to the register when the direct beneficial owner is a natural person, who can be retrieved directly from the Firmenbuch.

121. The beneficial owners can be traced automatically in the register in the following cases where the direct beneficial owners are natural persons: (i) general partnerships (OGs) (the personally liable partners are

automatically imported into the Register as the beneficial owners); (ii) limited partnerships (KGs) where all partners are natural persons (the individual partners are automatically imported if they hold more than 25%, and otherwise the top managers entered in the Firmenbuch are imported as beneficial owners into the Register). The law provides a caveat if another natural person directly or indirectly exercises control over the top management of the legal entity. In such a case, the legal entity is no longer exempted from the obligation to report its beneficial owners and is required to make a notification. The Austrian authorities indicated that the rationale of this provision is that if the owners are natural persons and are already entered into another national register, the exemption is only valid, as long as no other person is directly or indirectly controlling the legal entity. If this assumption is not true (e.g. because another person is exercising control through other means) the legal entity is obliged to report this person as beneficial owner as well. If the legal entity fails to report this person, it is subject to the penal provisions pursuant to Art. 15 BORA. Austria is recommended to ensure that this exemption from the obligation to report the beneficial owners is applied correctly in practice to the limited situations set forth in the law.

122. The definition of beneficial owners for KGs and OGs is the same as that applicable for companies as set out in A.1.1.Similarly, the due diligence obligations of banks under the FMAML Act and of notaries concerning partnerships are the same as for companies, as noted above and enforcement of these rules does not vary whether the client is a company or a partnership.

123. However, there are no requirements for beneficial ownership information on GesbR (the turnover of which is always under EUR 700 000) to be registered in the Beneficial Ownership Register, nor are there any legal requirements for them to engage an AML-obligated person who would avail of the beneficial ownership information on these arrangements. As the civil law partnership is an association of persons or companies that combine their labour or assets to achieve a common objective, there are no assets jointly owned by the partnership as a whole. The capital, machines, vehicles, etc. belong either to one of the partners who make them available – possibly for a fee – or all partners are pro-rata owners. Only the partners are liable personally, i.e. with their entire assets, without limit in solidarity. Austria indicated that Civil law partnerships and silent partnerships are not legal persons and they are not registered in the Firmenbuch. It is therefore not possible to include them in the beneficial owner register. Austria indicated that for any engagement with an AML-obligated person (for example a bank), only the partners could be engaged with and customer due diligence would be carried out on these partners. Accordingly, there would be a gap if the partners (whether domestic or foreign) do not engage an AML-obligated person in Austria. Although the gap is limited in practice due to the nature of the Civil law partnerships in Austria and the tax reporting obligations on the partners

of the Civil Law partnerships taxable in Austria, Austria is recommended to ensure that beneficial ownership information on GesbR is available in all cases.

Availability of information in practice

124. In practice, the identity and ownership information is available with the court, the service providers and the tax authorities. During the three year period under review, Austria did not receive requests concerning ownership information on partnerships. Austria has received 29 requests during the peer review period concerning other aspects of partnerships like accounting information, to which Austria answered in a timely manner.

A.1.4. Trusts

125. Austria does not have the concept of trusts. It is possible to set up another type of arrangement, the *Treuhand*, which is considered an escrow relationship (rather than a trust arrangement). The rules regarding the maintenance of ownership information in respect of foreign trusts, and *Treuhand* in Austria were found in accordance with the standard in the 2015 Report and were effective in practice.

126. A summary of the conclusions from the 2015 Report are included here, as well as an analysis of the experience in practice since the last review.

Types of trust and similar arrangements and requirements to maintain information

127. Austria does not recognise the concept of trusts and Austria has not signed the 1985 Hague Convention on the Law Applicable to Trusts and on their Recognition. There are, however, no obstacles that prevent an Austrian citizen or service provider from acting as a trustee of a foreign trust or preventing a trustee of a foreign trust from owning assets in his/her own name in Austria or from having a bank account with an Austrian bank (see section A.3 on the availability of banking information). In this case, during the KYC/AML process the trustee has to disclose the relationship with the trust as beneficial owner for the bank account or the land.

128. Austrian law allows for the set-up of *Treuhand*. The *Treuhand* is a civil contract which is not regulated by law, but is based on the general principle of the autonomy of the contracting parties (i.e. the ability of any person to enter into any contract with whomsoever they chose) and delimited by jurisprudence and doctrine. A *Treuhand* does not have any legal personality. It is created when a person, the *Treuhänder*, is authorised to exercise rights over property in his/her own name, on the basis of and in accordance with

a binding agreement with another person, the *Treugeber*. Different from the trust, the Treuhänder is the sole proprietor, and the assets do not constitute a separate fund. In most cases the *Treuhand* is concluded for a specific transaction.

129. There are two main types of *Treuhand*: the *Fiducia* and the *Ermächtigungstreuhand*. With the *Fiducia*, most of the rights connected to the assets are transferred to the *Treuhänder*, whereas the *Ermächtigungstreuhand* only entails a transfer of certain rights connected to the assets such as the right to manage them. The *Treuhand* can exist without any written record. It can be concluded between any two persons who have the necessary legal capacity to conclude a contract. The *Treugeber* and the *Treuhänder* may choose to inform third parties of the legal arrangement between them (*offene Treuhand* or open *Treuhand*) or not (*verdeckte Treuhand* or hidden *Treuhand*). Austria indicates that most commonly in Austria the legal institution of *Treuhand* serves the purpose of an escrow relationship. So the *Treuhand* normally is not a similar type of arrangement to trusts. The most significant function of a *Treuhand* is to secure property transactions, especially real estate, where the trustee is acting for both parties of the transaction (the vendor and the purchaser) and has to make sure that the money is only paid to the vendor if certain conditions are met (e.g. the purchaser is entered in the land register in return). So, escrow relationships are typically associated with settling real estate transactions.

Commercial and Tax Law Requirements and Oversight

130. While there are no general requirements for foreign trusts to be registered, a partial obligation exists for *Treuhand* where it is administered by a lawyer or civil law notary. Further, the obligations set out in sections 119 and 120 of the BAO require anyone to disclose all facts and circumstances that are relevant for taxation in Austria and this may include information on settlors and beneficiaries of trusts and *Treuhand*. The disclosure should in particular be achieved by way of tax returns, registrations, notifications and provision of other information (s 119(2)). In addition, a general obligation applies to taxpayers to notify to their tax offices all circumstances which justify, change or end their personal tax obligations in respect of income tax, corporate tax, VAT and taxes on capital (s 120).

Beneficial ownership information on foreign trusts and Treuhand

131. As mentioned under A.1.1 Beneficial ownership information on companies, there are two avenues to avail of beneficial ownership information in Austria: (1) the Beneficial Ownership Register and (2) the AML/CFT framework.

Beneficial ownership information under the Beneficial Ownership Act

132. Under the Beneficial Ownership Register Act, foreign trusts managed from within Austria and other arrangements of similar nature to trusts (i.e. Treuhand) must register their beneficial owners in the Beneficial Ownership Register. Management from within Austria will in particular exist if the trustee's place of residence is in Austria. For arrangements of a similar nature to trusts, management from within Austria will in particular exist if the holder of a position of authority (fiduciary) of a comparable standing to a trustee has his/her place of residence or place of incorporation in Austria.

133. The Beneficial Ownership Act defines a Trust as "a legal form created by a person (the Settlor/Trustor) by means of a legal transaction among living persons or by means of testamentary disposition, in assets for the benefit of a beneficiary or are entrusted to trustees for a specific purpose, whereby the trust itself may also be legally responsible". According to the Beneficial Ownership Act, a trust has the following characteristics:

- The assets of the trust constitute separately held special assets and do not form part of the personal assets of the trustee.
- The rights in relation to the assets of the trust are registered in the name of the trustee or to another person as a representative of the trustee.
- The trustee has the power and obligation, about which he/she will be required to give account, to manage, use or dispose of the assets of the trust in accordance with provisions governing the trust as well as the particular obligations conferred upon him/her under law.

134. The fact that specific rights and powers are reserved for the settlor/trustor or that the trustee him/herself has rights as a beneficiary, does not necessarily preclude the existence of a trust.

135. The Beneficial Ownership Register Act and the FMAML Act include the same definition of beneficial owner(s) of trusts. The beneficial owner(s) of a trust are the settlor/trustor; the trustee(s); the protector, if any; the beneficiaries, or where the individuals that are the beneficiaries of the trust have yet to be determined, the group of persons in whose interest the trust was established or operated (circle of beneficiaries); if persons belonging to this group receive benefits from the trust that exceed the value of EUR 2 000 in a calendar year, then they will be considered as beneficiaries in the calendar year in question; any other natural person exercising ultimate control over the trust by other means.

136. Austria indicated that the circle of beneficiaries must be reported in any case. If, however, a person from this circle receives benefits from the trust that exceed the value of EUR 2 000 in a calendar year, then this person

must be reported as a beneficiary itself. In that case the circle of beneficiaries and the individual beneficiaries are captured, if they receive benefits of more than EUR 2 000 in a calendar year. As an illustration, where the circle of beneficiaries is "all students of the university of Vienna", if an individual student receives more than EUR 2 000 in a year, this person has to be reported as a beneficial owner.

Beneficial ownership information under the AML/CFT legal framework

137. The rules in the FMAML Act governing information required to be kept in respect of trusts and similar arrangements were changed in July 2017 through the Beneficial Ownership Register Act. The new rules transpose the 4th AML Directive and require banks to identify, in addition to the settlor(s), trustee(s) and any other natural person exercising ultimate effective control over the trust and Treuhand, also all beneficiaries (regardless of any threshold of interest in the trust or control over the trust). Prior to that, a 25% ownership threshold applied. As the new rules regarding information required to be kept in respect of trusts and similar arrangements are recent and have an impact on the availability of information as required under the standard, Austria should monitor their practical implementation.

138. However, the AML/CFT rules applicable to notaries and lawyers have not been amended, and the 25% ownership threshold still applies with respect to the identification of the beneficiaries. This gap is however remedied by the Beneficial Ownership Act, which obliges foreign trusts administered by an Austrian-resident trustee and any other similar entities to register their beneficial owners with the Beneficial Ownership Register.

Oversight and enforcement and availability of information in practice

139. The Oversight programme by the various AML supervisory bodies is described in Section A.1.1 Beneficial ownership information – Enforcement measures and oversight. The practical application of the above legal requirements has not occurred frequently in Austria as trust arrangements are not common. Austria has not received any EOI requests concerning trusts or *Treuhand* arrangements during the period under review.

A.1.5. Foundations

140. The 2015 Report found that the rules regarding the maintenance of ownership and identity information in respect of foundations in Austria was in accordance with the standard and was effective in practice. As of 20 September 2017, there were 3 168 private foundations and 312 public foundations in Austria. This report also concludes that the rules pertaining to

ownership and identity information on foundations in Austria are in line with the standard and effectively implemented in practice. This same conclusion applies to the new requirements on the availability of beneficial ownership information on foundations.

141. Austrian law allows for the creation of:

- public benefit foundations under the Federal Foundations and Funds Act (BStFG). These foundations can only be set up for charitable purposes. They may carry on a minor commercial activity to the extent that this activity supports the main purpose of the foundation. The conditions, which meet all the requirements to have them excluded from the scope of the review, are set out in paragraphs 147 to 158 of the 2013 Report.
- private foundations under the Private Foundations Act (PSG). In such private foundations, the founder dedicates property for private purposes devoid of any self-interest. There is a legal prohibition which prevents private foundations from carrying on any commercial activity. As at 30 June 2014, 3 205 private foundations were registered for tax purposes.

Commercial and Tax law requirements and oversight on legal ownership

142. The Austrian legal and regulatory framework ensures the availability of ownership information on public foundations: (i) the name of the founder is available in the deed of foundation; and (ii) designation of the foundation's administrative and representative bodies and details on the class of beneficiaries must be disclosed in the foundation's Charter which must be provided to the Foundations Authority. In addition, public benefit foundations are subject to the general disclosure requirements of the BAO applicable to any taxpayer, as well as to tax audits.

143. The Austrian legal and regulatory framework also ensures the availability of ownership information for private foundations:

- The name of the founder, of the board of directors, and the supervisory board is indicated in the deed of foundation on a mandatory basis. The deed must be established by a civil law notary who is a professional with CDD obligations.
- Private foundations must be registered in the Firmenbuch.
- For registration by the revenue authorities, foundations must provide the foundation deed and the identity of their beneficiaries.

144. As set out in the 2015 Report, the system of maintenance of ownership and identity information is much stronger in the case of private foundations than for public foundations. Private foundations are also subject to internal (desk based) and external (on-site) audits by the tax authorities. The primary purpose of on-site visits is to gather information from and about the new taxpayer for the purpose of discovering and combatting potential cases of tax evasion. A complete risk assessment takes place with regard to the personal and economic circumstances of the taxpayer (identity check, check of business premises and if any employees, is the taxpayer operating in an industry in which a large number of tax evasion cases have been detected, etc.). For detailed figures on the tax audits carried out by the tax authorities, see A.2 Supervision activities by the tax authorities.

145. Austria has received one EOI request concerning ownership information of private foundations, but none regarding public foundations, during the three year period under review. Austria provided the requested information in that one case.

Beneficial ownership information

146. There are two avenues to avail of beneficial ownership information in Austria on foundations: (1) the Beneficial Ownership Register and (2) the AML/CFT framework. With respect to the link with the CFT framework, private foundations have to involve a notary with respect to (1) their registration in the Firmenbuch, (2) changes in the foundation articles. Furthermore, any change regarding the beneficiaries have to be reported immediately by the directors of a foundation to the local tax office in charge.

147. Under the Beneficial Ownership Act, public and private foundations must identify and register their beneficial owners to the Beneficial Ownership Register under the conditions set out under Section A.1.1

148. The Beneficial Ownership Act, which is also taken over by the FMAML Act (which applies to financial institutions), defines the beneficial owners of foundations as: the founders; the members of the management board of the foundation; the beneficiaries, the circle of beneficiaries; and any other natural person exercising ultimate control over the foundation by other means. With respect to private foundations, if individual persons from the circle of beneficiaries receive benefits from the private foundation with a value of more than EUR 2 000 within a calendar year, those individuals must be reported as beneficial owners for this calendar year as well.

A.2. Accounting records

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

149. The 2015 Report concluded that, except in some very specific situations relating to Treuhand, the obligations in the accounting and tax legislation ensure the availability of accounting records, from which it is possible to accurately review all transactions, to assess the financial position of all entities (including entities in liquidation), and to prepare financial statements.

150. The 2015 Report noted some uncertainties in the case of fiduciary relationships, especially Treuhand as regards the detailed obligations to keep accounting records where the Treugeber (settlor) is not resident in Austria and assets held through the fiduciary relationship are located abroad (and therefore not taxable in Austria) but the Treuhänder (trustee) is tax resident in Austria. The section below provides an analysis of the situation and its lack of materiality in practice. Based on this analysis, the recommendation is removed.

151. The 2015 Report also found that supervision of these rules both by the Commercial Court and the tax authorities was adequate. The implementation of these accounting requirements in practice is ensured mainly through filing requirements with the Commercial Court, tax audits and tax filing obligations. Where accounting records are examined as part of the audit, their quality is evaluated to determine the degree of reliance that can be placed on them in assessing tax compliance. The availability of accounting records is also indirectly supervised by tax filing requirements as accounting information has to be filed with the annual corporate and partnership income tax returns.

152. During the review period, Austria received 264 EOI requests regarding accounting information, and was able to respond to all the requests that it found valid. Overall, 181 EOI requests pertained to companies, 29 to partnerships and 68 to other types of entities. Peers confirm that the accounting information was available in all cases and no issues were raised in this respect.

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

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

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

154. The obligations to keep accounting records arise in Austria from both Entrepreneurial Code (UGB) and Federal Fiscal Code (BAO). The same obligations also apply to foreign companies that are tax resident in Austria, as well as to branches of foreign companies, for the activities they carry on in Austria. These obligations also cover underlying documentation by all business; including books, inventories, financial statements with the consolidated management reports, copies of received and sent business correspondence and all evidence underlying ledger entries in the books.

Company Law and Tax Law requirements

155. According to the UGB, businesses are required to keep books and records in order to retrace their transactions and to enable their financial position to be established. These accounting records must permit the reconstruction of the individual business transactions. The requirements set out in the UGB apply to:

- joint stock companies, limited liability companies and partnerships where no general partner with unlimited liability is a natural person, whatever their turnover
- any other businesses whose turnover is above EUR 700 000 a year. Hence these requirements do not apply to Civil law partnerships, the turnover of which is below EUR 700 000 a year.

156. Under the tax law, whoever bears an obligation under the UGB or other provisions of law to keep and retain books and records must also keep this information for tax purposes. In addition to this requirements, forestry and commercial businesses must keep books and records above a certain threshold. Books and records to be kept under the tax law must ensure the preparation of financial statements and the annual inventories.

157. The 2015 Report noted some uncertainties in the case of fiduciary relationships, especially Treuhand (see A.1.4 above) as regards the detailed obligations to keep accounting records where the Treugeber (settlor) is not resident in Austria and assets held through the fiduciary relationship are located abroad (and therefore not taxable in Austria) but the *Treuhänder* (trustee) is tax resident in Austria. It was therefore recommended that Austria make it clear that reliable accounting records are kept in the case of fiduciary relationships in any situation.

158. Professional trustees and *Treuhänder* are subject to the record keeping requirements set out in the BAO in their professional capacity and to the extent that there is an obligation to pay taxes in Austria i.e. when (i) income from Austrian source is derived from a trust or a Treuhand or (ii) assets located in Austria are held through a fiduciary relationship. As persons

liable to tax on the income derived from a trust or Treuhand (sec. 24 of the BAO), settlors and *Treugeber* are also required to keep accounting records explaining the income received as well as enabling them to fill out their financial statements when (i) they are resident for tax purposes in Austria or (ii) income from Austrian source is received through a fiduciary relationship. When the *Treugeber* or settlor is not resident in Austria and all assets held through the fiduciary relationship are located outside Austria, there are no record-keeping requirements provided for by the Austrian tax legislation.

159. The Austrian authorities have clarified that a situation can occur where under fiduciary a non-resident *Treugeber* with assets held abroad has an Austrian *Treunehmer*. With respect to the BAO, the *Treunehmer* has to demonstrate to the tax authority that he is not the owner of the assets and has to provide underlying documentations (accounting information) of the fiduciary. The Austrian tax authorities indicate they did not encounter any cases where they were unable to provide the requested information to the requesting jurisdiction. If a disclosed fiduciary is given Austria could provide at least the identification of the *Treugeber* and the assets held to the requesting jurisdiction. In light of the above situation, the in-text recommendation is deleted.

160. The Austrian tax authorities have demonstrated that they are in a position to effectively supervise the obligation to maintain accounting records and underlying documentation for the five year period, prescribed by the standard.

Entities that ceased to exist

161. Information that was once recorded in the Firmenbuch remains available even after their deletion ("deleted entries") (Sect. 31 Firmenbuch Act "*Firmenbuchgesetz* – FBG"). This includes the financial accounts of the companies that need to be filed with the Firmenbuch.

162. According to the Commercial Code (see Sect. 212), business owners (including legal persons) have to retain all their business documents seven years at least after the end of the accounting year in which they were created. This obligation also covers accounting records and all underlying accounting documents, etc. The obligation laid down in Sect. 212 is applicable to companies and partnerships, where all of the members of the undertaking having otherwise unlimited liability in fact have limited liability, because they are companies; to all other business owners, including sole traders and civil law partnerships it applies, if the annual net turnover exceeds EUR 700 000. However, Sect. 212 does not apply to civil law partnerships, as it is not considered a business entrepreneur (GesbR). Instead, Section 1175-1216 of the Austrian Civil Law Code (ABGB) is relevant. Section 1189 para. 3 Civil Law Code determines that the managing partner (or the external manager) of the civil law partnership is obliged keeping and retaining the records.

163. For liquidated partnerships and companies, there are similar legal obligations to preserve records (e.g. Sect. 157 para 2 of the Commercial Code; Sect. 93 para 3 of the Limited Liability Company Act). Basically, in cases of liquidation, the partners/shareholders are obliged to retain the records as follows:

- Civil law partnership (GesbR): the managing partner is responsible (Section 1189 in Connection with Section 1194 of the Civil Law Code).
- Other partnerships (KG, OG): the responsible partner or a third person will be determined by the shareholders' agreement or by the competent court (Section 157 para 2 of the Commercial Code).
- Limited liability Company (GmbH): the responsible shareholder will be determined by the shareholders' agreement, or by shareholders' resolution or by the competent court (Section 93 para 3 of the Limited Liability Company Act).

164. Section 131 para 1 of the Federal Fiscal Code (BAO) permits the keeping and retaining of records outside Austria in cases, where there is no other provision disallowing it. In addition, the responsible person/taxpayer can be a non-resident. However, it must be ensured that the tax authority can check the records without any complication. Therefore, the tax authority is permitted (see Section 138 or 144 of the Federal Fiscal Code) to request for the records and the taxpayer has to transmit the records to Austria without any deferral. If the holder of the accounting information does not deliver the records to Austria when the tax authority asks for them, it can be enforced due to international provisions (mutual administrative co-operation).

165. Regarding partnerships, according to Sect. 157 para 2 of the Commercial Code (Sect. 93 para 3 Limited Liability Act) the records have to be kept with one of the partners or a third party, in principle for a period of seven years, calculated from the end of the calendar year in which the liquidation is terminated. The decision with whom the records have to be kept is based primarily on the agreement of all partners, which can also be taken after termination of the liquidation. In the case that the partners cannot agree on a person, the competent Commercial Court shall designate a depositary upon application.

166. As stated above, the place of storage is not explicitly regulated by law. There are currently no judicial decisions or jurisprudential statements on this issue. Since the local jurisdiction of the Firmenbuch Court refers to Austrian territory only, it is highly probable that the Commercial Court will pick a place within Austria. This can also be concluded from Sect. 157 para 3 Commercial Code (Sect. 93 para 4 Limited Liability Act), where the inspection of the company's books and records is granted to the partners, shareholders or the creditors in important cases. The court can only ensure this right, if the place of storage is within the domestic territory.

Oversight and enforcement of requirements to maintain accounting records

167. The 2015 Report concluded that the implementation of accounting requirements in practice was in compliance to the standard. As described below the supervision by both the Commercial Court and the Austrian tax authorities is adequate to ensure the availability of accounting information (including the maintenance of underlying documentation).

Supervision activities by the Commercial Court

168. The Commercial Court monitors the compliance under commercial law. In practice, the legal representatives of companies have to publish the annual accounts after their adoption at the Annual General Meeting, but no later than nine months after the end of the financial year, to the company court of the registered office of the company.

169. Fines can be imposed in case of violation of the obligation to compile the annual account (sect. 222 para 1 Commercial Code) or the completeness and accuracy requirement (sect. 281 Commercial Code). In addition, in case of non-compliance with filing requirements with the Firmenbuch, the representatives of the company are subject to monitoring by the court by means of compulsory penalties of EUR 700 to EUR 3 600. The penalties must be imposed after the end of the period of disclosure. If disclosure has still not been made within two months following the expiry of the last day of the prescribed period, a further penalty of EUR 700 has to be imposed. If the failure to comply with the disclosure requirement persists, the order shall be repeated in respect of each subsequent two-month period; if an objection is raised against that order, the decision imposing the periodic penalty must be published.

170. In 2014 there were 137 370 companies[7] which had to file their accounts, whereof 134 011 (97.55%) have done so in time. On the remaining 3 359 companies (2.45%) fines have been imposed, with the result that 2 330 of these companies filed their accounts late and only 1 029 have not filed their accounts to date (9 March 2018).

171. With respect to 2015 and 2016, the compliance rate of timely filing was 97.7% and 97.69%, respectively; Fines have been imposed on the remaining companies (2.3% in 2015 and 2.31% in 2016).

7. This figure covers mostly companies, but also special form of partnerships, where all of the members of the undertaking having otherwise unlimited liability in fact have limited liability. A regular OG or KG with at least one partner with unlimited liability is not include in the numbers.

172. For companies and partnerships who repeatedly did not file their accounts, the violation of the disclosure obligations can in addition to the initiation of the compulsory penalty proceedings, lead to the deletion from the Firmenbuch, since failure to present the financial statements of two consecutive financial years implies the (refutable) presumption of lack of funds (Sect. 40 Firmenbuch Act, FBG).The imposition of a fine is not a prerequisite for the admissibility of an official deletion according to sect. 40 para 1 Firmenbuch Act. If the court by other means gets knowledge of the lack of funds of a company, the deletion procedure can be initiated immediately.

173. The tax authority and the legal representative body must be heard before deletion (unless these were applicants themselves). If these bodies do not respond within four weeks, consent is considered granted. If the company cannot show that it still has funds, the deletion is carried out. The tax and court authorities exchange the necessary information in relation to deletion of a company.

174. The Firmenbuch regularly cleans up the register of non-compliant companies. To this effect, the legal entities struck off the Register ex officio[8] were 623 in 2014 (only the last quarter of the year), 2 819 in 2015, 2 781 in 2016 and 2 577 in 2017. These numbers must be compared with the total number of non-compliant companies where the non-filing was still open: i.e.1 029 in 2014, 1 022 in 2015 and 1 656 in 2016. Accordingly, the monitoring activities from the Firmenbuch are adequate to ensure compliance by companies.

Supervision activities by the tax authorities

175. In practice, the tax authorities have sufficiently wide powers to ensure that companies and partnerships (including those foreign with a sufficient nexus with Austria) keep to the obligations to maintain and produce accounting records, through their tax filing obligations and tax audit. As mentioned under A.1.1, a foreign company doing business in Austria must register for tax purposes, in addition to its registration with the Firmenbuch. As mentioned in the 2015 report, the supervision of such obligation (cross-checking with the Firmenbuch database) is the same as for domestic companies and partnerships and is adequate.

8. When a company is struck off the register ex officio, it is considered dissolved. A distribution of funds does not take place. If, after the deletion, the existence of assets subject to distribution should be discovered, the distribution takes place ex post. Then the liquidators are to be appointed by the court at the request of a party (Section 40 para 1 and 3 Firmenbuchgesetz, FBG).

176. Annual accounts has to be filed with the annual corporate and partnership income tax returns.

177. Austria has reported that taxpayers' compliance with their accounting record-keeping obligations is generally good.

178. The Austrian authorities indicated that checks to the tax returns are made when the risk system has identified a potential risk or a desk officer had a suspicion. Content of the checks are to examine the truthfulness of the tax return. Very often this is done by requesting additional documents and explanations. In cases where more than one taxpayer was involved, the different local tax authorities makes cross checks based on the provided information. Examples for the requested content are depreciation, deductible expenses and fees for services.

179. The Austrian authorities indicate that the compliance rate on tax returns was around 88% in 2015, 87.65% in 2016 and 85% in 2017. From 1 October until 31 December 2014, the number of desk audits performed amounted to 111 934. In 2015 there were 467 202, in 2016 459 983, and from 1 January until 30 September 2017, there were 331 531. This represents about 25% of the total tax returns filed. The number of onsite audits (full audit and onsite visits) amounted to 15 399 for the last quarter of 2014, 51 049 for 2015, 52 895 for 2016 and 32 401 for the first three quarters of 2017. During the course of an onsite audit or for the purpose of gathering information to answer EOI requests, tax authorities can ask the taxpayer to produce any relevant document, including accounting records and underlying documentation, of the last seven years. In cases of tax fraud this is extended to the last 10 years. Failure to do so, on the part of the taxpayer will attract a penalty of up to EUR 5 000.

180. Private foundations are also subject to internal (desk based) and external (on-site) audits by the tax authorities. The primary purpose of on-site visits is to gather information from and about the taxpayer for the purpose of discovering and combatting potential cases of tax evasion. A complete risk assessment takes place with regard to the personal and economic circumstances of the taxpayer (e.g. identity check, check of business premises and if any employees, is the taxpayer operating in an industry in which a large number of tax evasion cases have been detected, etc.). From 1 October until 31 December 2014, there were 157 internal tax audits on private foundations. There were 1 261, 1450 and 988 such audits in 2015, 2016 and from 1 January until 30 September 2017, respectively. As to external audits, there were 42 in the last quarter of2014, 155 in 2015, 142 in 2016 and 105 for the first three quarters of 2017.

181. Although trusts are not recognised in Austria, in some very specific cases a foreign trust can be a subject to tax in Austria mainly with respect to VAT. In any case were a foreign trust is a taxpayer for Austrian tax purposes the normal procedures of the Federal Fiscal Code applies.

Availability of accounting information in practice

182. Austria received 264 EOI requests regarding accounting information, and was able to respond to all the requests. Overall, 181 EOI requests pertained to companies, 29 to partnerships and 68 to other types of entities. Peers confirm that the accounting information was available in all cases and no issues were raised in this respect. The requests included for example loan contracts, purchase of vehicles, trade in precious metals, alleged management services, verification of issued invoices, invoices, contracts concerning business transactions, account statements, copy of customer´s accounts, balance sheets, and financial statements.

183. Austrian authorities also answered more than 4 173 incoming VAT requests during the peer review period (460 in 2014; 1 347 in 2015; 1 342 in 2016; and 1 024 in 2017) and in these requests, Austria's VAT partners mainly ask for underlying documents justifying delivery of goods or provision of services, such as invoices, contracts and other supporting documents. The large number of requests received as well as the capacity of Austria's authorities to provide answers gives broad assurance that underlying documentation is kept in compliance with the standard in Austria.

A.3. Banking Information

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

184. In terms of banking information, the 2015 Report concluded that record keeping obligations of banks and their implementation in practice were in line with the standard. Since 2015, the AML/CFT rules applicable to financial institutions have been amended and also gathered in one single text, the Act Financial Markets Anti-Money Laundering Act (FMAML Act) issued in 2016 and amended in 2017.

185. In Austria, the FMA serves as the regulatory authority for financial institutions and checks banks' compliance with their record keeping obligations.

186. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership) be available in respect of accountholders. The FMAML Act refers back to Article 2 of the Beneficial Ownership Act with respect to the definition of beneficial owner. Under the FMAML Act, banks are required to identify beneficial owners of their account holders. The provisions of the FMAML Act are in line with the standard on beneficial ownership information of bank accounts.

187. In the case of breach of these obligations, administrative and criminal sanctions apply. In addition, the supervision of banks by the FMA has been strengthened and a specific focus has been taken to ensure that banks comply with their CDD requirements. Under the current supervision cycle, the onsite visits represent about 10.5% of the total amount of banks. The current supervision seems adequate.

188. The availability of banking information was confirmed in EOI practice. During the review period, Austria received 144 requests related to banking information. There was no case where the information was not provided because the information required to be kept was not available with the bank. No concerns in this respect were reported by peers either. In light of the above, element A.3 continues to be in place and remains compliant. The table of recommendations, determination and rating remains as follows:

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

A.3.1. Record-keeping requirements

Availability of banking information

189. The 2015 Report determined that Austria has put in place a system whereby the availability of banking information is ensured from a legal and a practical perspective. Legal obligations to keep bank information are contained in the Austrian Federal Banking Act (BWG) and cover amongst others all transactions.

190. All credit institutions and financial institutions are subject to Customer Due Diligence requirements (CDD) and to heavy penalties for failure to comply with their CDD obligations. In addition, the 2015 Report determined that the supervision of the financial institutions by the Financial Market Authority (FMA) was adequate by means of on-site visits and other off-site supervision.

191. The sanctions that the FMA can apply vary in degree, based on the failure uncovered. The penalties may go up to EUR 150 000 for regular sanctions and in the case of severe, repeated or systemic breaches, the sanctions may go up to EUR 5 000 000 or 10% of the total annual turnover for legal persons. Another sanction can be the revocation of the licence of the institution. The FMA reported that they have found breaches relating to failure to adhere to the CDD principle, information regarding the client and/or the beneficial owner not being properly documented etc. (see below).

Beneficial ownership information on account holders

192. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership) be available in respect of accountholders. The FMAMLA refers back to Article 2 of the Beneficial Ownership Act with respect to the definition of beneficial owner. Under the FMAMLA, banks are required to identify beneficial owners of their account holders in line with the standard. The provisions of the FMAML Act are in line with the standard on beneficial ownership information of bank accounts.

193. Articles 5 and 6 of the FMAMLA sets out the customer due diligence obligations of financial institutions, which applies amongst other:

- when establishing a business relationship (e.g. opening a bank account)
- when executing any transactions which are not conducted within the scope of a business relationship (occasional transactions) under the conditions sets forth in the 4th EU AML Directive
- when there are doubts as to the veracity or adequacy of previously obtained customer identification data.

194. Under Article 6 of the FMAMLA, the financial institutions must:

- identify the customer and verify the customer's identity on the basis of documents, data or information obtained from a reliable and independent source
- identify the beneficial owner and taking reasonable measures to verify that person's identity so that the obliged entity is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts, companies, foundations and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer
- assess and obtain information on the purpose and intended nature of the business relationship
- obtain and check information about the source of the funds used; such information may include details about professional or business activities, income or operating result or the general financial situation of the customer and their beneficial owners
- identify and verify the identity of the settlor and the trustee
- conduct ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with their knowledge of the customer, the business and risk profile, including where necessary the source of funds

- regular checks of the availability of all required information, data and documents that are required under the FMAMLA, and updating of such information data and documents.

195. The Beneficial Ownership Act allows financial institutions to rely on the Beneficial Ownership Register, but only to verify the customer due diligence they have carried out separately.

Definitions of beneficial owner(s)

196. As mentioned above, the FMAML Act refers back to the definition of beneficial owner(s) contained in the Beneficial Ownership Act. These definitions transpose the definitions of beneficial owner(s) included in the 4th AML Directive. As set out in section A.1, the definitions of beneficial owner(s) of companies, partnerships, trusts, foundations and co-operatives are in line with the standard.

197. The rules governing information required to be kept in respect of trusts and similar arrangements were changed in July 2017 through the Beneficial Ownership Register Act. The new rules transpose the 4th EU AML Directive and require banks to identify, in addition to the settlor(s), trustee(s) and any other natural person exercising ultimate effective control over the trust, also all beneficiaries (regardless of any threshold of interest in the trust or control over the trust). Prior to that, a 25% ownership threshold applied. As the new rules regarding information required to be kept in respect of trusts and similar arrangements are recent and have an impact on the availability of information as required under the standard Austria should monitor their practical implementation.

198. Regarding the timeline for keeping the information up to date, the FMA indicated that a risk-based approach must be applied. Regular reviews and updates have to be done on the one hand periodically according to the respective customer risk, and on the other hand on an occasion-related basis as soon as information that requires an update occurs. For customers rated with a low risk, an occasion-related update may be sufficient. Nevertheless, there is a minimum set of due diligence obligations that has to be met also for customers classified with low risk. If customers are classified with a medium-risk, the information must be updated in any case (in addition to the occasion-related update) within a maximum period of three years. Information regarding customers classified as high-risk have to be updated on an annual basis.

Introduced business rules

199. The introduced business rules, under Article 13 FMAML Act which determines the admissibility of performance of CDD by third parties, are in line with the standard. The ultimate responsibility for meeting those obligations remains with the obliged entity which relies on the third party. In addition, the obliged entities must ensure that they obtain the necessary information without delay with regard to the customer due diligence obligations from the third parties upon whom they are reliant. Furthermore, they must take appropriate steps to ensure that the third party is able to forward them upon request copies of the documentation used to satisfy these due diligence obligations as well as other relevant documentation on the identity of the customer or the beneficial owner(s).

200. For the purpose of these rules, AML-obliged entities are prohibited from relying on third parties established in high-risk third countries, as defined in Art. 2 no. 16 FMAML-Act. These are third countries, which have strategic deficiencies in their national AML/CFT regime, that pose significant threats to the financial system of the European Union and which have been determined by the European Commission by means of a Delegated Regulation pursuant to Article 9 4th AML Directive (i.e. Delegated Regulation (EU) 2016/1675).

Oversight activities and enforcement provisions to ensure the availability of banking information

201. In terms of context, it is relevant to note that Austria has a highly-developed financial market characterised by the dominance of the banking sector (ca. 75%). In 2016, credit institutions held total assets of approx. EUR 806 billion (approx. 228% of GDP). In total, there were 628 credit institutions licensed in Austria at the end of 2017. Of these, a total of 482 (76.8%) belonged to the co-operatives and savings banks sectors, which are predominantly small, rural banks servicing the local population and pool their compliance activities into a centralised function. In practice AML/CFT operations in co-operatives and savings banks exhibit a high degree of centralisation, in particular of back-office operations and systems. This means that although they have many local branches, these banks operate centrally in respect of ensuring their compliance requirements. In contrast, in terms of (unconsolidated) assets held, the Austrian banking industry is dominated by just three large banking institutions, which together account for 27% of the total banking sector.

202. The FMA applies a risk-based approach to supervision for all the obliged entities and plans its supervisory activities taking into consideration ML/TF risks present in the Austrian financial sector as a whole and in individual financial institutions. The starting point of this approach is the

implementation of a tiered supervision, which takes into account the inherent/abstract risks of the individual sub-sectors of the Austrian financial sector, based on objectified risk criteria. The FMA indicated that the tiered approach allows the FMA to vary the scope and intensity of its AML/CFT supervision according to the inherent risks of the individual sectors, as identified in the National Risk Assessment, in which the banking sector (including payment services) is allocated a medium to high risk classification. As such, tax fraud is not a criteria in the risk-scoring tool of the FMA. Nevertheless, as tax fraud is a predicate offence to money laundering, the FMA sets the appropriate measures if a suspicious fact relating to tax fraud occurs (off-site as well as on-site measures). Finally, the National Risk Assessment in its Chapter 19 deals with tax fraud and tax evasion.

203. The FMA indicated that due to the banking sector's risk and its relative size, a more "granular" approach, entailing the development of risk profiles for individual banks, is applied. This is achieved using the FMA's automated "risk scoring tool". Based on this risk-profile and taking into account any other additionally relevant information, the FMA determines the frequency and intensity of its on-site and off-site AML/CFT measures. For this purpose, the FMA launched an online AML/CFT reporting tool for all banks, requiring them to submit detailed information regarding the nature and scope of their business, products and services, customer structure, geography and delivery channels and to submit relevant quantitative data. The assessment of the quality of the institutions' preventive measures is based on information gathered in the course of the FMA's AML/CFT supervision (on-site reports, administrative proceedings and the information submitted in the annex to the annual external audit report).

External auditors

204. Under the Banking Act, all banks are obliged to prepare an annex to the audit report on an annual basis which includes the assessment of external auditors regarding the bank's compliance with AML/CFT provisions. The results are taken into account by the FMA for the risk-scoring of the banks.

205. External auditors must assess the bank's compliance with AML/CFT provisions as set out in the FMAMLA. The result of the audit is to be presented in an annex to the audit report on the annual financial statements. This annex must be submitted to the FMA by the bank. The external auditor is legally obliged to report facts indicating violations of AML/CFT provisions directly to the FMA (Article 63 para. 3 Banking Act). In the annex to the audit report the external auditors are required to provide a description of the specific measures taken, areas inspected and all relevant findings produced during their audit. The FMA inspects all annexes to the audit report in order to determine whether an investigation proceeding is to be initiated by the FMA.

206. A total of 23 external audit reports for the year 2016 (22 in 2015) stated findings indicating potential violations of AML/CFT requirements, triggering the initiation of investigation proceedings on behalf of the FMA's AML/CFT unit. This demonstrates that failure regarding CDD implementation are first caught by the external auditors, which assist in ensuring AML compliance by banks. The Austrian authorities indicate that the assessment by the external auditor is just one possible cause for further (off-site) investigations or (on-site) inspections. Further (ad-hoc) measures – in addition to the ongoing supervisory measures – by the FMA can be triggered by a variety of events (e.g. information received from other departments within the FMA or other (national and international) authorities, information from STRs, input from whistle blowers, from the media or any other source of information etc.). In short: any information that indicates a possible breach of AML/CFT obligation by an obliged entity triggers some kind of supervisory measures from the FMA.

Onsite and company visits by the FMA

207. The FMA carries out two types of onsite programmes: the onsite visits and the company visits.

208. The FMA indicated that on-site inspections involve a team of inspectors spending up to two full weeks at the premises of the bank and provide a comprehensive analysis of an institution's AML/CFT set-up. Teams deployed on-site are made up of a minimum of 2 members of the "on-site inspections team", while members of the "policy and enforcement team" also take part in inspections, e.g. when they are related to a specific issue already subject to off-site analysis.

209. Prior to the inspection at the institution's premises, the institution is required to answer a detailed assessment questionnaire and to provide certain data (e.g. customer structure and internal AML risk-classification system) beforehand to the FMA's inspection team. This early information, including the information provided via the annual AML return and risk profile and score generated by the FMA's automated "risk tool" serves as a baseline for the scoping of the on-site inspection and allows the inspectors to prioritise certain topics and issues, which then comprise the audit modules.

210. The on-site itself aims to test and assess the quality of the AML/CFT systems in place and to determine their adequacy in light of the institution's ML/TF risk. Inspections start with an introductory meeting with the executive directors and the AML/CFT-officer, as this gives a good initial indication of the overall awareness of ML/TF issues within the institution and the level of dedication that is applied.

211. The FMA also tests a sample customer files and transactions monitoring, which provides an indication as to whether the AML/CFT systems and measures in place are adequately applied in practice. To this end the FMA is granted access to the institution's internal (IT- and core banking-) systems and conducts interviews with the relevant staff (customer service, AML/CFT, IT and internal audit).

212. The FMA also carries out company visits, which familiarise the on-site inspection team with the financial institution's AML/CFT set up and clarifies potential outstanding issues related to any pending off-site proceedings. To prepare the company visits, the financial institutions are required to answer a detailed assessment questionnaire. Through the use of these company visits, the FMA indicates it is able to ensure broad coverage of the financial sector, in particular with a view to ensuring that smaller co-operatives are routinely engaged with on a direct level in order to raise awareness throughout the sector. After a company visit, a short internal report is drawn up and any findings are forwarded to the off-site team for the initiation of follow-up procedures.

213. By taking into account the bank's individual risk profiles and scores, the FMA indicates that the on-site inspection plan ensures that the AML/CFT division's resources are applied in the most efficient and effective way by concentrating on the higher risk and significant institutions.

214. In addition to the offsite inspections mentioned above, the figures of onsite inspections and company visits are set out in the graph below.

Inspections and company visits 2014-17

215. The FMA uses the FMA's automated "risk scoring tool" to identify the risks of banks, which comprises an online AML/CFT reporting tool. Based on this risk-profile and taking into account any other additionally

relevant information, the FMA determines the frequency and intensity of its on-site and off-site AML/CFT measures. The FMA indicates that about 75% of the banks operate as small co-operatives or savings banks and therefore pool their compliance activities into a centralised unit. The FMA can monitor and visit the centralised locations to undertake on-site measures. The Austrian banking sector has a specific decentralised structure: co-operative banks (i.e. Raiffeisen and Volksbanken) and savings banks account for about ¾ of the banking sector. With respect to prioritising resources, in the 2018 inspection plan a total of 6 of 7 higher risk banks are scheduled for on-site inspection as well as a further 15 of 27 banks exhibiting moderate to elevated risk levels.

216. The resources of the FMA, which comprised 18 staff as at 1 July 2018, are well exploited to ensure the best value to support the FMA's oversight mission, but they are fully utilised. It is therefore recommended that the FMA monitors its resources to ensure that its supervision remains adequate, especially in times of the implementation of new legislation.

Sanctions and penalties applied

217. From 2014 to 2017 a total of seven penal decisions were issued, where at least one charge (either single case or systematic) related to breach(es) of BO requirements. The failure to verify the BO identity in all cases involved customers (legal persons) domiciled outside Austria.

218. On 30 March 2018, the FMA announced that it imposed a fine of EUR 2 748 000 against a major Austrian bank for inadequate verification of the identity of the beneficial owner and failure to regularly update the necessary documents, data and information required to be able to understand ownership and control structures with regard to high-risk customers (offshore) in specific individual cases. The penal order is not final. The on-site inspection that produced the findings took place from April 2016, just two days after the revelations of the Panama Papers, and lasted through summer 2016. The FMA was assisted by one of the "big four" audit firms to collect, analyse and systematically catalogue the bank's offshore customer files.

Availability of bank information in EOI practice

219. Austria received an increasing number of EOI requests on banking information totalling 144 during the peer review period (11 requests in 2014, 57 requests in 2015, 44 requests in 2016 and 32 requests in 2017), as compared to 18 requests during the last peer review period. Out of the 144 EOI requests, 38 related to companies, 3 to partnerships and 103 to other entities and individuals.

220. Austria indicates that the banking information was available in nearly all cases, which was confirmed by peers. The requested information included for example the name of account holder, name of persons who are authorised to sign or act on behalf of a company, statement of account, account balance, opening documents, and the withholding tax on interest.

Part B: Access to information

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

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

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

222. Austria's access powers were assessed under the 2010 ToR and found to be generally adequate: the tax administration has broad access powers to obtain all types of relevant information including legal ownership information, accounting and banking information from any person, both for domestic tax purposes and in order to comply with obligations under Austria's EOI arrangements. The 2015 Report nonetheless identified deficiencies in relation to access to bank information because some of Austria's treaties contained limitation in this respect. Element B.1 was thus determined to be "in place, but certain aspects of the legal implementation of the element need improvement" and rated "Largely Compliant".

223. Austria has taken steps to address the issue of access to bank information. As detailed in section C.1.3 below, Austria has renegotiated some of its treaties to conform to the Standard in order to address the recommendation made in the 2015 Report. However, 16 EOI relationships continue to restrict access to bank information. Therefore, Austria is recommended to continue to amend its EOI network to bring it to the standard with all partners.

224. The amount of declined cases that concern banking information diminished from 44 out of 70 cases (2015 review) to 7 out of 144 cases in

the current review period. Most of these 7 cases related to EOI relationships which were not in line with the standard for the requested period but have been amended to conform to the standard for more recent tax periods. In all cases where a new or amended treaty was applicable, Austria exchanged the full banking information. Therefore, the only issues in exchanging banking information based on new or renegotiated treaties are related to acceptable legacy issues where the amended treaty does not apply to tax periods that predate the amendment. As these legacy issues do not require further monitoring, the first round recommendation is deleted.

225. Access to ownership and accounting information did not raise systemic issue in practice and peers were satisfied by the timeliness of provision of the requested information. Although no issue arose in respect of the scope of the tax administration's access powers, a doubt emerged on the application of the rules on professional privilege. The applicable rules should allow the tax authority to access information held by legal professionals in line with the standard, but there is neither practice nor jurisprudence on interaction of the professional secrecy rules of lawyers and notaries with the general access powers of the tax administration and professionals met during the onsite visit had not such a clear and positive view on this matter. It is difficult to determine whether Austria would in all cases be able to access information held by these professionals. Therefore, Austria is recommended to monitor that it is able to access information held by professionals who can claim legal or professional privilege in line with the standard.

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

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework	Restrictions on access to bank information provided for by Austria's domestic legislation are still applicable in respect of 16 out of Austria's 144 EOI relationships.	Austria should continue to further amend its EOI network to bring it to the standard with all relevant partners.
Determination: in place, but certain aspects of the legal implementation of the element need improvement		

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice	Although there are sufficient general access powers available to the tax authority which seem to allow access to information held by legal professionals, the interaction of these powers with professional secrecy of lawyers and notaries has not been tested in practice. This concern is strengthened by the fact that the representatives of the lawyers did not clearly indicate that they would in practice provide information to the tax authority when requested.	Austria should monitor access to information held by professionals who can claim legal professional privilege so that the requested information can be obtained in line with the standard.
Rating: Largely Compliant		

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

227. The competent authority has broad access powers to obtain all types of relevant information including ownership, identity, accounting and banking information from any person to comply with obligations under Austria's EOI agreements. However, access to banking information is still limited by some EOI instruments not to the standard.

General access powers

228. Where the incoming request received from a foreign counterpart relates to the provision of ownership and accounting information, the Administrative Assistance Implementation Act (ADG) states that the information will be gathered using access to information powers provided for by the Austrian Federal Fiscal Code (BAO).

229. According to section 143(1) of the BAO, the Austrian tax authorities can request information about all the facts that are relevant to explain the imposition of taxes. The obligation to provide such information applies to all persons, including where the personal tax obligations of the person required to provide this information are not the subject of the enquiry. This information must be provided to the best of the knowledge of this person. The authorities can also request any type of certificates or written documents.

This obligation also includes the possibility for the tax authorities to inspect documents (s. 143(2) BAO). In addition, section 144 (1-2) of the BAO gives the tax authority power to enter and inspect buildings, property and business operations, and to demand presentation of the books and records which are to be kept according to the tax regulations, as well as other documentation appropriate to tax matters.

230. Austria explains that sections 143 and 144 of the BAO are the access provisions that the tax authority in practice applies in almost every case where it is necessary to use access powers to collect information. Other access powers are not as commonly used. With regard to other government agencies a special provision applies that allows the tax authority to access relevant documents held by other public law bodies (s. 158 BAO).

231. With regard to other available access provisions, when tax returns have already been filed, the tax authorities are permitted in the course of their duties of assessing and auditing tax liabilities to review these tax returns and when necessary to require the provision of supplementary information (s. 161 BAO). These powers can also be used potentially in the course of answering incoming EOI requests.

232. Section 164 of the BAO provides for the possibility to ask taxpayers to submit all types of books, records and business papers, allows the Austrian authorities to access and use for EOI purposes any type of accounting records and ownership information that must be kept under Austrian legislation. Pursuant to section 165 of the BAO, third parties can also be asked to provide such information when negotiations with the taxpayer are not likely to lead to the provision of information. The Austrian tax authorities have advised that they have a wide margin in evaluating whether a request to the taxpayer is likely to lead to the provision of information, taking into account: the taxpayer's interest in confidentiality, the interests of third parties and the tax administration's economy and convenience.

233. Ultimately, if some conditions are met, the tax authorities may also use further investigation powers and in particular summon third parties to testify as a witness (s. 169 BAO). Pursuant to section 172, anyone required to testify as a witness can also, upon request of the tax authorities, be required to submit documents, deeds and business records relating to specifically designated facts for inspection. Section 173 of the BAO finally states that these testimonies may also be provided in writing.

234. In criminal tax cases the CLO (Central Liaison Office for International Co-operation – the Austrian EOI Unit) has additional options available to ensure production of information. The CLO may, with permission of the requesting jurisdiction, forward the case to the Tax Fraud Department of the Ministry of Finance who in turn would contact the Austrian FIU which

has additional access powers available in criminal tax cases (see also paragraphs 157-161 of the 2015 Report). However, this has not yet been necessary in practice in any EOI case.

235. As mentioned in Section A.1 the Electronic Register of Beneficial Ownership is also fully available and accessible to the tax authorities, with unlimited access, from 1 June 2018. The tax authorities are also able to use the powers listed above to get beneficial ownership information and underlying documents from the entities themselves.

236. Considering these broad powers and the various avenues enabling the revenue authorities to gather information, any type of ownership information (including beneficial ownership information collected based on AML legislation) or accounting information can be collected in Austria from taxpayers or any third parties and can be exchanged upon request with counterparts.

Databases accessible to the competent authority

237. The CLO has access to the taxpayers' central database maintained by the tax administration. In cases where the information requested is available on that database (tax returns, type of income received, residential status, habitual abode) and the help of the local tax office is not required to collect other data, the CLO is able to answer the EOI request immediately. Austria has reported that it can answer about 47% of the requests from the databases that it has access to. In respect of the rest; the local tax office has to make third party enquiries or enquiries with the taxpayer.

238. The CLO also has access to various electronic databases, besides the central tax database: (i) land register, (ii) Firmenbuch, (iii) central register of residents, (iv) central trade register, (v) central register of associations, (vi) central licensing register for vehicles and (vii) vehicle permit and information register.

Access to ownership and accounting information in practice

239. During the peer review period, the CLO replied to about 47% of requests directly by using its broad access to tax databases, without involving the local tax office.

240. Where the information (be it identity and ownership information or concerning accounting records), is required to be gathered by the local tax office, they are given two months to do so (see Section C.5 on incoming requests for more details).

241. Most peers reported that ownership information and accounting information was provided to their satisfaction. However, three peers reported

that accounting information was not provided in full. In one transfer pricing case the competent authority had lengthy discussion with the company about the requested information (agreements of a subsidiary with third parties). Eventually it was determined that there were no such agreements held by the subsidiary, and therefore information could not be provided. This seems to be in line with the standard, although the response provided to the peer was not timely. With regard to one peer Austria reports that the case is very complex and has been open since 2017, but Austria is still working to provide full information. The third case relates to accounting information, part of which was already accessed and exchanged, but in relation to which a specific issue of suspected taxation contrary to the tax convention is presented in more detail under Section C.5.1.

Accessing bank information

242. The legal basis for bank secrecy in Austria is provided for by section 38 of the Austrian Federal Banking Act (BWG). According to section 38 (1) of the BWG, "credit institutions, their members, members of their governing bodies, their employees, as well as any other persons acting on behalf of credit institutions must not divulge or exploit secrets which are revealed or made accessible to them exclusively on the basis of business relations with customers, or on the basis of section 75(3)" (reports on large value credits).

243. The 2015 Report determined that, in the case of exchange of information based on Austria's international treaties, the ADG allows for the access by revenue authorities to bank information, but only when the request is made under a treaty which includes provisions allowing for the exchange of bank information, whether these provisions are contained in Double Taxation Conventions, Tax Information Exchange Agreements, the MAC or EU directives and regulations on administrative co-operation. At the time, Austria had 21 EOI relationships, which did not allow for exchange of bank information. Accordingly, Austria was recommended to ensure that access to bank information is available to all its treaty and relevant partners.

244. Because Austria has updated some of its treaties and because new jurisdictions have signed and ratified the MAC, the number of EOI relationships that do not allow Austria to access and exchange banking information has now diminished from 21 to 16 (see section C.1).

245. Where the request involves banking information under an agreement that is in line with the international standard, the matter is dealt directly by the CLO who applies the provisions of the ADG. Accordingly, the procedure for access to banking information is the same as that applicable to any other information obtained by means of international administrative assistance proceedings (see B.1.1 and B.1.2 above) with the exception that the CLO uses a special template when requesting the bank for information.

246. The CLO first checks whether the requirements set out by the relevant legal basis for providing the bank information are fulfilled. Then, the CLO contacts the bank and requests the information. The template used to request the information from the bank includes several elements: (i) the name of the requesting jurisdiction, (ii) the legal basis (EU legal basis, double taxation treaty, TIEA or MAC), (iii) a statement that the legal requirements for the request to be valid under § 4(3) of the ADG were met, (iv) a statement that the bank is not obliged or entitled to check the accuracy of the statement mentioned in iii above, (v) a statement that the request for information and all connected facts and operations have to be kept secret against the customer and third parties according to § 4(1) ADG and (vi) the requested information together with time limit of two weeks for the reply. No further information regarding the background of the request or details on the foreseeable relevance of the request is communicated.

247. In practice during the peer review period, the Austrian competent authorities have not encountered access problems with any of the banks, which once asked to provide the information, did it within two weeks.

248. Where the request for banking information is made under an EOI arrangement that is not in accordance with the international standard, the ability to obtain banking information is seriously restricted by a requirement for the requesting party to obtain the taxpayer's consent or fulfilling special requirements in a criminal case. After the CLO has obtained the consent from the taxpayer the process is similar to normal requests that concern banking information. Austria received 6 such requests under the review period.

249. During the peer review period, Austria received a total of 144 requests for banking information. Austria was able to provide the requested banking information in 137 cases (95% of cases). For 6 of the remaining 7 cases the EOI agreement, as mentioned in the previous paragraph, was not in line with the standard for the requested period and the requested banking information could not be provided.[9] Today, a new EOI instrument in line with the standard is available with all but one of the related partners for more recent tax periods so the issue is being solved. In the seventh case, Austria was not able to identify in which Austrian bank the taxpayer had his/her account. Austria found that it would cause significant administrative burden to contact all banks in Austria, especially since even the large banks do not often have combined IT systems for local branches, and it would be therefore required to contact all branches individually. Austria contacted the peer to explain the reason for

9. In agreements not up to the standard it would be up to the requesting jurisdiction to search consent of the taxpayer and provide this written consent to the Austrian Tax Administration. Austria communicates this fact also to its partners.

not providing information and the peer considered the case closed. For future cases, if the requesting jurisdiction does not know in which Austrian bank the account is located it would not be an issue, as information can be obtained from the account register operational since 2016 (see below).

250. In all cases where a new or amended treaty was applicable, Austria exchanged the full banking information. Therefore, the only issues in exchanging banking information based on new or renegotiated treaties are related to acceptable legacy issues where the amended treaty does not apply to tax periods that predate the amendment. As there have been no problems in practice with the new treaties, no further monitoring is required and the first round monitoring recommendation is deleted.

251. In addition, Austria implemented a financial account register in 2016. This register contains information on all account holders or persons with access to the account for all Austrian financial institutions. There is a continuous obligation for the financial institutions to keep the register up to date (§ 3 Financial Account Register Act). Use by the tax authority is limited for domestic tax purposes but the CLO has full access for EOI purposes. The account register enables the CLO to confirm whether the person subject to the request has an account in a bank in Austria. This is particularly useful when the requesting jurisdiction cannot indicate in which Austrian bank the person subject to the request has an account. The searches by the CLO to the register for EOI purposes do not give any notification to the financial institution or person concerned, but in domestic cases the person concerned is notified. The information in the register is not treated differently than other banking information when it comes to application of Austria's treaties. Therefore, if the treaty is not in line with the standard with regard to exchanging banking information, the account register does not provide any new possibilities in these cases.

252. In criminal cases, Austria deals with them similarly to all requests that concern banking information i.e. the CLO collects the information and replies to the partner. During the start of the review period Austria applied an old procedure where such cases would be sent to the criminal division of the respective local tax office. However, Austria reported that there was no need to apply the procedure during the review period and the new procedure where the CLO collect all the information would be used for all future cases.

253. To conclude, the B.1 recommendation made in the 2015 Report is only partially addressed and Austria is still not able to access and exchange banking information (without the consent of the account holder) with 16 partners. Austria is recommended to further amend its existing EOI network to the standard with all relevant partners.

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

254. 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.

255. The ADG clearly states that the investigative actions necessary to deal with a foreign request for administrative assistance are conducted in the same manner as if the foreign taxes were Austrian domestic taxes. Therefore, all domestic gathering measures described above in B.1.1 and B.1.2 can be used whether there is a domestic interest in the matter or not.

256. In practice the CLO and the local tax offices deal with foreign EOI requests similarly to domestic cases. There are no restrictions on the powers of the authorities to use their gathering measures to answer EOI requests and no incoming requests have been declined by Austria for the period under review on the basis of a domestic tax interest as confirmed by feedback from peers. Austria also confirms that it has in practice successfully dealt with cases where a foreign taxpayer receives payments via his bank account in Austria, and those payments were suspected to be taxable income in the requesting jurisdiction.

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

257. When information is required to be kept but the person who is required to keep it refuses to provide the information for whatever reason, the tax authority is authorised, by imposition of a fine up to EUR 5 000, to compel compliance (s. 111(3) BAO). This sanction may apply regardless of whether the request relates to ownership, accounting or bank information. Austria has reported that this is an on-going fine till the information is provided. Additionally, the refusal to comply with an order to provide information by a company or bank can lead to criminal sanctions of up to EUR 5 000 or in important cases to imprisonment of up to six weeks. In practice, the taxpayer or information holder is first given a new deadline for production of the requested information before imposing the fines if information is still not provided. Austria indicates that fines would be reimposed every month.

258. Finally, a search warrant or a confiscation order could be issued and executed, if necessary, by using coercive measures (s. 93(4) StPO).

259. As it was the case during the 2015 review, the Austrian authorities report that they have been able to respond to all valid incoming requests without the need to resort to the imposition of these penalties and all information

requested from third parties has been provided. However, fines have been imposed in domestic tax cases. During year 2017 fines were imposed in total in 8 083 domestic cases.

B.1.5. Secrecy provisions

260. There are two types of secrecy or confidentiality provisions that are relevant for the purposes of this section: bank secrecy and professional secrecy. The rules in respect of each of these are analysed below.

Bank secrecy

261. The legal basis for bank secrecy in Austria is provided for by section 38 of the Austrian Federal Banking Act. Bank secrecy is lifted where information is required for the purposes of an EOI request made under agreements that expressly include a provision that the contracting parties may not decline to exchange bank information solely because the information is held by a bank or other financial institution notwithstanding any contrary domestic legislation. The Administrative Assistance Implementation Act allows tax authorities to access bank information for EOI purposes when the request is made under a treaty which includes such a provision. Although bank secrecy is fully lifted in EOI cases, it still remains for domestic tax purposes.

262. For access to information for the purposes of EOI under Austria’s other agreements, which up to now do not follow the OECD standard, bank secrecy cannot be lifted – except in criminal cases subject to special requirements or when the taxpayer gives consent to accessing the information.

263. Currently, 16 EOI relationships contain limitations with regard to bank information and Austria is recommended to bring these relationships to the standard.

Professional secrecy

264. The 2015 Report indicated that secrecy provisions applicable to various professions do not prevent effective exchange of information. In practice, Austria has not requested lawyers or notaries for information in relation to EOI cases. Accountants and auditors on the other hand are more typical sources of information. Some information held by these professionals are directly accessible via the beneficial ownership Register from 1 June 2018 (see section A.1.1).

265. Professional secrecy is protected in accordance with the legislation governing the professions of lawyers (s. 9 RAO), civil law notaries (s. 37 NO), tax consultants and auditors (s. 91 WTBG) and accountants (s. 76 BibuG).

These provisions provide for confidentiality with respect to all matters entrusted to these professionals. This duty also extends to personal circumstances and trade or business secrets that come to their knowledge in the performance of an engagement given to them. Austrian authorities maintain that professional secrecy rules do not relieve any person from the obligation to disclose information according to the provisions of the BAO. In addition, these rules do not cover matters relating to the tax records kept in accordance with tax law (s. 124-132 BAO) by these professionals (their records can be audited by the Austrian revenue authorities).

266. Pursuant to the Terms of Reference, communications between attorneys, solicitors or other admitted legal representatives and their clients can be protected when (i) it is provided for the purposes of seeking or providing legal advice or (ii) for use in existing or contemplated legal proceedings. However, in Austria these rules generally cover a wider group of professionals and situations.

267. Officials from the Chamber of Civil Notaries indicated that although the information they hold, for example when acting as a *Treuhänder*, would be subject to professional secrecy, this provision would be overridden if they were required to provide such information to a tax authority. Section 159 of the BAO contains a special provision on notaries indicating they may not decline to provide information to the tax authority based on confidentiality in all cases where they are operating in their statutory duties as commissioners of the court or performing notarial deeds. The provision would cover all situations mentioned in the Notarial Code (s. 36a) of buying or selling property or business entities and creation, operation or management of companies (with the exception of testaments not yet published). When performing these duties, information that will be collected based on AML, such as beneficial ownership information, must therefore also be provided to the tax authority on request.

268. All information in the possession of an accountant or auditor can be obtained by the Austrian tax authorities both for domestic purposes and in response to a valid EOI request. Austria reported that there have been numerous occasions where information held by accountants and auditors had been successfully accessed, and that in domestic cases there were only problems in rare cases where the auditor/accountant was himself/herself involved in fraudulent activities and the information was of self-incriminating nature.

269. Although not limited by law, as reported by Austrian authorities, in Austria lawyers typically do not act as nominee directors of a company, trustees, or represent a company in its business affairs. Lawyers typically concentrate on litigation and giving legal advice. Therefore, lawyers have not been a source of information for the tax authority in practice in domestic cases or in EOIR cases. However, lawyers are required to also provide

information to the tax administration based on the general access powers as detailed in section B.1.1 as long as provision of the information is not in conflict with the obligations arising from the professional secrecy rules as laid down in the RAO. The professional secrecy provisions foreseen by RAO are very similar than the provisions that cover auditors and accountants and in particular notaries.

270. Section 9(2) of the RAO provides that the lawyer is obliged to maintain secrecy as to the matters entrusted to him/her and to the facts coming to his/her knowledge in another way within the scope of his/her profession, whose secrecy is in the interest of his/her client. In proceedings before the courts or before other authorities he/she has the right that this secrecy is respected in accordance with the procedural provisions. The same applies to the partners and members of supervisory organs of a lawyer´s company foreseen by law or the articles of association. The lawyer's right to secrecy must not be circumvented by any judicial or administrative measure, such as the examination of the lawyer's assistants or by orders to hand over documents, picture-, sound- or data carriers. Special provisions to further describe the limits of this prohibition remain unaffected (s. 9(3) RAO).

271. The RAO provides for exceptions in limited cases. In case of suspected money laundering the lawyer has to inform the FIU about all the circumstances he/she knows about the suspected money laundering or financing of terrorism against the client (s. 9(4) RAO). The information given in good faith to the authority performing the investigation is not regarded as a violation of the obligation to maintain secrecy or any other limitations to disclosure imposed by contract or by judicial or administrative provisions and does not cause any detrimental legal consequences for the lawyer.

272. According to Austria these exceptions are specifically mentioned in the RAO because the lawyer is obliged to provide even information that could normally constitute a confidential communication. Further, other exceptions can apply such as the tax authority using its general access powers. However, the representatives of the Austrian Bar Association indicated that lawyers have limited possibility to provide information directly to the tax authorities and that they were only obliged to provide information to the FIU for money laundering prevention purposes.

273. Austria reported it had started an audit programme in February 2018 of accounts which had capital inflow during years 2011 to 2013. Some of these accounts are escrow accounts held by lawyers and notaries who were also requested to provide information i.e. to identify recipients of money inflows. In two cases information was not provided when requested from the lawyer (the cases are still pending) and the Ministry of Finance provided guidance to the tax administration how to deal with the cases. According to the memo the Ministry has a strict view that the lawyers should provide the requested

information to the tax authorities. According to the Ministry, sole reliance on section 9 RAO or section 37 NO would constitute a misperception of the scope and purpose of the confidentiality duties of lawyers and notaries, which are only intended to ensure protection of the special relationship of trust between a lawyer/notary and his/her clients and the clients' right to a fair trial. Under no circumstances may the duty of confidentiality serve to prevent tax authorities from conducting in-depth audits of capital inflows to ensure that statutory obligations are being fully complied with. The Ministry also instructs the tax administration to impose a fine and if information is not provided to increase the fine each time it is imposed relating to a specific case. However, it needs to be noted that the memo specifically referred to s. 12(2) of the Capital Outflow Reporting Act[10] and it is not clear whether a similar position would apply in all cases where the tax authority would require information for tax purposes, when other information than information on capital inflows is requested, and the identity of the recipient is required to be provided.

274. A judicial pronouncement of the Austria Supreme Court (in the case of Oberster Gerichtshof/OGH) of 18 October 2012, showed that information related to a criminal tax matter could not be placed with a service provider or professional just to avoid access to this information by government authorities. Although the case concerned a criminal tax matter, the Austrian authorities are of the view that the principles would apply also in civil tax matters especially if there would be any future cases brought to court.

275. To conclude, generally the applicable rules should allow the tax authority to access information and exchange it in line with the standard. However, there is neither practice nor jurisprudence on interaction of the professional secrecy rules of lawyers and notaries and the general access powers of the tax administration contained in the BAO. Additionally, taking into account the view of the Bar Association, it is difficult to determine whether Austria would in all cases be able to access information held by these professionals. Therefore, Austria is recommended to monitor that it is able to access and exchange information held by professionals who can claim legal or professional privilege in line with the standard.

10. The Act concerns reporting obligations of capital inflows above EUR 50 000 from Switzerland or Liechtenstein.

B.2. Notification requirements, rights and safeguards

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

276. The 2015 Report found that Austria had no issues regarding notification requirements or appeal rights and the element was determined to be in place and rated compliant with the Standard. Since then there have been no changes in legislation or practice. The table of recommendations, determination and rating remains as follows:

Legal and Regulatory Framework
Determination: In Place
Practical Implementation of the standard
Rating: Compliant

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

277. Austrian law does not require the notification of the person who is the object of a request for information, neither before the information is exchanged (prior notification) nor within a certain period of time after the information is exchanged (time specific post notification).

278. As explained in the 2015 Report when the notification procedure was abolished beginning from 14 June 2014, an anti-tipping off provision was introduced. This provision concerns only banks and states that they are not permitted to inform the taxpayer about foreign requests for information.

279. Appeals are allowed against decisions issued by the tax authorities and separate appeals against procedure are explicitly not allowed (s. 243 and 244 Federal Fiscal Code). Execution of a foreign request and use of the access powers of the tax authority in connection to the request are seen as procedural aspects that cannot be appealed. Appeals against procedure are only allowed in connection with the appeal against the final decision of the tax authority at the end of the procedure, and the notice given to the taxpayer to provide information is a procedural aspect which does not constitute a final decision. Procedural aspects, which are specifically mentioned in the Federal Fiscal Code, are for instance (i) the threat of a coercive penalty (s. 111 Federal Fiscal Code), (ii) a summons to appear before the tax authorities (s. 91 Federal Fiscal Code), (iii) refusal to grant access to file (Section 90 of the Federal Fiscal Code) or (iv) refusal to grant extension of a deadline (Section 110 of the Federal Fiscal Code).

280. While it is not possible for the person subject to the foreign request for information or for the information holder to appeal against execution of the request or the threat of a coercive penalty, it is possible to appeal against the coercive penalty after it has been imposed. Thus, only the information holder has an appeal right as the sanctions can only concern the holder of the requested information in cases where it has not provided the requested information to the tax authority. The taxpayer subject to the request would only have this possibility in exceptional situations where the taxpayer subject to the foreign request and holder of the information in Austria are the same person. In case of an appeal, Austria reported that it would disclose information necessary to fulfil the request or to defend their position, but the request itself would not be disclosed.

281. During the review period there have been no new appeals that relate to EOI cases. However, there is still one case pending where the appeal was lodged in 2013. The bank account holder (who was formally notified about the foreign request based on the notification procedure that previously existed in Austrian law) appealed the formal notice to the Federal Finance Court on the basis that the request of the foreign jurisdiction was not foreseeably relevant. The court rendered a decision supporting the position of the tax administration on 24 April 2015, under which the requested banking information could be submitted without limitation. Since then the taxpayer has appealed to the Constitutional Court in August 2015. The Constitutional Court decided to hand the case over to the Highest Administrative Court in June 2016. Since then, the case has been pending. Because a formal notification is not anymore issued similar cases cannot occur under the new legislation.

Part C: Exchanging information

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

C.1. Exchange of information mechanisms

Exchange of information mechanisms should provide for effective exchange of information

283. The 2015 Report concluded that Austria had significantly improved its EOI network but 21 EOI relationships did not allow exchange of banking information in line with the standard. Therefore, the legal framework was determined as requiring improvement and Austria was rated largely compliant with the EOIR standard. Austria was recommended to bring all deficient EOI relationships in line with the standard.

284. Austria's EOI mechanisms currently cover 144 partner jurisdictions, with 128 in force at the cut-off date of the report.[11] Since the first round review, Austria has signed and ratified 4 new DTCs, one TIEA and 2 Protocols to existing DTCs.[12] In addition, a new DTC was signed with

11. Out of the 144 relationships 16 are not yet in in force. 13 of these are EOI relationships based solely on the MAC but it has not yet entered into force in respect of the partner (Bahamas, Brunei Darussalam, Burkina Faso, Dominican Republic, El Salvador, Gabon, Jamaica, Kenya, Liberia, Macau (China), Paraguay, Peru and Vanuatu). In addition, DTCs signed with Kosovo, Libya and Syria are pending ratification. More details are provided in Annex 2 of the report.
12. Belarus (Protocol to DTC), Iceland (DTC), India (Protocol to DTC), Israel (DTC), Japan (DTC), Mauritius (TIEA) and Turkmenistan (DTC). In addition, there was an exchange of notes with Luxembourg with regard to the DTC.

Kosovo in June 2018. However, restrictions are still applicable in respect of 16 out of Austria's 144 EOI relationships. Ten of these EOI relationships also limit EOI to the application of the treaty or require providing the name and address of the holder of the information in Austria. Austria should continue to further amend its EOI network to bring it to the standard with all relevant partners.

285. No issue in respect of the practical interpretation of foreseeable relevance was identified in the 2015 review. In the current review period, all peers providing input, except for one (see C.5), were satisfied with Austria's interpretation of the foreseeable relevance standard and the application of the EOI clause in the agreement more generally.

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

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework	Restrictions on access to bank information provided for by Austria's domestic legislation are still applicable in respect of 16 out of Austria's 144 EOI relationships. In addition, 10 of these deficient EOI relationships also limit EOI to the application of the treaty or require providing the name and address of the holder of the information in Austria.	Austria should continue to further amend its EOI network to bring it to the standard with all relevant partners.
Determination: The element is in place but needs improvement		
Practical Implementation of the standard		
Rating: Largely Compliant		

Other forms of exchange of information

287. Austria reported that it also engages in spontaneous exchange of information, automatic exchange of information, presence of one jurisdiction's officials in the offices of another jurisdiction for tax co-operation purposes and simultaneous tax controls. Austria sent spontaneous information to other jurisdictions in 462 cases. There were 4 simultaneous controls and three presences in administrative offices.

288. Austria exchanges information for tax purposes on a mandatory automated basis since 30 June 2015 (with first exchange related to tax year 2014) under article 8 of Directive 2011/16/EU of 15 February 2011 on Administrative Co-operation in the Field of Taxation. Austria committed to

the automatic exchange of financial account information under the Common Reporting Standard and will start exchanging data in September 2018. Finally, Austria has already started exchanging financial account information with the United States in 2016 based on the Inter-Governmental Agreement on Co-operation to Facilitate the Implementation of FATCA.

C.1.1. Foreseeably relevant standard

289. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction.

290. The 2015 Report found that all of Austria's DTCs signed after 2009 include the full wording of Article 26 of the OECD Model Tax Convention, including paragraphs 4 and 5. The new treaties and protocols signed by Austria since 2015 also conform to the standard of foreseeable relevance.

291. However, in some cases, the article was supplemented by additional information to be provided, such that the treaty did not conform to the Standard. These limitations concerned treaties with Bosnia Herzegovina, Qatar, Serbia and Tajikistan because the treaties require providing the name and address of the person in possession of the information in Austria. Austria signed a protocol with Tajikistan already in March 2013, which would bring the relationship to the standard. Austria reported that it received an official note from Tajikistan on 21 January 2015 on ratification of the protocol but since the Tajik language version of the protocol contained changes compared to the already agreed text, there was need for further discussion with Tajikistan. Austria is currently working to ratify the treaty in co-operation with Tajikistan. With regard to the other three jurisdictions, there have been no new bilateral developments to bring these EOI relationships in line with the standard. However, Qatar has signed the MAC but not yet ratified it. No effect in practice is reported by Austria as there were no requests received from these jurisdictions.

292. EOI relationships with Cuba, Iran, Kyrgyzstan, Mongolia, Nepal and Uzbekistan continue to limit exchange of information only to the application of the treaty. Austria has exchanged a draft protocol with Mongolia in 2011 and Uzbekistan in April 2018, which would bring the relationships to the standard. A response is pending from the side of the partners. Austria has also requested Iran for renegotiations in 2017. Negotiations with Cuba, Kyrgyzstan and Nepal are planned. Because of the limited human resources in the International Tax Division, very few requests with these jurisdictions and the fact that these jurisdictions did not ask for renegotiation, Austria has not yet proceeded to ask for renegotiation of these treaties.

293. To conclude, in total 10 EOI-relationships continue to be limited either because (i) the treaty limits EOI to application of the treaty or because

(ii) the treaty requires name and address of the holder of the information in Austria to be provided. Austria is recommended to continue to amend its EOI network to bring it to the standard with all relevant partners.

294. In practice, Austria reports it has declined to provide information in total in 27 cases[13] during the review period because the particular treaty allowed, for the two reasons of deficiencies in the treaties mentioned above, limited possibilities to exchange information.

295. Austria has performed well in amending the EOI instruments that would have most impact in practice and because of entry into force of the MAC with two partners, a legal base that is up to the standard is now in force for majority of the jurisdictions concerned by these declined cases. A sufficient legal base is not in force only with two jurisdictions concerned by the declined cases (that represent two cases for which Austria could not answer the request).[14]

Clarifications and foreseeable relevance in practice

296. Austria requires that the requesting jurisdiction provides sufficient information to demonstrate the foreseeable relevance of their request. In practice, Austria typically requires that a short description of the case that indicates the tax purpose is included to the request. If foreseeable relevance is not clear or there are other deficiencies with the request, Austria will always ask the requesting jurisdiction for clarifications. Any issues in foreseeable relevance are typically solved by the treaty partner providing more details.

297. In the period under review, 79 requests for clarification (or 5% of total EOI requests received) were made by Austria to the requesting jurisdictions. Austria explained that the need to ask for clarification was caused by several factors that include: (i) foreseeable relevance was not explained sufficiently or there was not enough background information on the case, (ii) insufficient identification data concerning the taxpayer (not related to the above-mentioned deficient treaties), (iii) insufficient explanation to what extent the requested information is necessary to correctly apply the DTA (in cases based to a DTA with EOI limited to its application) and (iv) the request was lacking any mention of exhaustion of domestic investigation possibilities.

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13. The total amount of declined cases is 38. The number 27 does not contain the 7 declined cases related to banking information as these are discussed separately in Section C.3.1 nor 4 cases declined for other reasons discussed in Section C.5.2.
14. In order by amount of cases, the new instruments apply with Belarus (protocol to DTA entered into force in October 2015), Ukraine (MAC entered into force in December 2014) and Russia (MAC entered into force in July 2015). No updated legal base is currently available with Kazakhstan and Uzbekistan, but Austria has exchanged a new draft protocol with Uzbekistan in April 2018.

Group requests

298. Austria's procedures to deal with group requests are similar to those used for dealing with individual requests. As detailed in the 2015 Report, as a result of the amendment in 2014, the ADG expressly provides that group requests are permitted also in case of bank information, on condition that the international agreement provides for the exchange of bank information in line with the Standard (contains paragraphs 4 and 5 of the OECD Model Tax Convention). Under such conditions Austria accepts group requests also for cases which refer to periods prior to the entry into force of the revised ADG.

299. The main difference compared to normal requests relates to the information that must be included in the request. The requesting jurisdiction should provide: (i) a detailed description of the group, (ii) an explanation of the applicable law, (iii) an explanation why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law and (iv) a showing that the requested information would assist in determining compliance by the taxpayers in the group. The requirements are very similar to those set in paragraph 5.2 of the Commentary to Article 26 of the OECD Model Convention.

300. With regard to any types of information (including bank information), group requests are excluded in cases where the EOI mechanism restricts EOI to the application of the agreement.

301. During the review period, Austria did not receive or send any group requests.

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

302. The 2015 Report found that none of Austria's EOI agreements restricts the jurisdictional scope of the exchange of information provisions to certain persons, for example those considered resident in one of the contracting parties.

303. The additional agreements that Austria has entered into since the last Report similarly do not have such restrictions. Peers have not raised any issues in practice during the current review period. Austria reported that in practice it has been requested, for example, to provide information concerning a bank account of a company resident in a third jurisdiction and that it provided all the requested information without any issues.

C.1.3. Obligation to exchange all types of information

304. The 2015 Report indicated that EOI relationships with 21 jurisdictions[15] did not allow for exchange of banking information in line with the standard, and Austria was recommended to address this gap. Since then Barbados, Malaysia, Pakistan and United Arab Emirates have signed and ratified the MAC. Armenia, Kuwait and Former Yugoslav Republic of Macedonia have signed the MAC but not yet ratified it (Armenia in January 2018, Kuwait in May 2017 and FYROM in May 2018). Furthermore, a new DTC with Israel allowing EOI in line with the standard entered into force in 1 March 2018. With regard to Libya, the DTC signed on 16 September 2010 would allow EOI to the standard, but it remains to be ratified by both parties. Therefore, the amount of EOI relationships that do not allow banking information to be exchanged in line with the standard (with the addition of the US,[16] Bosnia and Herzegovina and Uzbekistan which were erroneously not listed previously) has diminished to 16.[17]

305. The agreements that Austria has entered into since the 2015 Report all include paragraph 5 of Article 26 of the OECD Model Tax Convention which provides that a contracting state may not decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

306. There have been further developments with some of the remaining jurisdictions: (i) a treaty with Libya was signed already in 2010. However, the new government of Libya wanted to reopen negotiations and due to this situation no further negotiations have been scheduled, (ii) Negotiations with Syria have been postponed because of the internal situation of the country, (iii) Egypt and Austria have been in treaty negotiations since 2009 but no agreement on the final text has been reached so far, (iv) Former Yugoslav Republic of Macedonia approached Austria by letter asking to amend the EOI article of the DTC in May 2018 and Austria communicated its willingness to

15. Algeria, Armenia, Barbados, Cuba, Egypt, Former Yugoslav Republic of Macedonia, Iran, Israel, Kyrgyzstan, Kuwait, Libya, Malaysia, Mongolia, Nepal, Pakistan, Serbia, Syria, Thailand, United Arab Emirates, Venezuela and Viet Nam.
16. The DTC between Austria and the US does not contain paragraph 5 of the OECD Model Tax Convention. Although the US is party to the MAC (original), it has not ratified the MAC as amended which contains language similar to paragraph 5. Therefore, although Austria and the US exchange predefined banking information based on FATCA automatically, the EOI relationship is not in line with the standard for the purposes of EOI on request. Austria reported that it has discussed opening the DTC for renegotiation with the United States.
17. Algeria, Bosnia and Herzegovina, Cuba, Egypt, Iran, Kyrgyzstan, Libya, Mongolia, Nepal, Serbia, Syria, Thailand, United States, Uzbekistan, Venezuela and Viet Nam.

do so in June, (v) Austria has requested Iran to renegotiate the DTC in 2017, (vi) Austria sent a new draft protocol to Uzbekistan in April 2018, which would bring the relationship to the standard. Austria reports that it has not had the resources to request to renegotiate with the remaining jurisdictions and that it would find it most efficient if these jurisdictions would sign and ratify the MAC. Further details on Austria's negotiation programme is provided in relation to element C.2.

C.1.4. Absence of domestic tax interest

307. The 2015 Report noted that there is no domestic tax interest requirement in Austria or in its EOI instruments and the Austrian authorities can access all types of information, whether this information is needed for domestic or exchange of information purposes. The new agreements that Austria has entered into since the 2015 Report all include paragraph 4 of Article 26 of the OECD Model Tax Convention which provides that a contracting state may not decline to supply information solely because it has no interest in obtaining the information for its own tax purposes. Hence, Austria is able to exchange information, including in cases where the information is not publicly available or where it is not already in possession of the government authorities. There has been no change in this respect.

308. However, Austria was recommended to continue its programme of renegotiation of DTCs including to incorporate wording in line with Article 26(4) of the OECD Model Tax Convention because domestic tax interest requirements may exist in some of the partner jurisdictions.

309. Austria's peers did not report any issues in practice during the current review period with regard to domestic tax interest requirements. Austria reported that it has in practice dealt with cases without domestic tax interest without any issues.

C.1.5. Absence of dual criminality principles

310. The 2015 Report did not identify any issues with Austria's network of agreements or domestic legislation in respect of dual criminality. All of Austria's EOI instruments require the exchange of information regardless of whether the conduct under investigation, if committed in Austria, would constitute a crime. No issues arose in practice as confirmed by peer feedback.

C.1.6. Exchange information relating to both civil and criminal tax matters

311. The 2015 Report found that Austria's network of agreements generally provided for exchange in both civil and criminal matters and no issues

arose in practice. There were some exceptions with regard to old agreements that only provide exchange of banking information in criminal tax matters.

312. All new agreements signed by Austria allow for exchange of information in both civil and criminal tax matters. Austria reports that it does not collect statistics on cases that relate to criminal tax matters. However, no refusals related specifically to criminal tax matters.

C.1.7. Provide information in specific form requested

313. The 2015 Report noted that there are no impediments under Austrian domestic law and tax treaties that would prevent Austria from providing information in the specific form requested. Austria reported that it continues to be prepared to provide information in the specific form requested to the extent such form is known or permitted under Austria's law or administrative practice. Austria reports that during the peer review period it did not receive any request of this type.

C.1.8. Signed agreements should be in force

314. Austria has a broad EOI network covering 144 jurisdictions through 98 bilateral agreements, the Multilateral Convention and Directive 2011/16/EU. Out of these 144 jurisdictions Austria has an EOI instrument in force with 128 (see Annex 2 to the report).

315. There are three signed treaties that are pending ratification. Austria reports that the treaties with Libya and Syria are pending because of internal issues of the partner. In addition, the treaty with Syria does not follow the standard so it would need to be renegotiated. The treaty with Kosovo was signed recently on 8 June 2018 and is thus pending ratification.

316. In addition, protocols to existing treaties are pending entry into force with India and Tajikistan. The protocol with India has been ratified by Austria and the ratification is pending from the side of the treaty partner. Austria reports that with regard to protocol signed with Tajikistan already in March 2013, it had issues with the Tajik language text of the protocol and it is working currently to resolve the issues and to ratify the protocol.

317. A majority (59 out of 98) of Austria's bilateral EOI instruments remain not to the standard. However, from the perspective of EOI relationships to the standard, when factoring in the EU and multilateral instruments, 128 out of 144 relationships are to the standard. There remain only 16 relationships for which exchange of banking information is limited (see Section C.1.3) and a further 10 of these relationships are limited also because the treaty limits exchange of information to the application of the treaty or requires providing the name and address of the information holder (see Section C.1.1).

318. The following table summarises the outcomes of the analysis under element C.1 in respect of Austria's bilateral EOI mechanisms (i.e. regardless of whether Austria can exchange information with the particular treaty partner also under a multilateral instrument):

EOI Bilateral Mechanisms [a]

A	Total Number of DTCs/TIEAs (A= B+C)	98
B	Number of DTCs/TIEAs signed but not in force (B = D+E)	3
C	Number of DTCs/TIEAs signed and in force (C = F+G)	95
D	Number of DTCs/TIEAs signed (but not in force) and to the Standard	2
E	Number of DTCs/TIEAs signed (but not in force) and not to the Standard	1
F	Number of DTCs/TIEAs in force and to the Standard	36
G	Number of DTCs/TIEAs in force and not to the Standard	59 [b]

Note: a. Austria has signed and ratified a new tax treaty with Japan which replaces the older tax treaty not in line with the standard. The new treaty, which is in line with the standard, is not yet in force. Therefore, the treaties with Japan are not double counted and only the old treaty is presented in the table figures.

b. From the perspective of EOI-relationships, there remain 16 which are not to the standard.

C.1.9. Be given effect through domestic law

319. As explained in the 2015 Report, all EOI mechanisms must be incorporated into Austrian domestic law. This means that the respective agreement must be ratified by both Chambers of the Parliament (art. 50 (1) (1) Constitutional Law with respect to approval by the Chamber of Representatives; art. 50 (2) (2) for approval by the Chamber of States). The ratification procedure lasts in practice on average 6 to 8 months.

320. The authorities have broad powers to access any type of information, including banking information where the agreement contains wording akin to Article 26(5) of the OECD Model Tax Convention (as detailed in Section B.1 of this Report).

321. No issues were raised in the 2015 Report in this regard, and similarly no issues arose in practice during the current review period.

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

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

322. The 2015 Report found that Austria was compliant with the standard. However, 21 EOI relationships still contained limitations with regard to exchange of banking information and Austria was recommended to bring these relationships in line with the standard.

323. As noted in the last review, since its commitment to the international standards, Austria has only concluded DTCs that contain text akin to a full version of Article 26 of the OECD Model Tax Convention (including paragraphs 4 and 5). All TIEAs are also in line with the OECD Model TIEA.

324. Austria's tax treaty negotiations are the responsibility of the International Department of the Ministry of Finance. The treaty negotiations team consists of six persons, who also handle matters related to Advance Pricing Agreements, Mutual Agreement Procedures and different privileges including VAT refunds to diplomats and headquarter agreements. In addition, they participate in several OECD Working parties and work of the Global Forum. The International Department reported that typically only a limited amount of treaties can be negotiated each year because the negotiation unit has more and more other responsibilities including work related to the current EU Council presidency of Austria. Typically it can negotiate only one new treaty and two protocols to existing treaties per year. Considering Austria still has 16 EOI relationships not in line with the standard with regard to banking information and 10 of these relationships are limited because EOI is otherwise restricted (for details see Section C.1), Austria is encouraged to ensure that it has sufficient resources available for treaty negotiations.

325. Austria currently has an extensive network of EOI mechanisms covering 144 jurisdictions (see C.1.1). Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information agreement. Austria is willing to negotiate new EOI instruments with new partners, although it prefers that any jurisdiction who has not yet signed and ratified the MAC would do so. No peers reported that Austria had refused to negotiate a new EOI arrangement. Austria is recommended to continue to conclude EOI agreements with any new relevant partner who would so require.

326. Both the total number of EOI relationships to the Standard and EOI-relationships that allow banking information to be exchanged have continued to increase as detailed in Section C.1. Therefore, the network is now broad enough to justify that the recommendation from the 2015 Report on EOI relationships not in line with the standard be deleted from element C.2 (the same

recommendation remains as updated for elements B.1 and C.1.). The determination of Element C.2 remains "in place", and Element C.2 is rated "compliant".

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

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

C.3. Confidentiality

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

328. The 2015 Report concluded that all of Austria's EOI agreements have confidentiality provisions in line with the standard (with the exception of one treaty). This is also the case for all of Austria's EOI agreements and Protocols signed since the first round review.

329. There are adequate confidentiality provisions protecting tax information in Austria's domestic tax laws, which have not been amended since the last report. These provisions also apply to information exchanged under Austria's EOI instruments unless the respective EOI instrument stipulates different rules.

330. The above confidentiality rules also cover incoming EOI request letters. If a court proceeding, under Austria's domestic law, necessitates the disclosure of the competent authority letter itself, the CLO reported that before disclosing the letter it would first contact the partner to ask for opinion on the disclosure. There have not been any such cases under the review period.

331. The applicable rules are properly implemented in practice to ensure confidentiality of the received information. The CLO has in place policies and procedures to ensure that confidential information is clearly labelled and stored. The information received is in all cases stored electronically with access restricted to authorised officers. When there are also hard copies available, they are stored in locked archives at the office of the CLO. Adequate security and operational controls are deployed in an appropriate manner, with the exchanged information adequately protected. Accordingly, no case of breach of confidentiality has been encountered in the EOI context and no such case or concerns have been reported by peers either.

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

Legal and Regulatory Framework
Determination: In place
Practical Implementation of the standard
Rating: Compliant

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

333. The 2015 Report concluded that Austria's EOI instruments have confidentiality provisions in line with Article 26(2) of the OECD Model Tax Convention with the exception of the treaty with Tajikistan to which the protocol is still pending at the side of Tajikistan. All of Austria's agreements and protocols signed since the first round review contain wording akin to Article 26(2) of the Model DTC as well and therefore ensure confidentiality of exchanged information in line with the standard.

334. The 2016 Terms of Reference clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the authority supplying the information authorises the use of information for purposes other than tax purposes, in accordance with the amendment to Article 26 of the OECD Model Tax Convention introducing this element, which previously appeared in the commentary to this Article. In the period under review Austria reported that there were three cases wherein the requesting partner sought Austria's consent to utilise the information for non-tax purposes. Granting the permission requires one of the following to be met (s. 48(a) BAO) (i) legal obligation (e.g. criminal proceedings) (ii) mandatory public interest or (iii) the taxpayer gives consent to sharing the information. In the first case Austria was able to grant the permission. In the second case Austria requested further details from the partner but has not yet received a reply to the clarification request. In the third case Austria did not give the permission because information could not be used for the requested purpose in Austria. Austria did not request its partners to use information received for non-tax purposes.

335. As concluded in the 2015 Report, there are adequate confidentiality provisions protecting tax information contained in Austria's domestic laws which are supported by administrative and criminal sanctions applicable in the case of breach of these obligations. (see paragraphs 252 to 265 of the 2015 Report). The confidentiality provisions are supported in practice by appropriate policies and procedures as explained in detail below.

Practical measures to ensure confidentiality of the information received

336. The security procedures are designed to respect the requirements of the international information security standard (ISI/IEC 27001:2013) that concern physical and environmental security which applies to all information held by the tax authority, with information exchanged with Austria's partners being one type of information. The policy contains the following instructions:

- Data classification instructions
- Information (document) filing instructions
- Information (document) storage instructions together with clean desk policy
- Data retention, backup and encryption instructions
- Information (document) printing, copying and scanning instructions
- Electronic transmission instructions
- Information deletion and document destruction instructions
- With regard to physical security: definition of physical security perimeters, entry controls, physical security of rooms and offices, ID cards and password and PIN protection of systems.

337. Adequate planning, security and risk assessment processes are in place in conformity with internationally accepted good standards. The office of the CLO is only accessible by authorised personnel. Similarly, only authorised staff has access to the IT systems used to store data. The CLO uses an electronic system to track and store all requests and replies. Information received under all EOI instruments is classified in accordance with the procedures for document management, labelled as protected under the particular legal base and stored in the system. The original hard copies are retained in a separate locked archive room.

338. To collect the information to reply to the request, the complete request is electronically transmitted to the local tax office trough a secure channel with a confidentiality stamp. The confidentiality stamp refers to the provisions of the relevant treaty. In each tax office there is one central point of contact. The designated auditor then proceeds to collect the information from the taxpayer or third party information holder if the information is not contained in databases. The tax auditor uses a special form to inform the taxpayer or information holder about the audit, which only contains reference to sections 143 and 158 of BAO and contains only limited general information on the foreign request to enable the taxpayer to reply. The full request is not disclosed.

339. Majority of information is exchanged with EOI partners via secured electronic means. This is the case with all EU Member States. With all other

jurisdiction, with the exception of one with which Austria uses encrypted e-mails, Austria exchanges information using trackable mail.

340. No case of breach of the confidentiality obligation in respect of the information exchanged has been encountered by Austrian authorities and no such case or concern in this respect has been indicated by peers.

C.3.2. Confidentiality of other information

341. The 2015 Report found that the confidentiality provisions in Austria's agreements use the standard language of Article 26(2) of the OECD Model Tax Convention and Article 8 of the OECD TIEA Model and do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction. The same conclusions apply to all new agreements that were signed after the last review.

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

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

C.4.1. Exceptions to provide information

342. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

343. The 2015 Report concluded that all of the agreements concluded by Austria since 2009 incorporate wording modelled on Article 26(3) of the OECD Model Tax Convention or Article 8 of the OECD Model TIEA providing that requested jurisdictions are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney-client privilege/legal privilege or information the disclosure of which would be contrary to public policy. The reports found that the practical application of the procedures that protect the rights of taxpayers indicates that Austria acts in a manner that ensures this.

344. The professional privileges of the relevant professionals are in detail analysed in section B.1.5 where it is found that the general rules seem to be

in line with the standard. However, it was recommended that Austria should monitor access to information held by professionals who can claim legal professional privilege so that the requested information can be obtained in line with the standard.

345. During the current period under review there were no practical cases where Austria would have requested information from a lawyer or notary. However, as indicated in section B.1.5 there were several successful cases that concerned accountants and auditors.

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

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

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

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

347. In order for exchange of information to be effective, jurisdictions should request and provide information under its network of EOI mechanisms in an effective manner. In particular:

- *Responding to requests*: Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or provide an update on the status of the request.
- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.
- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

348. The 2015 Report concluded that Austria had sound organisational process and resources in place ensuring timely responses within 90 days in 70% of cases. Austria had also introduced a new system for ensuring that status updates are made within 90 days.

349. Austria continues to have in place a good quality and active EOI programme. Over the period under review (1 October 2014 to 30 September 2017), Austria received a total of 1 534 requests for information. On average,

Austria provided replies to received requests within 90 days in 80% of cases. Austria declined to provide a reply, for valid reasons linked to deficiencies in its treaties or because the request had deficiencies, in 38 cases. Additionally, 16 cases were considered withdrawn by the requesting jurisdiction.

350. Although Austria had introduced a new system for ensuring timely status updates already in February 2013, it appears that the system has not functioned in all cases as intended. During the review period Austria had provided a status update in approximately 20% of cases that took over 90 days to reply. The seriousness of this gap is diminished by the excellent overall timeliness of Austria's replies before the 90 days deadline. Nevertheless, Austria is recommended to ensure that status updates are provided in all cases where it takes over 90 days to provide the reply.

351. The organisation and procedures are complete and coherent with the exception of lack of status updates in all cases where Austria took longer than 90 days to reply. All peers, with the exception of one, were very satisfied with both replies received and with request sent by Austria. Austria also acknowledges the importance of the EOI Programme and actively works to improve the efficiency of processes involved in obtaining and exchanging the requested information.

352. In light of good timeliness statistics, sound organisational processes and satisfactory resources together with generally positive peer inputs, it can be concluded that Austria performs to the standard in terms of both responding to requests and sending requests and Element C.5 continues to be rated "compliant".

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

Legal and Regulatory Framework		
This element involves issues of practice. Accordingly, no determination has been made.		
Practical implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice	Although under the review period Austria provided timely replies in 80% of cases within 90 days it only provided status updates in 20% of cases where it took longer to reply.	Austria should ensure that it provides status updates in all cases where it takes over 90 days to provide the reply.
Rating: Compliant		

C.5.1. Timeliness of responses to requests for information

354. Over the period under review (1 October 2014-30 September 2017), Austria received a total of 1 534 requests for information. The information requested in these requests[18] related to (i) ownership information (23 cases), (ii) accounting information (264 cases), (iii) banking information (144 cases) and (iv) other type of information including address in Austria, tax registration details, Firmenbuch registration (1 103 cases). The entities for which information was requested[19] are broken down to (i) companies (264 cases), partnerships (35 cases) and other entities including, for the majority, individuals (1235 cases). Austria's most significant EOI partners for the period under review (by virtue of the number of exchanges with them) are Germany, Switzerland, Slovenia and Hungary.

355. The following table relates to the requests received during the period under review and gives an overview of response times needed by Austria to provide a final response to these requests together with a summary of other relevant factors impacting the effectiveness of Austria's exchange of information practice during the reviewed period.

Statistics on response time (1 October 2014-30 September 2017)

			2014		2015		2016		2017		Total	
			Num.	%	Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received		[A+B+C+D+E]	303	100	596	100	347	100	288	100	1534	100
Full response:	= 90 days		274	90	494	83	232	67	235	82	1235	80
	= 180 days (cumulative)		283	93	529	89	288	83	263	91	1363	89
	= 1 year (cumulative)	[A]	291	96	555	93	315	91	279	98	1440	93
	> 1 year	[B]	10	3	14	2	7	1	0	0	28	2
Declined for valid reasons			0	0	24	4	14	4	0	0	38	2
Status update provided within 90 days (for responses sent after 90 days)			0	0	18	18	36	31	29	55	83	20
Requests considered by Austria as withdrawn by requesting jurisdiction		[C]	2	1	2	1	11	3	1	1	16	1
Failure to obtain and provide information requested		[D]	0	0	0	0	0	0	0	0	0	0
Requests still pending at date of review		[E]	0	0	1	0	0	0	8	2	9	1

Notes: Austria counts each request with multiple taxpayers as one request, i.e. if a partner jurisdiction is requesting information about 4 persons in one request, Austria count that as 1 request. If Austria received a further request for information that relates to a previous request, with the original request still active, Austria will append the additional request to the original and continue to count it as the same request.

The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

18. Please note that some requests entailed more than one information category.
19. Please note that some requests entailed more than one entity type.

356. During the review period Austria was able to reply to 80% of all requests within 90 days.

357. Requests that are fully dealt within 90 days typically relate to information already at the disposal of the competent authority (e.g. tax information such as income information or tax residency status of a person). Requests that are not fully dealt with within 90 days typically relate to more complex situations.

358. Cases where a delay has occurred included situations where (i) Austria was requested not to notify the taxpayer and the information was only obtainable from the taxpayer, (ii) a tax audit was pending on the same taxpayer which slowed down gathering information for EOI purposes (although typically an open audit does not affect EOI procedure), (iii) the request of documentation was extensive, (iv) clarification of tax residence required detailed investigation, (v) appeal to Highest Administrative Court (only one case, see section B.2.1). Austria additionally reported that in a small amount of cases there were also communication issues or changes in competence with the local tax office tasked to gather the information, and the case was not followed up properly. Austria reported that the electronic monitoring system and its improvements would help to address these problems in the future. They are also working to hire more staff as some issues were caused reportedly by lack of staff.

359. In the period under review, 79 requests for clarification (or 5% of total EOI requests received) were made by Austria to the requesting jurisdictions (see C.1.1). Austria estimated that about 15% of these clarifications lead to delays in the EOI process. Peers did not report any issues with Austria's clarification requests.

360. Austria reported that when deficiencies are identified in the received request it provides the partner with an opportunity to clarify the request within 3 months, after which Austria considers the request withdrawn. 16 requests (approximately 1% of all requests) were thus considered withdrawn by the requesting jurisdiction. If Austria would receive the requested clarification after 3 months, the request is treated as a new request. However, in none of these cases under the review period a new request was received. Peers did not report any difficulties with regard to this practice.

361. Austria declined to reply to 38 requests over the review period. 27 of these were declined because the DTC allowed for limited exchange of information (see C.1.1). 6 cases were declined because of article 38 of Austrian Banking Act meaning that the DTC did not contain provisions allowing the competent authority to lift banking secrecy. One case was declined because the CLO could not identify in which Austrian bank the account was located and it would have been, according to Austria, unreasonable to contact all Austrian banks. This particular problem does not anymore exist because the

Austrian account register was introduced (see B.1.1). The remaining 4 cases were declined for various other reasons that include wrong legal basis used, the requesting authority was not designated as competent authority and that the request was not sent according to the agreed standard form of the EU.

362. One peer was not satisfied in exchanging information with Austria as there had been difficulties in 2 out of 5 cases. In those cases Austria failed to provide the full information to the peer. In the first request received by Austria in July 2015 the peer was auditing transfer pricing of a domestic company that is subsidiary of an Austrian company. Austria had just finished auditing the transfer pricing of the same Austrian company. Based on the findings of the recent audit Austria was convinced that the company's transfer pricing model was in order and that any further taxation by the peer might lead to taxation contrary to the DTA. Austria still provided some of the requested information in September 2015 including gross sales amount and the operating profits of the subsidiary. Austria reported that typically it would ask the peer to provide more information in order to be able to provide the full information, but in this case Austria considered the case closed. Subsequently, the peer did not provide any further feedback to Austria.

363. In the second case the peer was auditing a domestic company that acts as a representative for an Austrian freight forwarding company. The peer indicated that profits originating from forwarding goods within the borders of the peer, according to their domestic law, have to be taxed by the peer. However, from the view of Austria, taxation as described by the peer would be contrary to the provisions of the DTA. Therefore, Austria sent a request for clarification in September 2015, which was answered by the peer in October 2015. This led to discussion between Austrian Tax Administration and the company involved. In June 2016, the Austrian company applied for a mutual agreement procedure in order to clarify the taxation right. Austria reported that it assumed that the case would be clarified during this procedure, and did not provide further information to the peer. In January 2018 Austria found that the case cannot be solved in the mutual agreement procedure as there is a court procedure pending in the requesting jurisdiction. Austria reports that the case is still open and that it is ready to further proceed with providing the requested information.

364. Application of the exemption from the obligation to provide the requested information in cases where the taxation would be contrary to the convention may hinder effective exchange of information if applied in too broad sense. Austria should therefore monitor that the exemption is applied in line with the standard. In the two cases information was not exchanged in an effective manner. This can be also attributed to the lack of communication and subsequent delays. It is nevertheless noted that in the first case partial reply was provided, the second case remains open and the two cases represent

only a small proportion of requests processed by Austria during the review period. Austria reported that there were no other cases where it raised a concern about taxation contrary to the convention and this was also confirmed by peers as no other such cases were indicated.

Status updates

365. The 2015 Report indicated that Austria had introduced in February 2013 a new monitoring system, under which the internal standard deadline for replies was reduced to 90 days instead of the previous 180 days. In addition, from 1 January 2014, Austria introduced standardised status updates to all partner jurisdictions. In practice, Austria provided status updates in 0% of cases in 2015, 18% of cases in 2016, 29% of cases in 2016 and 55% of cases in 2017. Although the provision of status updates shows a positive trend, it appears that the new procedure has not functioned in all cases as intended. The seriousness of this gap is diminished by the overall timeliness of Austria's replies before the 90 days deadline. Nevertheless, Austria is recommended to ensure that status updates are provided in all cases where necessary.

Requests affecting the work of the EOI unit – FATCA requests

366. Austria and the United States exchange a substantial amount of financial information on request in connection with the information that reporting Austrian financial institutions provide the United States under the FATCA IGA. The requests that relate to information provided under the FATCA IGA are subject to special processes and procedures that may differ in some respects to those generally applicable to exchange of information requests.

C.5.2. Organisational processes and resources

Organisation of the competent authority

367. The 2015 Report concluded that the CLO had good organisational process and resources in place. Since then, the EOI organisation and working methods did not change significantly.

368. The Federal Ministry of Finance is the competent authority. Competence has been delegated to the CLO operating under the Tax Investigation Service. The Head of the CLO has two teams under him with a total of 18 persons, including the team leaders. The office of the CLO is located in Vienna with 3 persons working from Salzburg.

369. The CLO deals with all practical exchange of information issues for direct taxes, VAT and tax recovery. The working methods for all of these

areas are set in the EOI manual including handling incoming and outgoing requests and spontaneous information (GZ BMF-280000/0015-IV/2/2010 as amended by GZ BMF-280000/0010-I/8/2018 dated 22 January 2018).

Resources and training

370. Although timeliness of the responses has slightly improved compared to the 2015 Review, the CLO has confirmed that there have been challenges with regard to resources dedicated for EOI on request. The practical challenges originate from the overall combined increased workload of the CLO. Although at the time of the 2015 review the Austrian authorities had confirmed that they would stand ready to allocate more resources to deal with increasing amounts of EOI requests, it appears that the amount of staff has instead diminished by two persons. The CLO reported that plans to hire five more staff in 2017 did not materialise. Considering that the CLO has received significant new responsibilities (i.e. deals with follow-up requests sent by the United States under the US-Austria FATCA Agreement) and because the workload of the CLO is reported to be very high compared to available resources, Austria is recommended to monitor that its EOI organisation continues to allow for good quality and timely responses and requests.

371. The staffing of the CLO has remained very stable during the latest years and most members of the staff has several years experience on EOI. Therefore, regular training sessions concentrate on new aspects in the EOI area. Training is typically overseen by the head of the CLO. Austria reported that there is also training on the job and, on demand, special training and coaching. The three new members of staff who joined the CLO over the last three years received a special practical training, as well as a training at the tax academy.

Incoming requests

372. When receiving an EOI request from an EOI partner, the case is entered into an electronic system that monitors all EOI cases. At the same time, acknowledgement of receipt is sent if requested by the partner. The electronic system contains, mainly, the following information: Austrian Reference number, nature of the request, Competent Austrian Tax Office, Austrian Tax Registration Number, Austrian and foreign companies concerned, jurisdiction and foreign reference number, and all relevant dates related to processing of the request. The platform gives an overview for managers on all cases, allowing to follow-up with each case and officer if needed. The status of cases is checked monthly by the managers.

373. When processing the request, the CLO studies the standard form or letter with regard to requirements under the EOI agreement and requirements

under domestic law. Austria expects that each request will be accompanied by (i) a short explanation of the background of the request (ii) understandable and clear questions (iii) statements with regard to reciprocity and exhausting all domestic avenues to gather the requested information and (iv) statement on appropriate use and disclosure of the information.

374. In case any deficiencies are identified, Austria reports that it clearly points out the issues with the request and asks for further explanation to be provided within three months; otherwise it considers the request as being withdrawn. However, in case there is an explanation provided after three months, Austria will handle the request, but consider it to be a new request.

375. Once the CLO is confident that the request should be processed, it directly requests banking information from the bank; for other types of information, it electronically transmits the request to the contact person in the local tax office competent in handling the request. Austria gives the bank two weeks to provide the reply and reported that banks reply very efficiently and that they have had no problems with them. In cases where the request is transferred to the local office, the EOI manual does not set a definite time limit that the officer collecting the information should use, but the CLO typically sets a time limit of 60 days to provide the requested information (but this time limit can be shortened based on the urgency of the case). The contact person further designates an officer who is tasked in collecting the information. If a reply is not received within 2 months the CLO sends a reminder to the local tax office. A second reminder is sent after 2 months and 6 weeks and third reminder after 2 months and 12 weeks. 2 weeks after the third reminder the case is transferred to the head of CLO who will contact the management of the local tax office to resolve the issue.

376. The local tax office proceeds to get in contact with the person concerned. Once the local tax office has received the necessary information, it electronically transmits the draft reply to the CLO. The CLO will then in turn, forward the information to the requesting jurisdiction. The CLO will aim to do this as fast as possible with at the latest within 7 days.

377. The EOI manual foresees a total three month time limit for replying to requests, which will ensure the timeliness of responses to EOI requests. This period may be extended when separate investigations are needed, and the manual foresees that the requesting tax authority should be informed of the status of the proceedings and/or of the reasons for the delay (see Status updates).

Outgoing requests

378. Austria sent out 722 requests during the reviewed period. Outgoing requests are generally initiated by a regional tax office. According to the EOI-manual, tax auditors have to use the EU standard form when preparing

the draft request to EU Member States and can use it for non-EU jurisdictions (or the information may be submitted to the CLO in free text format). Austria uses a list of jurisdictions that accept requests in German and for all the other jurisdictions auditors are obliged to prepare the draft request in English. After completion, the request is sent via encrypted internal e-mail to the CLO. The CLO reviews the requests for accuracy according to the standard, the respective legal basis and also for linguistic issues. After completion of the review, the finalised request is sent to the other jurisdiction.

379. Peers reported that Austria's requests generally are of good quality and up to the standard. No specific issues were reported (with regard to clarifications see below).

Requests for clarification on outgoing requests

380. Austria does not keep statistics on the number of clarifications requested related to Austrian outgoing requests. However, Austria has received some clarification requests during the reviewed period. Usually the CLO is able to deal with the clarification request directly, but if the local office is required to be involved they are requested to provide the missing details expeditiously.

381. The CLO explains it typically received requests for clarification for various reasons. These reasons include situations where (i) the requested jurisdiction was not able to identify the target taxpayer based on the data provided (ii) the standard form used was incomplete (iii) the requested jurisdiction did not understand the background description provided (iv) attached documents needed clarification and (v) requested non-notification required clarification. Upon receiving the request for clarification, the CLO forwards it to the local tax office as necessary. Although there are no specific rules regarding timeliness, in practice the officer who has requested the information has a good incentive to provide the additional information in a timely manner. Peers did not indicate any issue in respect of the timeliness of answers to requests for clarification.

382. Three peers reported asking clarifications from Austria. One peer indicated that clarifications were sought in eight cases but underlined that most of these cases were very complex transfer pricing cases. Another peer indicated that it had requested clarification in one case which involved many entities and large volumes of information, and that the clarification request did not relate to relevance of the request. Finally, a peer reported that clarifications were sought in three cases in which Austria had requested not to notify the taxpayer, and it seemed that the conditions set by the domestic law of the requested jurisdiction were not met. After discussing with the peer, Austria decided that it would be reasonable to withdraw the requests for non-notification, and the cases were processed normally.

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

383. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI in Austria.

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.1.3:** If this assumption is not true (e.g. because another person is exercising control through other means) the legal entity is obliged to report this person as beneficial owner as well. If the legal entity fails to report this person, it is subject to the penal provisions pursuant to Art. 15 BORA. Austria is recommended to ensure that this exemption from the obligation to report the beneficial owners is applied correctly in practice to the limited situations set forth in the law.
- **Element A.1.3:** Although the gap [(no coverage by the beneficial ownership register)] is limited in practice due to the nature of the Civil law partnership and the tax reporting obligations on the partners of the Civil Law partnerships taxable in Austria, Austria is recommended to ensure that beneficial ownership information on GesbR is available in all cases.
- **Elements A.1.4 and A.3** The rules governing information required to be kept in respect of trusts and similar arrangements were changed in July 2017 through the Beneficial Ownership Register Act. The new rules transpose the 4th EU AML Directive and require banks to identify, in addition to the settlor(s), trustee(s) and any other natural person exercising ultimate effective control over the trust, also all beneficiaries (regardless of any threshold of interest in the trust or control over the trust). Prior to that, a 25% ownership threshold applied. As these new rules are recent and have an impact on the availability of information as required under the standard, Austria should monitor their practical implementation.

- **Element A.3.** The resources of the FMA, which comprised 18 staff as at 1 July 2018, are well exploited to ensure the best value to support the FMA's oversight mission, but there are no more flexibility allowed through a better optimisation of the resources as such optimisation has reached its maximum. It is therefore recommended that the FMA monitors its resources to ensure that its supervision remains adequate, especially in times of the implementation of new legislation.
- **Element C.2** Austria is encouraged to ensure that it has sufficient resources available for treaty negotiations.
- **Element C.2** Austria is recommended to continue to conclude EOI agreements with any new relevant partner who would so require.
- **Element C.5.2** Austria is recommended to monitor that its EOI organisation and resources continue to allow for good quality and timely responses and requests.
- **Element C.5.2** Application of the exemption from the obligation to provide the requested information in cases where the taxation would be contrary to the convention may hinder effective exchange of information if applied in too broad sense. Austria should therefore monitor that the exemption is applied in line with the standard.

Annex 2: List of Austria's EOI mechanisms

Summary table of all EOI instruments per jurisdiction

EOI partner	Type of agreement (DTC, TIEA, other)	Date signed	Date of ratification by the assessed jurisdiction	Date entered into force
1. Albania	DTC	14-12-2007	24-04-2008	01-09-2008
	Multilateral Convention	01-03-2013		01-12-2014
2. Algeria	DTC	17-06-2003	27-07-2006	01-12-2006
3. Andorra	TIEA	17-09-2009	18-12-2009	10-12-2010
	Multilateral Convention	05-11-2013		01-12-2016
4. Anguilla	Multilateral Convention	Extended		01-03-2014
5. Argentina	Multilateral Convention	03-11-2011		01-12-2014
6. Armenia	DTC	27-02-2002	24-07-2003	01-03-2004
	Multilateral Convention	24-01-2018		Not in force
7. Aruba	Multilateral Convention	Extended		01-09-2013
8. Australia	DTC	08-07-1986	22-12-1987	01-09-1988
	Multilateral Convention	03-11-2011		01-12-2014
9. Azerbaijan	DTC	04-07-2000	09-11-2000	23-02-2001
	Multilateral Convention	23-05-2014		01-09-2015
10. Bahamas	Multilateral Convention	15-12-2017		01-08-2018
11. Bahrain	DTC	02-07-2009	18-12-2009	01-02-2011
	Multilateral Convention	29-06-2017		01-09-2018
12. Barbados	DTC	27-02-2006	06-07-2006	01-04-2007
	Multilateral Convention	28-10-2015		01-11-2016

EOI partner	Type of agreement (DTC, TIEA, other)	Date signed	Date of ratification by the assessed jurisdiction	Date entered into force
13. Belarus	DTC	16-05-2001	20-12-2001	09-03-2002
	Protocol	24-11-2014	09-04-2015	01-10-2015
14. Belgium	DTC	29-12-1971	18-05-1972	28-06-1973
	Protocol	10-09-2009	18-12-2009	01-03-2016
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	04-04-2011		01-04-2015
15. Belize	DTC	08-05-2002	24-07-2003	01-12-2003
	Multilateral Convention	29-05-2013		01-12-2014
16. Bermuda	Multilateral Convention	Extended		01-03-2014
17. Bosnia and Herzegovina	DTC	16-12-2010	14-04-2011	01-01-2012
18. Brazil	DTC	24-05-1975	04/03/1976	01-07-1976
	Multilateral Convention	03-11-2011		01-10-2016
19. British Virgin Islands	Multilateral Convention	Extended		01-03-2014
20. Brunei Darussalam	Multilateral Convention	12-09-2017		Not in force
21. Bulgaria	DTC	20-07-2010	17-12-2010	03-02-2011
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	26-10-2015		01-07-2016
22. Burkina Faso	Multilateral Convention	25-08-2016		Not in force
23. Cameroon	Multilateral Convention	25-06-2014		01-10-2015
24. Canada	DTC	09-12-1976	31-03-1977	17-02-1981
	Protocol	09-03-2012	31-05-2012	01-10-2013
	Multilateral Convention	03-11-2011		01-12-2014
25. Cayman Islands	Multilateral Convention	Extended		
26. Chile	DTC	06-12-2012	05-04-2013	09-09-2015
	Multilateral Convention	24-10-2013		01-11-2016
27. China (People's Republic of)	DTC	10-04-1991	21-05-1992	01-11-1992
	Multilateral Convention	27-08-2013		01-02-2016

EOI partner	Type of agreement (DTC, TIEA, other)	Date signed	Date of ratification by the assessed jurisdiction	Date entered into force
28. Colombia	Multilateral Convention	23-05-2012		01-12-2014
29. Cook Islands	Multilateral Convention	28-10-2016		01-09-2017
30. Costa Rica	Multilateral Convention	01-03-2012		01-12-2014
31. Croatia	DTC	21-09-2000	15-02-2001	27-06-2001
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	11-10-2013		01-12-2014
32. Cuba	DTC	26-06-2003	18-12-2003	12-09-2006
33. Curaçao	Multilateral Convention	Extended		
34. Cyprus [a]	DTC	20-03-1990	13-06-1990	01-01-1991
	Protocol	21-05-2012	31-10-2012	01-04-2013
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	10-07-2014		01-04-2015
35. Czech Republic	DTC	08-06-2006	27-07-2006	22-03-2007
	Protocol	09-03-2012	31-05-2012	26-11-2012
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	26-10-2012		01-12-2014
36. Denmark	DTC	25-05-2007	31-10-2007	27-03-2008
	Protocol	16-09-2009	18-12-2009	01-05-2010
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	27-05-2010		01-12-2014
37. Dominican Republic	Multilateral Convention	28-06-2016		Not in force
38. Egypt	DTC	16-10-1962	20-02-1963	28-10-1963
39. El Salvador	Multilateral Convention	01-06-2015		Not in force
40. Estonia	DTC	05-04-2001	08-11-2001	12-11-2002
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	29-05-2013		01-12-2014
41. Faroe Islands	Multilateral Convention	Extended		01-06-2011

EOI partner	Type of agreement (DTC, TIEA, other)	Date signed	Date of ratification by the assessed jurisdiction	Date entered into force
42. Finland	DTC	26-07-2000	09-11-2000	01-04-2001
	Protocol	04-03-2011	01-06-2011	01-12-2011
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	27-05-2010		01-12-2014
43. Former Yugoslav Republic of Macedonia	DTC	10-09-2007	31-10-2007	20-01-2008
	Multilateral Convention	27-06-2018		Not in force
44. France	DTC	26-03-1993	30-09-1993	01-09-1994
	Protocol	23-05-2011	06-10-2011	01-05-2012
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	27-05-2010		01-12-2014
45. Gabon	Multilateral Convention	03-07-2014		Not in force
46. Georgia	DTC	11-04-2005	13-10-2005	01-03-2006
	Protocol	04-06-2012	31-10-2012	01-03-2013
	Multilateral Convention	03-11-2010		01-12-2014
47. Germany	DTC	24-08-2000	08-11-2001	18-08-2002
	Protocol	29-12-2010	14-04-2011	01-03-2012
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	03-11-2011		01-12-2015
48. Ghana	Multilateral Convention	10-07-2012		01-12-2014
49. Gibraltar	TIEA	17-09-2009	18-12-2009	01-05-2010
	Multilateral Convention	Extended		01-03-2014
50. Greece	DTC	18-07-2007	20-12-2007	01-04-2009
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	21-02-2012		01-12-2014
51. Greenland	Multilateral Convention	Extended		01-06-2011
52. Grenada	Multilateral Convention	18-05-2018		01-09-2018
53. Guatemala	Multilateral Convention	05-12-2012		01-10-2017

EOI partner	Type of agreement (DTC, TIEA, other)	Date signed	Date of ratification by the assessed jurisdiction	Date entered into force
54. Guernsey	TIEA	14-05-2014	24-07-2014	23-11-2014
	Multilateral Convention	Extended		
55. Hong Kong (China)	DTC	25-05-2010	05-11-2010	01-01-2011
	Protocol	25-06-2012	31-10-2012	03-07-2013
	Multilateral Convention	Extended		01-09-2018
56. Hungary	DTC	25-02-1975	10-07-1975	09-02-1976
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	12-11-2013		01-03-2015
57. Iceland	DTC	30-06-2016	21-12-2016	01-03-2017
	Multilateral Convention	27-05-2010		01-12-2014
58. India	DTC	08-11-1999	15-02-2001	05-09-2001
	Protocol	06-02-2017	01-06-2017	Not in force
	Multilateral Convention	26-01-2012		01-12-2014
59. Indonesia	DTC	24-07-1986	03-12-1987	01-10-1988
	Multilateral Convention	03-11-2011		01-05-2015
60. Iran	DTC	11-03-2002	24-07-2003	11-07-2004
61. Ireland	DTC	24-05-1966	20-07-1966	05-01-1968
	Protocol	16-12-2009	09-04-2010	01-05-2011
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	30-06-2011		01-12-2014
62. Isle of Man	Multilateral Convention	Extended		01-03-2014
63. Israel	DTC	29-01-1970	15-07-1970	26-01-1971
	DTC	28-11-2016	05-07-2017	01-03-2018
	Multilateral Convention	24-11-2015		1-12-2016
64. Italy	DTC	29-06-1981	18-12-1981	06-04-1985
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	27-05-2010		01-12-2014
65. Jamaica	Multilateral Convention	01-06-2016		Not in force

EOI partner	Type of agreement (DTC, TIEA, other)	Date signed	Date of ratification by the assessed jurisdiction	Date entered into force
66. Japan	DTC	20-12-1961	22-02-1962	04-04-1963
	DTC	30-01-2017		Not in force
	Multilateral Convention	03-11-2011		01-12-2014
67. Jersey	TIEA	07-09-2012	20-12-2012	01-06-2013
	Multilateral Convention	Extended		01-06-2014
68. Kazakhstan	DTC	10-09-2004	02-02-2005	01-03-2006
	Multilateral Convention	23-12-2013		01-08-2015
69. Kenya	Multilateral Convention	08-02-2016		Not in force
70. Korea	DTC	08-10-1985	19-06-1986	01-12-1987
	Multilateral Convention	27-05-2010		01-12-2014
71. Kosovo	DTC	8-06-2018		Not in force
72. Kuwait	DTC	13-06-2002	24-07-2003	01-03-2004
	Multilateral Convention	05-05-2017		Not in force
73. Kyrgyzstan	DTC	18-09-2001	14-03-2002	01-05-2003
74. Latvia	DTC	14-12-2005	13-04-2007	16-05-2007
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	29-05-2013		01-12-2014
75. Lebanon	Multilateral Convention	12-05-2017		01-09-2017
76. Liberia	Multilateral Convention	11-06-2018		Not in force
77. Libya	DTC	16-09-2010		Not in force
78. Liechtenstein	DTC	05-11-1969	15-07-1970	07-12-1970
	Protocol	29-01-2013	05-04-2013	01-01-2014
	Multilateral Convention	21-11-2013		01-12-2016
79. Lithuania	DTC	06-04-2005	13-10-2005	17-11-2005
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	07-03-2013		01-12-2014

EOI partner	Type of agreement (DTC, TIEA, other)	Date signed	Date of ratification by the assessed jurisdiction	Date entered into force
80. Luxembourg	DTC	18-10-1962	20-02-1963	07-02-1964
	Protocol (including Exchange of Notes)	07-07-2009	18-12-2009	01-09-2010
	Exchange of Notes	18-06-2015 18-06-2015	29-10-2015	01-03-2017
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	29-05-2013		01-12-2014
81. Macau (China)	Multilateral Convention	Extended		01-09-2018
82. Malaysia	DTC	20-09-1989	23-05-1990	01-12-1990
	Multilateral Convention	25-08-2016		01-05-2017
83. Malta	DTC	29-05-1978	01-02-1979	13-07-1979
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	26-10-2012		01-12-2014
84. Marshall Islands	Multilateral Convention	22-12-2016		01-04-2017
85. Mauritius	TIEA	10-03-2015	23-07-2015	01-01-2016
	Multilateral Convention	23-06-2015		01-12-2015
86. Mexico	DTC	13-04-2004	22-07-2004	01-01-2005
	Protocol	18-09-2009	18-12-2009	01-07-2010
	Multilateral Convention	27-05-2010		01-12-2014
87. Moldova	DTC	29-04-2004	01-07-2004	01-01-2005
	Multilateral Convention	27-01-2011		01-12-2014
88. Monaco	TIEA	15-09-2009	18-12-2009	01-08-2010
	Multilateral Convention	13-10-2014		01-04-2017
89. Mongolia	DTC	03-07-2003	18-12-2003	01-10-2004
90. Montenegro	DTC	16-06-2014	06-11-2014	21-04-2015
91. Montserrat	Multilateral Convention	Extended		1-10-2013
92. Morocco	DTC	27-02-2002	24-07-2003	12-11-2006
	Multilateral Convention	21-05-2013		Not in force
93. Nauru	Multilateral Convention	28-06-2016		01-10-2016
94. Nepal	DTC	15-12-2000	19-04-2001	01-01-2002

EOI partner	Type of agreement (DTC, TIEA, other)	Date signed	Date of ratification by the assessed jurisdiction	Date entered into force
95. Netherlands	DTC	01-09-1970	04-02-1971	21-04-1971
	Protocol	08-09-2009	18-12-2009	01-07-2010
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	27-05-2010		01-12-2014
96. New Zealand	DTC	21-09-2006	20-07-2007	01-12-2007
	Multilateral Convention	26-10-2012		01-12-2014
97. Nigeria	Multilateral Convention	29-05-2013		01-09-2015
98. Niue	Multilateral Convention	27-11-2015		01-10-2016
99. Norway	DTC	28-11-1995	25-06-1996	01-12-1996
	Protocol	16-09-2009	18-12-2009	01-06-2013
	Multilateral Convention	27-05-2010		01-12-2014
100. Pakistan	DTC	04-08-2005	13-10-2005	01-06-2007
	Multilateral Convention	14-09-2016		01-04-2017
101. Panama	Multilateral Convention	27-10-2016		01-07-2017
102. Paraguay	Multilateral Convention	29-05-2018		Not in force
103. Peru	Multilateral Convention	25-10-2017		01-09-2018
104. Philippines	DTC	09-04-1981	22-10-1981	01-04-1982
	Multilateral Convention	26-09-2014		Not in force
105. Poland	DTC	13-01-2004	01-07-2004	01-04-2005
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	09-07-2010		01-12-2014
106. Portugal	DTC	29-12-1970	24-06-1971	27-02-1972
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	27-05-2010		01-03-2015
107. Qatar	DTC	30-12-2010	21-07-2011	07-03-2012
	Multilateral Convention	10-11-2017		Not in force

EOI partner	Type of agreement (DTC, TIEA, other)	Date signed	Date of ratification by the assessed jurisdiction	Date entered into force
108. Romania	DTC	30-03-2005	21-07-2005	01-02-2006
	Protocol	01-10-2012	20-12-2012	01-11-2013
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	15-10-2012		01-12-2014
109. Russia	DTC	13-04-2000	09-11-2000	30-12-2002
	Protocol	05-06-2018		Not in force
	Multilateral Convention	03-11-2011		01-07-2015
110. Saint Kitts and Nevis	Multilateral Convention	25-08-2016		01-12-2016
111. Saint Lucia	Multilateral Convention	21-11-2016		01-03-2017
112. Saint Vincent and the Grenadines	TIEA	14-09-2009	18-12-2009	01-01-2012
	Multilateral Convention	25-08-2016		01-12-2016
113. Samoa	Multilateral Convention	25-08-2016		01-12-2016
114. San Marino	DTC	24-11-2004	02-02-2005	01-12-2005
	Protocol	18-09-2009	18-12-2009	01-06-2010
	Exchange of Notes	16-11-2012 27-11-2012	05-04-2013	01-09-2013
	Multilateral Convention	21-11-2013		01-12-2015
115. Saudi Arabia	DTC	19-03-2006	27-07-2006	01-06-2007
	Multilateral Convention	29-05-2013		01-04-2016
116. Senegal	Multilateral Convention	04-02-2016		01-12-2016
117. Serbia	DTC	07-05-2010	02-12-2010	17-12-2010
118. Seychelles	Multilateral Convention	24-02-2015		01-10-2015
119. Singapore	DTC	30-11-2001	03-05-2002	22-10-2002
	Protocol	15-09-2009	18-12-2009	01-06-2010
	Exchange of Notes	03-09-2012 16-10-2012	18-07-2013	01-05-2014
	Multilateral Convention	29-05-2013		01-05-2016
120. Sint Maarten	Multilateral Convention	Extended		

EOI partner	Type of agreement (DTC, TIEA, other)	Date signed	Date of ratification by the assessed jurisdiction	Date entered into force
121. Slovak Republic	DTC	07-03-1978	06-07-1978	12-02-1979
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	29-05-2013		01-12-2014
122. Slovenia	DTC	01-10-1997	22-07-1998	01-02-1999
	Protocol	28-09-2011	15-03-2012	01-11-2012
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	27-05-2010		01-12-2014
123. South Africa	DTC	04-03-1996	14-11-1996	06-02-1997
	Protocol	22-08-2011	04-11-2011	01-03-2012
	Multilateral Convention	03-11-2011		01-12-2014
124. Spain	DTC	20-12-1966	15-03-1967	01-01-1968
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	11-03-2011		01-12-2014
125. Sweden	DTC	14-05-1959	24-07-1959	29-12-1959
	Protocol	17-12-2009	09-04-2010	16-06-2010
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	27-05-2010		01-12-2014
126. Switzerland	DTC	30-01-1974	04-07-1974	04-12-1974
	Protocol	03-09-2009	18-12-2009	01-03-2011
	Protocol	04-06-2012	31-10-2012	14-11-2012
	Multilateral Convention	15-10-2013		01-01-2017
127. Syria	DTC	03-03-2009		Not in force
128. Chinese Taipei	DTC	12-07-2014	No ratification required	20-12-2014
129. Tajikistan	DTC	07-06-2011	04-11-2011	01-07-2012
	Protocol	13-03-2013		Not in force
130. Thailand	DTC	08-05-1985	31-01-1986	01-07-1986

EOI partner	Type of agreement (DTC, TIEA, other)	Date signed	Date of ratification by the assessed jurisdiction	Date entered into force
131. Tunisia	DTC	23-06-1977	09-03-1978	04-09-1978
	Multilateral Convention	16-07-2012		01-12-2014
132. Turkey	DTC	28-03-2008	19-06-2008	01-10-2009
	Multilateral Convention	03-11-2011		01-07-2018
133. Turkmenistan	DTC	12-05-2015	29-10-2015	01-02-2016
134. Turks and Caicos Islands	Multilateral Convention	Extended		01-12-2013
135. Uganda	Multilateral Convention	04-11-2015		01-09-2016
136. Ukraine	DTC	16-10-1997	22-07-1998	20-05-1999
	Multilateral Convention	27-05-2010		01-12-2014
137. United Arab Emirates	DTC	22-09-2003	16-04-2004	01-09-2004
	Multilateral Convention	21-04-2017		01-09-2018
138. United Kingdom	DTC	30-04-1969	15-07-1970	13-11-1970
	Protocol	11-09-2009	18-12-2009	19-11-2010
	EU Directive 2011/16/EU	15-02-2011		01-01-2013
	Multilateral Convention	27-05-2010		01-12-2014
139. United States	DTC	31-05-1996	12-12-1996	01-02-1998
	Multilateral Convention	27-05-2010		Not in force
140. Uruguay	Multilateral Convention	01-06-2016		01-12-2016
141. Uzbekistan	DTC	14-06-2000	15-02-2001	01-08-2001
142. Vanuatu	Multilateral Convention	21-06-2018		Not in force
143. Venezuela	DTC	12-05-2006	27-07-2006	17-03-2007
144. Viet Nam	DTC	02-06-2008	13-03-2009	01-01-2010

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

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

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

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[20] The Multilateral 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 original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The Multilateral Convention was opened for signature on 1 June 2011.

The Multilateral Convention was signed by Austria on 29 May 2015 and entered into force on 1 December 2014 in Austria. Austria can exchange information with all other Parties to the Multilateral Convention.

As of 18 July 2018,[21] the Multilateral Convention is in force in respect of the following jurisdictions (as shown in the summary table above): 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, Curaçao (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

20. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention (the Multilateral Convention) which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.
21. Since this date, Antigua and Barbuda has signed the Multilateral Convention and Kuwait and Vanuatu have deposited their instruments of ratification, for an entry into force on 1 December 2018. The Multilateral Convention entered into force on 1 September 2018 in Bahrain, Grenada, Hong Kong (China), Macao (China), Peru and the United Arab Emirates.

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, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Kingdom and Uruguay.

In addition, the Multilateral Convention was signed by, or extended to the following jurisdictions, where it is not yet in force: Armenia, Bahamas (entry into force on 1 August 2018), Bahrain, Brunei Darussalam, Burkina Faso, Dominican Republic, El Salvador, Former Yugoslav Republic of Macedonia, Gabon, Grenada, Hong Kong (China), Jamaica, Kenya, Kuwait, Morocco, Liberia, Macau (China), Paraguay, Peru, Philippines, Qatar, United Arab Emirates, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010) and Vanuatu.

EU Directive on Mutual Administrative Assistance in Tax Matters

384. Austria can exchange information relevant for direct taxes upon request with EU member states under the EU Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation (as amended). The Directive entered into force on 1 January 2013. All EU members were required to transpose it into their domestic legislation by 1 January 2013, i.e. Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

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 2015 and the 2016-21 Schedule of Reviews.

This evaluation is based on the 2016 ToR, and has been prepared using the 2016 Methodology. The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 18 July 2018, Austria's EOIR practice in respect of EOI requests made and received during the three year period from 1 October 2014 to 30 September 2017, Austria's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Austria's authorities during the on-site visit that took place from 19 to 22 March 2018 in Vienna.

List of laws, regulations and other materials received

Federal Constitution Act

Corporate laws

Firmenbuch Act

Entrepreneurial Code

Stock Corporation Act

Limited liability Companies Act

Co-operative Act.

Federal public foundations and founds Act

Private foundations Act

European Economic Interest Grouping Act

Regulatory laws

Federal Banking Act

Financial Market Authority Act

Stock Exchange Act

Insurance Supervision Act

Federal Act regarding the Supervision of Investment Services

Taxation laws

Fiscal Code

Income tax Act

Value added tax Act

Fiscal Administration Organisation Act

Fiscal Offences Act

Non-Contentious Proceedings Act

Information exchange for tax purposes laws

Administrative Assistance Implementation Act with explanatory remarks

DTCs and TIEAs signed by Austria since March 2009

Other laws

Civil law notaries' Code

Accountancy Act

Solicitor-Advocates' Code

Chartered Accountant Professionals Act

Disciplinary Statute for Solicitor-Advocates and Trainee Solicitor-Advocates

Criminal Code

Criminal procedure Code

Authorities interviewed during on-site visit

Representatives of the Austrian Ministry of Finance and the Austrian Competent Authority (CLO) and the Austrian Tax authorities.

Representatives of the Austrian Ministry of Justice.

Representatives of the Austrian Financial Management Authority (for AML supervision of banks and financial institutions) and the Austrian Financial Intelligence Unit.

Representatives of the local tax office.

Representatives of the Austrian Financial Management Authority and the

Austrian Financial Intelligence Unit

Representatives of the Austrian Bar Association, Austrian Chamber of Civil-Law Notaries and Austrian Bank Association.

Current and previous reviews

This report is the fourth review of Austria conducted by the Global Forum. Austria previously underwent a review of its legal and regulatory framework (Phase 1) originally in 2011 and a review of the implementation of that framework in practice (Phase 2) in 2013. In 2015, Austria underwent a supplementary review where the new provisions of the legal framework together with practice were reviewed. All of the previous Reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of (date)	Date of adoption by Global Forum
2011 Report (Round 1 Phase 1)	Ms Hilary Pullum, Legislative Counsel of Guernsey; Mr Jesper Vestergaard Senior Legal Adviser in the Danish Ministry of Taxation; Mr Rémi Verneau from the Secretariat to the Global Forum	n.a.	June 2011	August 2011
2013 Report (Round 1 Phase 2)	Ms Merete Helle Hansen, Senior Adviser in the Ministry of Taxation of Denmark; Ms Lilian Birkemose, Senior EOI officer of the Danish Competent Authority; Mr Nigel Garland, Deputy Director (Compliance and International), Guernsey; Mr Rémi Verneau and Mr Bhaskar Goswami from the Secretariat to the Global Forum.	January 2009 to 31 December 2011	17 May 2013	Adopted in August 2013. Phase 2 rating approved in November 2013

Review	Assessment team	Period under review	Legal framework as of (date)	Date of adoption by Global Forum
2015 Report (Round 1 Phase 2 Supplementary)	Ms Maria Rosaria La Veglia, Senior Tax Official, Ministry of Economy and Finance, Italy; Mr Nigel Garland, Deputy Director (Compliance and International), Guernsey; Ms Séverine Baranger from the Secretariat to the Global Forum.	1 January 2012 to 30 June 2014	19 January 2015	July 2015
2018 Report (Round 2)	Ms Edīte Kriviša, Direct Tax Department, Corporate and International Taxation Unit, Ministry of Finance of the Republic of Latvia; Ms Audrey Christian Income Tax Division, Government Office, Isle of Man; Ms Séverine Baranger and Mr Jani Juva from the Secretariat to the Global Forum.	1 October 2014 to 30 September 2017	18 July 2018	12 October 2018

Annex 4: Austria's response to the review report[22]

Austria is thanking the Assessment Team for the great job they did by drafting this excellent report, which we consider as fair and just assessment of Austria. We highly appreciate that the report highlights the substantive progress Austria has made since the Supplementary Report in 2015. Taking into account the increased demands of the 2016 Terms of Reference, Austria showed that it is strictly committed to transparency. We fully accept the rating proposals as well as the recommendations for each element where this has been found necessary. Austria will address the recommendations appropriately and continues to be a reliable partner in administrative cooperation.

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

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

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

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The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

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

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