GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

BELGIUM

2018 (Second Round)

OECD

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

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 145 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. the implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. the implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbrevations and acronyms

General terms

AML/CFT	Anti-Money Laundering/ Countering the Financing of Terrorism
CDD	Customer Due Diligence
Competent authority	The person(s) or government authority(ies) designated by a jurisdiction as being competent to exchange information pursuant to an exchange of information instrument, for instance a double tax convention, a tax information exchange agreement, and EU Directive or any other multilateral or regional EOIR instrument.
DTC	Double Tax Convention
EOIR	Exchange of Information on Request
EU	European Union
FATF	Financial Action Task Force
GF	Global Forum on Transparency and Exchange of Information for Tax Purposes
MAC	multilateral Convention on the Mutual Administrative Assistance in Tax Matters, as amended in 2010
PRG	Peer Review Group of the Global Forum
TIEA	Tax Information Exchange Agreement
2016 TOR	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
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.

Terms specific to Belgium

2013 Report	Peer review report on the implementation of exchange of information standard
AGDP	Patrimonial General Administration (*Administration Générale de la Documentation Patrimoniale*)
AGFisc	General Administration of Taxes (*Administration générale de la Fiscalité*)
AGTrés	Treasury General Administration (*Administration Générale de la Trésorerie*)
AGISI	General Administration of Special Tax Inspectorate (*Administration générale de l'Inspection spéciale des impôts*)
BCE	Belgian register of legal persons (*Banque carrefour des entreprises*)
BNB	National Bank of Belgium (*Banque Nationale de Belgique*)
Cass.	Supreme Court (*Cour de Cassation*)
CC	Constitutionnal Court
ITC	1992 Income Tax Code (*Code des impôts sur les revenus 1992*)
EEA	European Economic Area
EOS INT	Operational expertise and international relations support
IEOI-DT	International exchange of information – Direct taxes
FIU	Financial Intelligence Unit
FSMA	Financial Services and Markets Authority (*Autorité des Services et Marchés Financiers*)
CPC	Central Point of Contact of the National Bank of Belgium
SA	public limited company(*Société anonyme*)
SCA	partnership limited by shares (*Société en commandite par actions*)

SCRI	co-operative company with unlimited liability (*Société coopérative à responsabilité illimitée*)
SCRL	co-operative company with unlimited liability (*Société coopérative à responsabilité limitée*)
SCS	limited partnership (*Société en commandite simple*)
SE	European company (*Société européenne*)
SNC	general partnership (*Société en nom collectif*)
SPF	Federal Public Service (*Service Public Fédéral*)
SPRL	limited liability company (*Société privée à responsabilité limitée*)

Executive summary

1. This report analyses the legal and regulatory framework against the international standard of transparency and exchange of information on request in Belgium as well as the practical implementation of this framework and exchange of information in practice on requests received and sent over a three year period from 1 October 2013 to 30 September 2016 in application of the 2016 Terms of Reference concerning the international standard of transparency and exchange of information on request. This report concludes that Belgium is overall Largely Compliant with the standard.

2. In 2013 the Global Forum evaluated Belgium's implementation of the EOIR standard in practice in relation to the 2009-11 review period against the 2010 Terms of Reference (the 2013 Report). The report concluded that Belgium was overall Compliant. The table below compares the outcomes of the two reports:

Comparison of ratings between the last two EOIR Review reports

Element		Round 1 Report (2013)	EOIR Report (2018)
A.1	Availability of ownership and identity information	C	LC
A.2	Availability of accounting information	C	C
A.3	Availability of banking information	C	C
B.1	Access to information	C	LC
B.2	Rights and Safeguards	C	LC
C.1	EOIR Mechanisms	LC	C
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	C	LC
C.4	Rights and Safeguards	C	C
C.5	Quality and timeliness of responses	C	C
	OVERALL RATING	C	LC

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

Progress made since previous review

3. The 2013 Report contained a recommendation regarding the deadlines for ratifying tax treaties (element C.1). With the entry into force of the multilateral Convention on Mutual Administrative Assistance in Tax Matters, this recommendation is no longer relevant in that most exchange relations are now either already in force or Belgium has completed the internal procedures needed for the relevant instruments to enter into force. This recommendation and the one under element C.2 to expand the EOI network have therefore been removed.

4. Moreover, Belgium, under element C.5 relating to the efficiency of replies, has implemented the recommendation to ensure that its information exchange units set appropriate internal deadlines that allow requests for information to be answered in due time by communicating the information requested within 90 days of receiving the request or by providing a progress report to the requesting authority.

Key recommendations

5. The implementation in Belgium of transparency measures in respect of beneficial owners, as required under the new 2016 Terms of Reference, has not yet been completed and existing anti-money laundering measures do not ensure that all the information is available and accessible to the competent authority. The Belgian authorities must ensure that the new obligation that companies keep an up-to-date register of beneficial owners is effectively put in place and that the competent authority effectively has access to such information (elements A.1 and B.1).

6. In addition, reversals in case law have impacted access to information in a small number of cases. Belgium has since then taken legislative measures to remedy these problems and must now ensure that these changes are implemented in practice with regard to access to information relating to a previous tax year without notification of indications of tax fraud, as well as in relation to exceptions to the notification of "serious indications of tax fraud" sent to the taxpayer when information is requested from a financial institution, to ensure that these measures are applied in a manner that it consistent with an effective exchange of information. Case law also triggered a legal change in provisions on data protection and access, including in exchange of information matters (element C.3). The Belgian authorities are therefore recommended to ensure that all elements that must be kept confidential so remain.

7. Lastly, it has transpired that in the few instances where the holder of the information requested has shown reluctance to provide it to the competent authority, the latter, despite its efforts, has not been able to compel the

production of information. The Belgian authorities do not have effective enforcement provisions to compel the production of information; sanctions are not proportionate and sufficiently dissuasive. Belgium is recommended to provide the competent authorities with means to better tackle these cases (element B.1).

Overall rating

8. As a result of the recommendations detailed above, Belgium's overall rating has been downgraded from "Compliant" to "Largely compliant".

9. Belgium remains a country widely open to exchange of information and that provides timely and reliable replies to its partners. The 2016 Terms of Reference now assess the quality of requests made and Belgium has a good system in place to ensure that its requests meet the requirements of international instruments for the exchange of information.

10. Belgium received 1 850 requests for information from 28 partners during the review period and sent 1 143 requests (from 1 October 2013 to 30 September 2016). 98% of the requests received came from partners in the EU, primarily from neighbouring countries. The majority of these requests concerned tax information, ownership of immovable property and salaries, but also accounting information, banking information and, to a lesser extent, information on company ownership and identity. Depending on the economic ties with Belgium, partners' requests ask for far more information on natural persons (in particular on their residents working in Belgium, the leasing of real estate, verification of tax residence) or rather on elements of business accounts. Belgium has had no difficulty in dealing with the few group requests received.

11. Significant improvements have been observed in respect of internal procedures and the reduced time taken to respond to requests for information received from partners, despite strong growth in the volume of such requests – Belgium received almost three times more requests between October 2013 and October 2016 than during the last period assessed by the Global Forum between 2009 and 2011. However, at the end of the period, changes in the organisation of the exchange of information in Belgium, combined with case law reversals and legislative amendments, could undermine this progress and good performance. The implementation of recommendations under elements B.1 and B.2 is therefore of paramount importance to maintaining this performance.

12. This report was approved at the PRG meeting on 26 February-1 March 2018 and was adopted by the Global Forum on 30 March 2018. A follow-up report on the measures taken by Belgium to implement the recommendations made by the PRG must be supplied by 30 June 2019, in pursuance of the procedures adopted in the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place		
EOIR rating: Largely Compliant	The obligation for companies and partnerships to keep a register of their beneficial owners entered into force in October 2017, so it has not been possible to assess its practical implementation.	The Belgian authorities should ensure the effective implementation of the obligation for companies and partnerships to keep an updated register of beneficial owners.
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		
EOIR rating: 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		
EOIR rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
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 needs improvements	The Belgian authorities do not have effective enforcement provisions to compel the production of information; sanctions are not proportionate and sufficiently dissuasive. Exchange of information was impeded in practice in the rare cases when information holders refused to provide information to the Belgian authorities.	Belgium should provide the competent authority with effective enforcement powers to compel the production of information.
	Prior to legislative change in October 2017 inserting the requirement for companies to create and keep a register of their beneficial owners, the Belgian competent authorities and local tax offices had no access to information on beneficial owners in the event that the ownership chain extended beyond Belgium. This information was available with entities subject to the anti-money laundering law, but the tax authorities do not have access to it. Information is now available with companies and partnerships.	Belgium is recommended to monitor the implementation of the new provisions on access to information concerning registers of beneficial owners of Belgian entities, and to ensure access for the tax authorities to information on beneficial owners available with the entities subject to the AML Law.
EOIR rating: Largely Compliant	Prior to legislative reform in July 2017, in the event that a request for information related to a tax year going back more than three years, the requesting authority was asked to confirm the existence of fraud indications to enable the collection of information. This condition impeded the exchange of information.	Belgium is recommended to monitor implementation of the new provisions on access to information concerning tax years going back more than three years.

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework determination is in place but needs improvements	During the review period, exceptions to the requirement of prior notification or post-exchange notification were not applicable to all the cases in which the notification was likely to undermine the chances of success of the foreign investigation. Since the legislative reform of July 2017 waiver of notification is subject to "serious indications of tax fraud"; the interpretation of this concept is not yet established.	The Belgian authorities should ensure that the implementation of the concept of "serious indications of tax fraud" is compatible with an effective exchange of information.
EOIR rating: Largely Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		
EOIR rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
EOIR rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place		

Determination	Factors underlying recommendations	Recommendations
EOIR rating: Largely Compliant	Law of 11 April 1994 on disclosure of information by the administration includes an exception when documents are covered by secrecy. A new ICT provision introduces an explicit exception for exchange of information when disclosure of information would prejudice an ongoing investigation, based on explicit refusal of the foreign authority. The exception has not yet been tested in practice or another exception in the Law of 1994 on the protection of international relations.	Belgium is recommended to monitor the application of the Law of 1994 to guarantee that treaty provisions on confidentiality are respected.
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		
EOIR rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework	This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.	
EOIR rating: Compliant		

Overview of Belgium

13. This overview provides some basic information about Belgium 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 Belgium's legal and regulatory or commercial systems.

Legal system

14. Belgium being one of the 28 Member States of the European Union, European regulations are directly applicable in Belgium and European directives, notably with regard to the exchange of information and combatting money laundering, must be transposed into domestic Belgian law. Belgium is a constitutional parliamentary monarchy. Since 1994, Belgium has been a federal State made up of three regions (Brussels, Flanders and Wallonia) and three communities (Flemish, French and German-speaking). The federal State is also divided into 10 provinces. The official languages are Dutch, French and German.

15. At the federal level, the legislature consists of the Chamber of Representatives and the Senate. The executive consists of the King as Head of State and the government led by the Prime Minister. The executive runs those aspects of the country which are the responsibility of the federal government under the Constitution, such as financial matters.

16. Belgian law is rooted in civil law. While it draws heavily on French law, the principles of common law have influenced its development in terms of legislation, doctrine and case law. At the federal level, the 1994 Constitution constitutes the pinnacle of the hierarchy of norms. While the Belgian Constitution does not refer to the position of international treaties in this hierarchy, the primacy of international law over domestic law has been confirmed by the case law of the Belgian Supreme Court of Appeal in so far as the international standard is likely to have a direct impact, i.e. is sufficiently clear, comprehensive and precise to generate rights and obligations for private individuals. European regulations also directly apply.

Tax system

17. The Belgian tax system is based on the Constitution which outlines the principles, namely public order, the legality of taxation and tax equity; accordingly, no agreement between a taxpayer and the tax authorities can compromise on the legal provisions establishing the tax base and rate. The main federal direct taxes in Belgium are income tax on natural persons, corporate income tax, legal entities income tax (on institutions and non-profit associations) and non-resident income tax.

18. Natural persons or legal entities resident in Belgium are subject to taxation on their worldwide income. Non-residents are taxed on their income from Belgian sources. All natural persons whose domicile is in Belgium or whose wealth is located in Belgium are regarded as residents. Barring any evidence to the contrary, all natural persons entered in the National Registry[1] are deemed to be residents. All companies with their registered office (incorporated) in Belgium, their principal establishment in Belgium, or whose seat of management or administration is located in Belgium are considered to be resident in Belgium and subject to corporate income tax. All companies must submit an annual tax return to the Belgian tax administration, including companies having started a procedure of dissolution (with or without liquidation).

19. The tax system is administered by the *SPF Finances* (Federal Public Service Finance, FPS Finance) which is divided into six general administrations: *Administration Générale de la Fiscalité* (AGFisc, General Administration of Taxes); *Administration Générale de l'Inspection Spéciale des Impôts* (AGISI, General Administration of Special Tax Inspectorate); *Administration Générale de la Perception et du Recouvrement* (Tax and Tax Collection Administration); *Administration Générale de la Trésorerie* (Treasury General Administration); *Administration Générale de la Documentation Patrimoniale* (Patrimonial General Administration); *Administration Générale des Douanes et Accises* (Customs and Excises General Administration). An in-depth restructuring of AGFisc took place between 2013 and 2016: services are no longer organised by subject (type of tax) but by target group: individuals, small and medium-sized enterprises (SMEs) and major enterprises. Local departments have also been reorganised by target group.

20. The Minister of Finance has delegated the role of competent authority for direct taxes to FPS Finance. The 2013-16 restructuring led to changes in the Belgian competent authority where the DLO service (central liaison office

1. The national registry is an IT system, the purpose of which is to ensure the registration, storage and communication of information relating to the identification of natural persons. The number in the national registry is also called the "tax identification number".

for direct taxes) mentioned in the 2013 Report has been divided into two services: EOS-Int (Operational expertise and international relations support) remains as part of AGFisc central services where it continues to represent Belgium in international bodies and has drawn up directives on the exchange of information for use by government services; and IEOI-DT (international exchange of information – direct taxes) is a service in the SME administration and deals with requests for information whatever the target group related to the EOI request: natural person, SME or large company.

Financial services

21. Belgium has a large financial sector: the assets held by 117 financial institutions amount to EUR 2 372 billion (September 2014) and the sector represents 255% of GDP. The *Banque Nationale de Belgique* (BNB) and the *Autorité des Services et Marchés Financiers* (Financial Services and Markets Authority, FSMA) are the two Belgian authorities responsible for the supervision of most financial institutions and financial services catering for the public. Their missions consist in safeguarding savers and insured parties and ensuring that the markets in financial instruments function properly. The BNB also has competence to verify compliance by financial institutions with the anti-money laundering Law. The European Central Bank, through the Single Supervisory Mechanism, exercises direct supervision of all significant entities, with the assistance of the national supervisory authorities. Financial service brokering activities may only be performed by persons or entities that have been approved by the BNB.

22. As at 31 December 2016, Belgium had 108 credit institutions, of which 34 that are governed by Belgian law and 50 branch offices governed by the law of a member of the European Economic Area (EEA), and 33 investment firms governed by Belgian law and 20 branch offices subject to EEA law. They include firms whose main activity consists in receiving deposits of money or other reimbursable funds from the public and in granting loans on their own account. Belgium also has 87 firms providing insurance, reinsurance and/or financial security services, 220 collective investment entities: 40 public investment funds under Belgian law (including 17 pension savings funds), 88 public collective investment schemes in the form of open-ended investment companies, an investment company in unlisted companies and in publicly-traded companies and an investment company in public debt, as well as 92 non-public collective investment schemes.[2]

2. Website and annual report of the FSMA: https://www.fsma.be/fr/node/7115 and https://finances.belgium.be/sites/default/files/Liste%20FIIS%2020171211.pdf.

23. The above-mentioned financial professions, as well as the following non-financial professions, fall within the scope of anti-money laundering legislation and are held to have a duty of exercising due diligence with regard to their customers: notaries (over 1 400); barristers (18 000); accountants and tax specialists (6 100); certified public accountants and tax advisers (almost 6 000).

FATF assessment

24. Belgium was assessed by the FATF in February 2015, on the basis of the FATF Recommendations of 2012. The assessment report is available on FATF website at: www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Belgium-2015.pdf. It concludes that Belgium is largely compliant with Recommendations 10, 24 and 25 for a moderate level of effectiveness on legal persons and arrangements. The FATF noted that basic information and information on beneficial ownership for a large majority of legal persons are publicly available through the information maintained in the companies register (*Banque-Carrefour des Entreprises*), although there are shortcomings, in particular regarding the reliability and updating of the data. The Belgian authorities indicate that measures have been taken in response to the recommendations made by the FATF (for example, a database of beneficial owners is currently being established; shortcomings in technical compliance are being taken into account in the work of transposing the 4th AML/CFT directive adopted in 2015 by the European Parliament) or are addressed in an action plan whose implementation is regularly monitored in the annual follow-up reports that Belgium submits to the FATF.

Recent developments

Changes since the 2013 Report

25. The Law of 15 July 2013 has introduced a procedure whereby the BCE can deregister *ex officio* companies which have failed to file their annual accounts for at least three consecutive financial years or which are no longer active (Art. III.52 of the Code of Economic Law, cf. elements A.1 and A.2).

26. Since 2014, Belgian taxpayers must provide details in their tax returns of any "legal arrangements" of which they are, even if only potentially, either founders or beneficiaries (Income Tax Code, Art. 307(1)(4)). The concept of "legal arrangement" covers trusts or fiduciary type relationships and foreign arrangements subject to a tax regime that is significantly more advantageous that the Belgian tax regime (such as so-called "offshore" structures) (cf. section A.1.4 on trusts, Availability of information on trusts).

27. As noted in relation to elements B.1.3, B.2 and C.3, a number of reversals of case law have weakened the competent authority's powers of access since publication of the 2013 Report. A Law published in July 2017 is designed to strengthen EOIR:

- When an investigation is set to answer an EOI request, the three-year deadline for the investigation is automatically extended by four years, without prior notification.
- The notification procedure applicable to a request for information from a financial institution has been amended.
- In order not to damage the effectiveness of the international investigations that give rise to requests for information from a foreign jurisdiction, a provision has been inserted in the ITC waiving the passive publicity obligation incumbent on the administration concerning EOI requests, the replies sent to the requesting jurisdiction and the correspondence between the competent authorities, unless the foreign jurisdiction has expressly authorised such disclosure.

28. The Law of 11 January 1993 on preventing use of the financial system for the purposes of money laundering and terrorism financing (the 1993 AML Law) was repealed by the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and the restriction on the use of cash (the 2017 AML Law entered into force on 12 October 2017). This new Law transposes the 4th European directive on money laundering (EU 2015/849) and FATF standards as revised in 2012, and responds to the FATF's. 2015 mutual evaluation of Belgium. The Law in particular creates a register of beneficial owners (UBO) hosted by FPS Finance (Treasury), which will create a dedicated service.

Projects currently in progress

29. The Orders required for the application of the new 2017 AML Law and in particular to establish the UBO Register have been drafted and will be submitted to the Government for approval and entry into force when a compromise will have been found at the EU level on the terms in the 5th AML/CFT Directive regarding an enhanced access to the national BO registers and their interconnection. In addition, a bill in discussion in Parliament aims at providing the competent authority with access to information collected pursuant to the AML Law.

30. A Bill aims at transposing section 47 of EU Directive 2015/849 inviting Member States to licence or register trust or company service providers that are not already registered or subject to AML obligations. It is scheduled for discussion at the Chamber of Representatives early 2018, for a publication by May 2018.

31. A new Company Code is due to enter into force before the end of the present legislature (2019). The draft Code, as it stands at present, provides for a reduction in the number of possible forms of company to four and the types of associations to one. The private limited liability company would become the only partnership (subject to certain formalities, it could acquire legal personality). The three forms of company would be: a public limited liability company (SA), a private limited liability company (SPRL), and a limited liability co-operative company (SCRL). The principle of seat of management or administration would be abandoned in favour of the principle of registered office, with the possibility of cross-border transfers of registered offices.

Other recent developments relating to the exchange of information in the broader sense

32. Since the 2013 Report Belgium has committed to the automatic exchange of financial information within the framework of the Global Forum on the basis of the Standard for Automatic Exchange of Financial Account Information in Tax Matters (Common Reporting Standard). The first exchanges took place in September 2017. The implementation of the automatic exchange of information should have an impact on the volume of EOI requests for information.

33. The OECD (BEPS action plan) and the European Commission plan the exchange of information regarding tax rulings and transfer pricing applied by multilateral enterprises. The IEOI-DT unit makes received decisions on rulings and transfer-pricing agreements covered by the rules in OECD's BEPS Action 5 or the EU's. 2016/11 Directive available to the competent departments.

Part A: Availability of information

34. 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 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.

35. The 2013 Report concluded that element A.1 was legally in place and that its implementation complied with the standard. The practical implementation of these obligations and the supervisory measures were considered satisfactory. It was also noted that Belgium actively exchanged information on legal ownership and identity. From the comments made by the peers, it was clear that the Belgian competent authority was able to provide information in respect of all relevant entities and arrangements. Since the publication of the 2013 Report, there have not been any changes in the legal framework which would constitute grounds on which to challenge the conclusions of that report with regard to the elements assessed.

36. The 2016 Terms of Reference strengthened the obligation of jurisdictions by requiring information to be adequate, accurate and up to date, kept for at least five years and made available in a timely manner. The main amendment consists in introduction of the concept of beneficial owner. Belgium has amended its AML legislation, in particular the provisions relating to the availability of information on beneficial owners, through adoption of the 2017 Law on the Prevention of Money Laundering and Terrorist Financing and the Restriction on the Use of Cash. The obligations of entities subject to the Law to identify customers and beneficial owners are fairly similar to the obligations described in the 2013 Report, but the information collected is not made available to the competent authorities. The main innovation consists in the obligation now incumbent on Belgian companies and associations to keep a register of their beneficial owners and in the creation of a centralised register of the beneficial owners of Belgian companies and

other relevant entities. While there are also penalties associated with these measures, it is not possible to draw any conclusions about their effectiveness as the Law is still too recent (it had not entered into force at the time of the on-site visit). On the whole, the Belgian legal framework would appear to comply with the standard.

37. Belgium received over 1 800 requests during the period assessed, of which only about a hundred related to information regarding the ownership of Belgian entities, including a handful concerning the beneficial owners of companies. Almost all of the requests regarding information on ownership related to SPRLs (the commonest type of company in Belgium) and to a lesser extent SAs. One request concerned a foundation. Belgium received no requests regarding trusts or similar arrangements. No concerns were raised by Belgium's partners over the availability of this information. Peers were generally satisfied with the information received.

38. In practice, the supervision measures applied during the assessment period were sufficient to ensure the availability of information on legal ownership. Obligations of companies regarding the availability of information about their beneficial owners are too recent to have been subject to checks, and this aspect will have to be followed up on by the Belgian authorities.

39. While the legal period for keeping information (at least 5 years or indefinitely, as the case may be) and the penalty regime associated with the legal requirements in the case of non-compliance should ensure the availability of information in practice, doubts persist over the registers of the beneficial owners of companies in that their administrators have no means of forcing their shareholders to provide the information required. It is therefore recommended that the Belgian authorities ensure the effective implementation of the obligation for companies to keep an updated register of beneficial owners.

40. The updated table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: In place		

Practical implementation of the standard		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice	The obligation for companies and partnerships to keep a register of their beneficial owners entered into force in October 2017, so it has not been possible to assess its practical implementation.	The Belgian authorities should ensure the effective implementation of the obligation for companies and partnerships to keep an updated register of beneficial owners.
Rating: Largely Compliant		

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

41. As described in the 2013 Report, several types of company can be established in Belgium. Six types of company were described in section A.1.1: the *Société Anonyme* (SA) (public limited company); the *Société en Commandite par Actions* (SCA) (partnership limited by shares); the *Société Privée à Responsabilité Limitée* (SPRL) (limited liability company); *Société Coopérative à Responsabilité Illimitée* (SCRI) (co-operative company with unlimited liability); and the *Société Coopérative à Responsabilité Limitée* (SCRL) (co-operative company with unlimited liability), all governed by the Company Code. In addition, there is also the *Société européenne* (SE) (European company) governed by Regulation 2157/2001. Section A.1.3 describes two types of partnership: the *Société en Nom Collectif* (SNC) (general partnership) and the *Société en Commandite Simple* (SCS) (limited partnership). These are either capital companies (*sociétés de capitaux*) or companies between persons (*sociétés de personnes*), although the distinction between the two types of civil law entities does not match that between companies and partnerships in common law, since both have legal personality. The rules regarding the availability of information are very similar.

42. At present Belgium has 114 219 SAs (most of which are large firms), 24 SEs, 2 541 SCAs, 445 169 SPRLs (the commonest form of company, accounting for 70% of the total number of Belgian companies, primarily SMEs), 6 422 SCRIs and 13 001 SCRLs, and 73 088 foreign companies. Foreign companies whose main establishment is in Belgium are subject to the same registration requirements as companies incorporated under Belgian law and the branch offices of foreign companies must also deposit certain documents with the Belgian register of legal persons (BCE, *Banque carrefour des*

entreprises[3]). The number of companies registered with the tax authorities is lower, given that inactive companies are counted. Likewise, foreign companies are registered for preparatory or ancillary activities that do not give rise to a permanent establishment.

43. There is no provision in Belgian law for the creation of *offshore* companies (structures without any territorial basis in Belgium which would be subject to a tax regime more advantageous than the common law regime). Furthermore, as noted in the 2015 FATF report, Belgium is not an international centre for the incorporation and administration of companies or legal constructs.

Obligations regarding information on legal ownership and identity

44. As indicated in the 2013 Report, Belgian companies are subject to obligations regarding the availability of information on the ownership in the Company Code and to tax declaration obligations. These obligations are supplemented or backed up by the anti-money laundering obligations incumbent on the persons subject to the legislation. Most of the information is therefore available from a number of sources: the tax administration (identity of the founder of all types of company and the partners of companies of persons), other public authorities (in particular from the BCE and the commercial register held by the court registries), the companies themselves and the persons subject to anti-money laundering legislation. These obligations, as well as their application in practice, were held to be compliant with the standard and to permit an effective exchange of information in the 2013 Report.

45. Belgian law has not been amended since the 2013 Report (para 47 to 102). For the main part, the names of founders can be obtained from notaries and from the registry of the locally competent commercial court, from the BCE and from the tax administration. Information on the current owners of shares is available from the companies themselves (register of shares or shareholders, including for foreign companies when the main establishment is in Belgium, major shareholding disclosure obligations with regard to listed companies) and from account holders for electronic shares (see A.1.2). Information on some legal owners of SCA (general partners) and owners of SCRI are also available with the commercial court.

46. The 2016 Terms of Reference state that information must be kept for at least 5 years. The BCE keeps documents for 30 years as of the loss of

3. Established under the law of 16 January 2003, the BCE is a registry kept by the Federal Public Service Economy, the purpose of which is to register, safeguard, manage and make available information regarding the identification of enterprises (s. 3 of the law). Any Belgian legal entity, any foreign legal entity with a seat in Belgium and any establishment must be registered in the BCE.

legal personality of the company concerned. Notaries keep the documents they draw up for 50 years. The data recorded in the register of shares (units)/ shareholders are kept throughout the lifetime of the legal person and for at least 5 years after its winding-up (s. 195 of the Company Code). It is the responsibility of the last manager or the liquidator to keep these documents. In practice, documents are rarely available in the event of liquidation, given that the company was generally defaulting, but some information is available in tax files that are kept for at least 7 years (minutes of general assemblies, annual accounts).The Belgian authorities are recommended to ensure a better keeping of information on legal owners of liquidated companies.

47. Furthermore, information must be adequate, accurate and up to date. The adequacy and accuracy of information were assessed in 2013. With regard to information being kept up to date, the information supplied to the registry has not always been recorded promptly, and the FATF report noted in 2015 a number of shortcomings in the updating of data in the BCE. The representatives of the registry have indicated that the delays observed were mostly due to a restructuring of registry departments; they added, however, that the files were now up to date, at least in the case of the Brussels registry, which is the largest one, and that company numbers are issued the day after applications are filed. The registry must also update the BCE with bankruptcy rulings, which it does not always do, although other administrations are diligent and inform the registry when a bankruptcy published in the *Moniteur belge* is not recorded in the BCE (the information is available online at www.regsol.be).

Checks aimed at ensuring the availability of information on legal ownership

Compliance with registration obligations and other obligations set out in the Company Code

48. As indicated in the 2013 Report (para 146-148), sanctions apply for failure to register deeds of incorporation with the registry and the BCE. These institutions verify the form of the deeds registered (i.e. they check whether the documents are complete). If the documents are not compliant, they are not registered, and the company does not legally exist nor does it have legal personality. New companies have 3 months to register their documents with the registry; any late registration of documents incurs a fine. The Belgian authorities report that in practice registrations are usually made within the deadlines, as it is this formality which confers rights and protection on the company and on partners.

49. The registries do not carry out in-depth checks (i.e. on the identity of the persons mentioned in deeds). This check is carried out by the notaries when a company is incorporated (s. 11 and 12 of the Framework Law on the

Profession of Notary). In practice, notaries collate the information and check it against official databases (in particular the national register of natural persons, company articles of association and their representatives' status). The representatives of the profession have confirmed that this was one of the basic elements of their work. Notarised deeds are registered and transmitted electronically. The quality of the work of notaries is audited every three years by the Chamber of Notaries, the self-regulating body for the profession, notably with regard to the conservation of proofs of identity. The prosecutors' office is made aware of the sanctions applied. There is no comprehensive public information available regarding disciplinary sanctions, nor on formal warnings, but the Belgian authorities indicate that ethical rules are well respected.

50. As mentioned above, the information held by notaries, registries and the BCE relates to founders and not to current owners (except for co-operatives and active partners of SCA). As a result, no updating is required, unlike that of other elements such as the address of the company or its authorised representatives (directors, managers, etc.) which does not require action by a notary. As part of these periodic checks, the BCE is currently examining all the SPRLs/co-operative companies for which information on the name of the manager has not been provided and adding this information to their files. In 2016, the BCE's attention was drawn in particular to the office of trustees and to bankruptcy situations. In the case of an incorrect address for a company, the BCE asks the company to update its details, and if no correction is made within 30 days the address is deleted by the BCE to indicate to interested third parties that details of the company's registered office are no longer up to date. The BCE's aim is above all to provide accurate information.

51. With regard to the register of shares (units)/shareholders held by the company itself, the partners/shareholders themselves are responsible for checking information. The Company Code does not specify any deadlines for recording transfers of shares in the register, although their ownership is established by being entered in the register (see for example sections 357, 359 and 365 of the Company Code in the case of SPRLs). Hence dividends will be paid to the owner whose name has been entered in the register. The company must ensure that the register is up to date before each general assembly. In practice, these assemblies are prepared with the help of a certified public accountant or notary. The representatives of these professions state that they rarely encounter difficulties over register entries and that many registers, notably the register of SMEs, are maintained directly by certified public accountants. Checking whether the registers of shareholders or partners are properly kept is one of the elements that are checked in the course of a tax audit (see section A.2).

52. Declarations of large shareholdings are checked by the Financial Services and Markets Authority (FSMA) and the sanctions mentioned in the 2013 Report have not been modified. The FSMA is empowered to conduct investigations, notably when it detects signs of inaccuracy or omissions or in

cases when it is contacted by the company concerned. It issues injunctions against shareholders or the issuers of shares, and if no action is taken the FSMA can publish information itself and impose a penalty. Furthermore, the sanctions and transactional rulings are published on the institution's website. In practice, the shareholding of Belgian companies subject to this obligation is relatively stable, with strong Belgian family control.

Compliance with tax obligations

53. As indicated in the 2013 Report (paragraphs 64 to 69), all companies engaging in a commercial activity as their main or secondary line of business must register with the VAT office, which checks the existence of companies to combat the use of shell companies. The tax files contain limited information on ownership (primarily the names of founders), but in the course of tax audits the inspectors systematically ask for explanations of the way in which the company operates and scrutinises its shareholders, managers, etc., which helps ensuring the availability of information on ownership (see section A.2).

Compliance with anti-money laundering obligations

54. As anti-money laundering obligations are largely redundant in respect of tax obligations and company law, they make only a very minor contribution to ensuring the availability of information on company legal ownership. In contrast, they have proven to be highly relevant in regard of beneficial owners, as discussed in the section on this subject below.

Availability of information on legal ownership in practice

55. In practice, information relating to identity is available primarily with the companies themselves, and in some cases with other entities (*Moniteur belge*, the BCE, companies themselves, private databanks, etc.), which allow interested parties (the competent authority, but also banks, the BCE, economic partners, etc.) to collate information.

56. During the review period Belgium received some hundred or so requests for information regarding the legal ownership of Belgian entities. Almost all the requests concerned SPRLs, the commonest type of company in Belgium. No concerns were expressed by peers regarding the availability of this information. The Belgian authorities have confirmed that information that was required to be kept was available in all cases. In one case, the information requested could not be provided as a foreign taxpayer had made a false declaration as the Belgian entity was a shell. This reply was considered to be satisfactory by the partner.

Information about beneficial owners

57. The 2016 Terms of Reference introduced the obligation to make information about beneficial owners available. This element was not specifically assessed in the 2013 Report, even though it was addressed (see in particular paragraphs 85 to 87).

58. In Belgium, the main requirements on availability of information on beneficial owners are set out in the anti-money laundering legislation and, more recently, company law. The availability of this information during the review period was based on the due diligence obligations of entities subject to anti-money laundering obligations, which did not fully cover the 2016 Terms of Reference, as well as the 2017 AML Law which replaced it.

59. These deficiencies are compensated by an amendment to the Company Code, the main innovation in the 2017 Law which is the creation of a centralised register of beneficial owners (the UBO Register) hosted by Treasury in FPS Finance. The UBO Register is currently under development and is due to enter service by the end of 2018, fed by companies that are now required to collect and keep information on their beneficial owners.

Anti-money laundering obligations

60. The pre-existing obligations on entities subject to the AML Law remain in place with regard to the identification of their customers and the beneficial owners of the latter.

Definition of beneficial owner

61. The term "beneficial owner", in accordance with the 2016 Terms of Reference, is defined in s. 4(27) of the 2017 Law (and previously at s. 8(1) of the 1993 AML Law) as follows:

Law of 11 January 1993 on preventing use of the financial system for the purposes of money laundering and terrorism financing	Law of 18 September 2017 on the prevention of money laundering and terrorist financing and the restriction on the use of cash
"beneficial owner": the natural person(s) who ultimately own(s) or control(s) the customer or the natural person(s) for whose account or on whose behalf a transaction is being conducted or a business relationship is established.	"beneficial owner": the natural person(s) who ultimately possess(es) or control(s) the customer, the authorised representative of the customer or the beneficiary of life-insurance contracts, and/or the natural persons for whom a transaction is carried out or a business relationship initiated.

Law of 11 January 1993 on preventing use of the financial system for the purposes of money laundering and terrorism financing	Law of 18 September 2017 on the prevention of money laundering and terrorist financing and the restriction on the use of cash
For the purposes of this Law, beneficial owners shall include in particular: 1st in cases where the customer is a corporate entity: a. the natural person(s) who ultimately own(s) or control(s) this corporate entity through direct or indirect ownership or control over 25% of the shares or voting rights of that corporate entity;	The following are held to ultimately possess or control the customer, the authorised representative of the customer or the beneficiary of life insurance contracts: a) in the case of a company: i) the natural person(s) who possess(es), either directly or indirectly, a sufficient percentage of voting rights or a sufficient share of the capital of that company, including through bearer shares. The possession by a natural person of more than 25% of the voting rights or more than 25% of the shares or the capital of the company is an indication of a sufficient percentage of the voting rights or of a sufficient direct shareholding within the meaning of the first paragraph. A shareholding held by a company controlled by one or more natural persons, or by several companies that are controlled by the same natural person or persons, amounting to more than 25% of the shares or more than 25% of the capital of the company is an indication of a sufficient indirect shareholding within the meaning of the first paragraph.
b. the natural person(s) who otherwise exercise(s) control over the management of the corporate entity;	ii) the natural person(s) who exercise(s) control of this company through other means. The exercise of control through other means can be established in particular in accordance with the criteria set out in section 22(1) to (5), of Directive 2013/34/EU…*
	iii) if, after exhausting all the means possible, and provided that there are no grounds for suspicion, none of the persons referred to in point (i) or (ii) has been identified, or if it is unsure whether the persons identified are the beneficial owners, the natural person(s) holding the position of main manager.

* This includes in particular the majority of voting rights, the right to appoint or remove a majority of the members of the administrative, management or supervisory body of the company, the statutory right to exercise a dominant influence, or agreements concluded between shareholders (see the Directive at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:182:0019:0076:FR:PDF).

62. This definition is used for due diligence obligations regarding the customers of entities subject to the AML Law, for the UBO Register and for the registers of beneficial owners held by companies. Section 23 states that "the identification of beneficial owners includes the taking of reasonable measures to understand the ownership and control structure of the customer or authorised representative who is a company, a legal person, a foundation, a fiduciary, a trust or a similar legal arrangement".

Obligations of persons subject to the AML Law

63. The Law of 11 January 1993 on preventing use of the financial system for the purposes of money laundering and terrorism financing (AML/CFT) was in force during the assessment period (until October 2017). Following enactment of the 2017 law, the obligations of persons subject to the AML Law remain more or less the same with regard to the identification of their customers and the beneficial owners of the latter: banks, insurance companies, investment companies, notaries, lawyers, tax advisers, accountants, etc., must identify their customers under the same conditions (business relation, occasional transaction above EUR 10 000, suspicion of ML/FT or doubt over the veracity or correctness of the identification data obtained previously), by using adequate measures adapted to the risk of ML/FT.

64. The "identity" of the beneficial owner remains, in the case of a natural person, his/her name, first name, and, as far as possible, the date and place of birth and address. Persons subject to the law must compare some or all of the identification data collected with one or more conclusive documents or reliable and independent sources which can confirm those data (s. 7 of the 1993 Law, s. 27 of the 2017 Law). They cannot rely exclusively on consultation of the UBO Register for that purpose. The "other reliable and independent sources" are defined by the authorities through implementing regulations and circulars. BNB refers to valid official identity documents (identity card, passport, certificate of registration on the register of foreigners, qualified certificates according to the EU Directive on electronic signature). The information and copies of documents must be kept between seven and ten years (s. 60 and 62 of the 2017 Law).

65. The 2017 Law states that persons subject to the legislation must meet these obligations regarding identification before entering into a business relationship with their customers (s. 30 of the 2017 Law). Derogations are possible for the opening of an account, but no transfers, withdrawals or deposits of funds may be made before the customer and its possible beneficial owners have been identified (s. 31 of the 2017 Law). If a person subject to the legislation cannot meet the obligations with regard to identification, that person must not carry out transactions and must end the business relationship

that had been initiated[4] (s. 7 of the 1993 Law, s. 33 of the 2017 Law). This will be the case for instance if a foreign company that has issued bearer shares is not able to identify its beneficial owners (because the shares are not immobilised or dematerialised).

66. Some weaknesses in the 1993 AML Law still remain in the 2017 Law with regard to the Terms of Reference due to the non-tax purpose of measures.

a. *An incomplete scope of application*: The obligations apply to the relevant entities only where they use the services of persons subject to the Belgian AML Law, which is not necessarily the case. For instance, it is not mandatory to have a Belgian bank account. The obligation to use a notary (subject to the law) to create a company partly covers this shortcoming, but the notary intervenes on an ad hoc basis so notaries are not subject to the obligation to exercise constant due diligence. In 2011, the FIU together with the FPS Economy noted that the domiciling of firms was performed not only by certified public accountants and lawyers, or even notaries, but also, and increasingly, by companies specialised in domiciling, which had no clear link to persons subject to AML provisions. A risk of money laundering in respect of this sector was also noted in the FATF's. 2015 report (point 7.25) with the creation of shell companies or dummy registered offices (see above the Bill mentioned under Recent developments).

b. *Imprecisely updated information*: The obligation to exercise constant due diligence set out in section 35 of the 2017 Law provides that information must be "kept up to date" primarily if elements in the individual assessment of the customer's ML/FT risks change. This obligation to update information depends on the risk of ML/FT, without specifying a maximum period within which the updating must take place.

   That said, some of the factors indicating a potentially higher risk of ML/FT could apply to cases of tax offences, such as the following risks inherent in the customer: legal persons or arrangements designed to hold personal assets; companies whose capital is held by nominee shareholders or represented by bearer shares; companies whose ownership structure seems unusual or excessively complex in view of the nature of their activities. Likewise, products or transactions likely to encourage anonymity are factors indicative of a potentially higher risk.

4. In cases where this is impossible because another legal obligation precludes the unilateral cancellation of the relationship, the supervisory authorities can authorise the application of other restrictive measures by issuing rulings.

c. *The information is not at the disposal of the competent authorities:* The information collected cannot be accessed by the tax authorities, given that the persons subject to the legislation are authorised to supply it solely to the supervisory authorities listed (s. 56 of the 2017 Law) or to the Financial Intelligence Unit (the CTIF, s. 55 of the 2017 Law), which itself will only supply such information to the tax authorities in cases of suspected laundering of money from serious tax fraud, which is far from covering all EOI cases. The persons subject to the legislation encountered during the on-site visit (representatives of banks and notaries) confirmed that they would not share such information with the tax authorities. Moreover, the obligation to keep information and documents was introduced "for the purpose of preventing and detecting possible ML/FT" (s. 60 of the 2017 Law) and s. 64 very clearly states that "the processing of personal data collected in pursuance of the present Law for any other purpose than that provided for in the Law, notably for commercial purposes, is prohibited" (see section B.1).

   The representatives of the banking sector indicated that they could only supply information collected in pursuance of the Law on the automatic exchange of information, although the customers targeted did not include Belgian tax residents, but only customers who were tax residents in jurisdictions with which Belgium engaged in the automatic exchange of information.[5]

67. Notwithstanding the above, new provisions offset these shortcomings through development of the UBO Register, into which information will be input on the basis of the obligation incumbent on companies to collect and keep information relating to their beneficial owners.

The new company registers and the future centralised register of beneficial owners (UBO)

68. Since the entry into force of the 2017 AML Law on 16 October 2017, Belgian companies are required to keep a register of beneficial owner(s) and to provide this information to the UBO Register, the new centralised register of beneficial owners hosted by the FPS Finance (Treasury).

5. The Law of 16 December 2015 regulating the exchange of information on financial accounts, by Belgian financial institutions and FPS Finance, in the framework of an automatic exchange of information at the international level for tax purposes, introduced record-keeping obligations regarding the identity of beneficial owners (persons controlling the holder of a financial account).

69. The 2017 Law (s. 153 to 155) amends the Company Code, inserting a new Section V on beneficial owners composed of new s. 14/1 and 14/2. Pursuant to 14/1, "companies shall be required to collect and keep adequate, accurate and up-to-date information on the identity of their beneficial owners, as well as detailed data on the economic interests held by beneficial owners. The information shall include at least the beneficial owner's name, date of birth, nationality and address, as well as the nature and scope of the economic interest held by the beneficial owner". The section refers to the Law of 2017 for the definition of beneficial owner (see above). Pursuant to section 75 of the 2017 AML Law, a royal decree will specify which information will be required to complement this basic information. Company directors must transmit data to the UBO Register within one-month of the date the information is known or has changed. Any infringement of these requirements carries a fine ranging from EUR 50 to 5 000, imposed on company directors (s. 14/2).

70. Sections 73 to 75 of the 2017 Law also establish a centralised register of beneficial owners (UBO register). It will be managed by a dedicated unit set up within the FPS Finance (Treasury). Pursuant to section 74, "the purpose of the UBO Register is to make available adequate, accurate and up-to-date information on the beneficial owners of companies incorporated in Belgium, trusts, foundations and (international) non-profit associations and legal entities similar to trusts". To date, the dedicated unit has not yet been established and the decrees are not taken regulating the way in which information is to be collected, the content of the information gathered, management, access, use of data, procedures for data verification and the operation of the UBO Register (s. 75).

71. The company registers combined with the UBO Register should in time offset the weaknesses of the due diligence obligations of entities subject to the 2017 Law:

a. *Application to all Belgian companies:* Unlike due diligence obligations, the requirement to keep a register applies to all Belgian entities, whether or not they use the services of an entity subject to the AML Law.

b. *Updated information:* company registers must include "up-to-date" information without any reference to any AML risk. The Law does not set out the procedures for updating registers.

c. *Information available to the competent authorities:* the Company Code does not include provisions restricting tax authorities' access to documents. They may therefore request the information appearing in the company's register of beneficial owners. The Belgian authorities confirm that the services of AGFisc will be able to ask the registers of beneficial ownership of companies, and that a refusal to provide it will be punishable (see Section B.1).

> However, access to the UBO Register remains uncertain as it is directly governed by the 2017 Law. Indeed, s. 74 provides that the Treasury will make information in the UBO Register available "in accordance with the provisions of the [AML/CFT Law of 2017] and legal and regulatory provisions on initial data collection". Yet these provisions concern AML. The fact that the register will be managed by a unit within FPS Finance does not guarantee access by other FPS Finance units, in particular the AGFisc. Belgian authorities indicate that this is the object of a Bill (see Recent developments).

72. While the new provisions on company registers of beneficial owners and the UBO Register are welcome, they raise another issue: company directors do not have the means of enforcement to obtain information on the beneficial owners of their shareholders, whether they are legal persons or other entities, unlike entities subject to the AML Law which can terminate a business relationship or adopt other restrictive measures. In addition, concerning the updating of data, in the event of changes of a shareholder, the director may ask the new shareholder for information regarding its beneficial owners, but in the absence of changes to shareholders, the likelihood of the director becoming aware of a change to their beneficial owners is much lower. Yet the requirement is imposed on companies, rather than shareholders. At this stage, only the articles of association could determine the formalities for the company to control the quality and identity of shareholders and restrict participation in the general assembly when the available information is not provided or updated in application of section 295 of the Company Code on participation in the general assembly, which provides that "the articles of association determine the formalities to be accepted in the general assembly". Otherwise the directors have no power. The articles of association can authorise the company to update the register through electronic communication means.

73. Overall, the new obligation on companies to keep a register of their beneficial owners and the collection of this information in a centralised Register are major legal improvements which should significantly address the weaknesses of the AML/CFT system. However, the Belgian authorities have yet to adopt implementing measures for these new provisions and it will be necessary to monitor their implementation. It is therefore recommended that Belgium ensures the effective implementation of the obligation for companies to keep an up-to-date register of their beneficial owners to assess effectiveness.

Nominees

74. Belgium does not explicitly provide for the status of "nominee shareholder", which is specific to common law. Belgian law does not prohibit a person from performing this role but it can have tax consequences.

Representatives of the notarial profession indicate that the practice is rare and viewed with suspicion and under the AML/CFT preventive system notaries are expected to identify the real beneficiary of the operation where there are indications of an attempt to conceal the identity of the true beneficiary. In the same vein, the 2017 Law (Annex 3) also provides that the fact that a company's capital is held by nominee shareholders is a factor indicating a potentially higher AML/CFT risk.

Checks and supervision measures/Monitoring and coercive measures

75. In practice, the Financial Intelligence Unit considers that the information on beneficial owners received from financial institutions in suspicious transaction reports or on request is of good quality. The FIU has been able to establish that information on beneficial owners transmitted by entities subject to the AML Law is incorrect, where, for example, it already has different data on the customer concerned and its beneficial owners in its database, or where a suspicious transaction report is received from an entity subject to the AML Law and cross-checking with information held by another authority (tax authority or other financial or administrative authority) reveals discrepancies. The Unit does not itself control entities subject to the AML Law but it can refer a case to the supervisory authority for the defaulting entity to be sanctioned.

Customer due diligence requirements

76. All entities subject to the AML Law are supervised and monitored by the body in charge of regulating them, including in relation to their due diligence obligations. There are 13 such bodies which can impose administrative sanctions relating to such obligations, in particular the National Bank of Belgium for the banking and insurance sectors; the Financial Services and Markets Authority (FSMA) for investment companies; FPS Economy for registered company service providers; supervisors of certified public accountants, tax advisers, accountants and company auditors; national chamber of notaries and the President of the Bar Association. Regarding Financial institutions, see Section A.3.

77. The 1993 Law only dealt briefly with the powers of supervisory authorities in exercising their authority in the area of AML and referred to laws defining the general supervisory powers of those authorities. The 2017 Law sets out the broad outlines: monitoring is conducted on the basis of an assessment of ML/TF risks and the risk profile of each entity, in particular to determine its frequency and intensity (s. 87).

78. The measures which supervisory authorities may take, once the corresponding procedural regulations have been established (s. 118), include, in

addition to the measures set out in the specific laws governing their operation and powers: (1) a public statement specifying the identity of the person and the nature of the infringement; (2) an injunction to cease the concerned behaviour; (3) the withdrawal or suspension of authorisation; (4) the temporary ban of any person discharging managerial responsibilities, or any other natural person liable for the infringement from exercising managerial functions in entities subject to the AML Law. In addition, authorities may impose administrative fines, the minimum and maximum amounts of which vary depending on the profession.

79. The 2017 Law grants each of the authorities the power to adopt regulations in the exercise of their authority in the area of AML/CFT, in order to supplement statutory provisions on technical aspects. They can also adopt circulars, recommendations or other forms of communication aimed at clarifying the scope of obligations (s. 86). Texts taken for the implementation of the 1993 Law remain applicable in the meantime. Authorities are also responsible for conducting awareness-raising actions for entities subject to the AML Law and training on developments in the legal framework.

80. In practice, supervision conducted during recent years pursuant to the 1993 Law has been rather uneven. Monitoring of certified public accountants forms part of the quality control carried out by the Chamber's 70 inspectors. They receive an annual update at a meeting during which all problems faced in AML supervision are discussed. Certified public accountants are required to complete a questionnaire, including questions on money laundering and beneficial owners. Individualised actions can be taken on this basis. The most common infringements in the area of AML relate to the determination of beneficial owners. However, the representative of the Chamber indicates that the situation has improved in all cases. The statistics on the supervisor's actions do not identify which ones are related to identification and retention of information on customers and their beneficial owners. In total, in 2015, inspectors adopted 59 improvement plans and 23 recommendations; implementation is verified through an on-site visit, which takes place within a maximum of nine months, and by conducting a sample survey. Members who failed to complete the questionnaire (39) were subject to a disciplinary procedure, which in most cases led to the member's deregistration. A dozen administrative fines were also imposed (EUR 250 and 900 for costs of proceedings). The supervision of auditors is outsourced to the FSMA. Professional associations also conduct training sessions, in which there were approximately 9 000 participants in 2016.

81. Notaries, who play a fundamental role in the formation of companies, have shown some reluctance to complete the forms concerning beneficial owners, especially in simple cases relating to companies in respect of which they do not see the need. The representative of the Chamber of Notaries

indicates that it is difficult at present to provide statistics on replies and to assess whether reluctance is only related to the presumed lack of value of the measure or extends to cases of complex arrangements. As noted above, the supervisory activities and sanctions applied in the profession were not communicated to the assessment team. In general, in relation to designated non-financial businesses and professions, AML regulations are very recent and supervision is yet to be put in place. As notaries are not required to update the information on beneficial owners, the impact of this shortcoming is minor.

The company registers and the UBO Register

82. Section 14/2 of the Company Code provides for a civil fine of between EUR 50 and 5 000 on directors who fail to comply with the requirements on record keeping and providing information to the UBO Register. Furthermore, section 132 of the 2017 AML Law establishes an administrative fine of between EUR 250 and 50 000 in case of infringement of section 14/1 or concerning quality of the information provided, which can be imposed on directors and, if applicable, one or several members of the entity's statutory body, the management committee or the persons who, in the absence of a management committee, effectively participate in the entity's management.

83. Section 132 of the 2017 AML Law designates the Treasury as responsible for supervising the obligation of companies to maintain a register of their beneficial owners at their offices and the obligation to record such information on the UBO Register. It has the power to consult all documents proving that these obligations have been met, if necessary through on-site visits and interviews with the management. The Treasury plans to create between 8 and 10 inspector positions. The Belgian authorities indicate that supervision procedures are currently under discussion. Planned measures include in particular preventive checks during data registration, supervision of the recording of information for each entity, quality control of information recorded (random and targeted controls on the basis of cross-checks conducted with a private database, etc.).

84. As these measures have not yet been applied in practice, their implementation will need to be monitored. Furthermore, the means available to companies to ensure that data collected from shareholders and their updating remain problematic, since companies do not seem to have any means of enforcement. If a shareholder refuses to provide the information requested or provides erroneous information, it does not seem that the situation can be rectified. Inaccuracies in the companies' registers will impact the UBO register. Belgium is therefore recommended to consider the opportunity to strengthen its legal and regulatory framework to ensure that the holders of beneficial ownership information provide this information to companies.

Availability of information on beneficial owners in practice (partners' experience)

85. There are no statistics segregating information on legal ownership and beneficial owners, but the Belgian competent authorities and peers indicated that during the current review period, Belgium was asked to provide information on beneficial owners in a few cases, and the information has been provided. This is possible when the beneficial owners are the legal owners (natural persons), and when the ownership chain remains in Belgium.

A.1.2. Bearer shares

86. The 2013 Report indicates that bearer shares in Belgium were being eliminated. First, the Law of 14 December 2005 on abolishing bearer shares provides for the conversion of existing bearer shares into registered shares or electronic shares listed on a securities trading account between 2008 and 2013. Second, it prohibits the issue of new bearer shares from 2008 onwards. Electronic shares are listed in the Register of securities as such, in the name of the clearing institution or authorised account holder (s. 468 and 475(3) of the Company Code).

87. After expiry of the transition period on 31 December 2013, if the shareholder had not converted its bearer shares, they were converted by the issuing company and recorded under the name of the issuing company (without transfer of ownership). The 2013 Report noted that 4% of bearer shares had not been converted as of 31 December 2012.

88. The converted shares had to be sold by the issuing companies (with an advertisement published in the *Moniteur belge* and a one-month deadline given for shareholders to claim their shares) between 1 January and 31 December 2015 (Royal Decree of 25 July 2014). An issuing company which fails to organise the conversion and purchase of shares is liable to a fine equal to 10% of the value of the shares. The proceeds on the sale of the shares and unsold shares (listed in the name of the *Caisse des dépôts et consignations* – official depositary of the government) are deposited at the *Caisse des dépôts et consignations* until a person can prove his/her legal rights over the shares and claims restitution (by 2026 at the latest). A total of more than 142 million shares from 300 issuing companies have been sold or transferred to the *Caisse des dépôts et consignations*, representing EUR 244 million.

89. In practice, the Belgian authorities consider that the law has been complied with, in particular by major issuing companies; delays may have been experienced in some small companies due to the short one-month deadline, but ultimately the obligation of forced sale caught up with defaulting companies. The authorities did not establish supervisory measures, given the process in place which includes incentives for conversion, of both civil (loss

of voting rights) and tax nature, and which enables defaults to be avoided (for example, certification by an accountant that the law has been properly applied). No sanctions have been ordered. However, if at some point a person should appear with a paper share certificate which does not correspond to the company's declarations, measures would be considered.

90. The *Caisse des dépôts et consignations* began the restitution of amounts generated by the sales as well as unsold shares on 1 February 2016. Persons are liable to a fine equal to 10% of the amount of the equivalent value of the shares which are the subject of restitution, for every year of delay, from 1 January 2016 until 2026 (when the fine will reach 100% of the value). In practice, a paper share certificate must be presented at the desk of the securities manager (Belfis) which verifies the authenticity of the share and transfers the data and claim to the *Caisse des dépôts et consignations*.

91. In 2016, 3 000 persons presented bearer shares and paid a total of EUR 2.5 million in fines. Today the *Caisse des dépôts et consignations* still holds half of all the (sold and unsold) transferred shares and has only paid approximately EUR 16 million in restitution. Almost all the issuing companies concerned still have shares at the *Caisse des dépôts et consignations* (approximately 280 out of the 300).

92. As of 1 January 2026, the equivalent value of shares which have not been the subject of a restitution claim will be allocated to the State. Registered shares can be bought back by the issuing company. If the issuing company fails to buy back the shares, they will be allocated to the State.

93. Belgium did not receive any requests for information concerning bearer shares issued by Belgian companies during the current reporting period, nor during the period under review in the 2013 Report.

A.1.3. Partnerships

94. The 2013 Report covered two kinds of partnerships, which both have a registered capital divided into units (and not capital shares), which cannot be freely transferred: the *Société en Nom Collectif* (SNC, or general partnership) and the *Société en Commandite Simple* (SCS, or limited partnership). The publication and registration formalities for partnerships, as well as provisions on beneficial owners, are the same as those that apply to companies (see §§ 57 to 84 above). The rules governing their formation are more flexible in that the involvement of a notary is not required. The list of founders and jointly and severally liable partners is public information and any change to jointly and severally liable partners must be published, i.e. all SNC partners and SNC limited-liability or dormant partners (with the exception of active partners). Moreover, partnerships have legal personality and are subject to corporate income tax and required to submit an annual tax return providing

the annual accounts and the reports to the general assembly, including the list of those present. Information and statistics on monitoring which distinguish partnerships from companies are not available.

95. In practice, there are about 20 000 SCN and 34 000 SCS and requests for information do not concern these entities. Peers did not raise any specific questions on these entities but do not necessarily highlight the nature of the company concerned.

A.1.4. Trusts

Availability of information on trusts

96. The 2013 Report notes that Belgium has taken all reasonable measures to ensure that information is available to the authorities that identifies the settlor, trustee and beneficiaries of trusts administered in Belgium or that have assets in Belgium, noting that it is impossible to establish trusts under Belgian law. The availability of information on trusts is guaranteed by the tax obligations of trustees resident in Belgium (and anti-money laundering law). The retention period of documents is of seven years pursuant to tax law and ten years pursuant to AML law. In addition, it was noted that in practice the administration of foreign trusts by trustees resident in Belgium is not widespread and that authorities had never received any request pertaining to such trusts. In 2017, the situation remains the same.

97. Belgian authorities have adopted new measures to gain a better understanding of the use of trusts by Belgian taxpayers. Since 2014, Belgian tax payers (natural persons) are required to provide details in their tax return on "legal arrangements" (including trusts and *fiducies*) of which they are founders, beneficiaries or potential beneficiaries (s. 307(1)(4) of the Income Tax Code; Law of 30 July 2013). This new reporting requirement goes with a new tax on income received by legal arrangements which applies as of 1 January 2015. Tax is imposed on the founder (settlor, contributor or successor) as if he/she received the income directly. The following elements are required to be declared: full name, legal form, address and where applicable identification number of the legal arrangement, as well as the name of the trustee.

98. In practice, 1 600 statements have been received. All tax audit authorities are competent to carry out audits on statements declaring the existence of trusts. The unit in charge of personal income tax indicates that it received questions from taxpayers. AGISI processed several pilot cases and found that the corresponding income had been declared. These provisions go beyond the requirements of ToR A.1.4 in that they cover trusts which are mainly administered abroad. They can also increase the transparency of trusts administered in Belgium where one of the founders or beneficiaries is resident in Belgium. These measures increase awareness of taxpayers and authorities on the concept of trust and may give rise to outgoing requests.

Beneficial owners

99. The 2013 Report concluded that tax obligations imposed on a trustee resident in Belgium were sufficient to ensure the availability of information on beneficial owners of trusts.

100. In a complementary way, the new 2017 AML Law explicitly mentions trusts and any subject entity having a relationship with a trust (lawyer, notary, bank, accountant, etc.) or acting as trustee will have to identify the beneficial owners of the trust. Section 4(27°) of the 2017 Law provides a definition of beneficial owners of trusts.[6] While the definition is sufficiently broad to cover the cases set out in the Terms of Reference, the issue of access to information by the competent authorities remains the same as for companies.

101. It is planned that the UBO Register will contain adequate, accurate and up-to-date information on beneficial owners of trusts and legal entities similar to trusts. However, no provision explains how the information on trusts will be provided to the register or which trusts are targeted.

Availability in practice

102. As in Phase 2, the Belgian authorities indicated that trustee activity is not widespread in Belgium. Participants in the on-site visit, public authorities and representatives of the private sector, reiterated that the administration of foreign trusts by resident trustees was rare; none of them had yet encountered such a case. Belgium did not receive any EOI request dealing with trusts during the review period (nor during the previous period reviewed under Phase 2).

Foundations and other entities

Foundations

103. As indicated in the 2013 Report, there are two categories of foundations in Belgium in application of the Law on Non-Profit Associations, Foundations, European Political Parties and European Political Foundations:

6. Shall be deemed to be beneficial owners of a trust: (i) the settlor; (ii) the trustee(s); (iii) the trust protector, where applicable; (iv) the beneficiaries or, where the persons who will be beneficiaries have not yet been designated, the category of persons in whose primary interest the trust has been established or operates; (v) any other natural person exercising ultimate control over the trust on the basis of direct or indirect ownership or by other means. The same definition applies to legal arrangements similar to trusts.

public interest foundations and private foundations in which the founder may dedicate property for a private purpose devoid of any self-interest (for example safeguarding of an art collection, the keeping of a business within the family, or the maintenance of a child with special needs). They have no members or beneficiaries and it is not possible to use them for inheritance schemes. That said, the articles of association can provide that upon dissolution of the foundation because the purpose of the foundation is achieved, the assets might go back to the founders (art. 28). The report notes that since the articles of association and their amendments must be the subject of a notarial deed entrusted to the registry of the commercial court and published in the *Moniteur belge*, the information concerning the founders and members of their boards is known to the Belgian public authorities (2013 Report, para 142).

104. Belgian law has not changed since 2013, with the exception of the 2017 anti-money laundering Law which explicitly refers to foundations and section 4(27°) defines the beneficial owners of foundations and associations (see below) who must be identified by entities subject to the AML Law.[7] This definition includes all the relevant persons. Today, there are 1 287 private foundations registered at the BCE and 282 public foundations. Foundations are subject to legal entities income tax (which is different from corporate income tax) and monitored under that framework.

105. Foundations are not considered to be particularly at risk. In practice, Belgium received two requests for information concerning a foundation and provided a response. Belgium's treaty partners have not made any comments on this matter.

Associations

106. Four requests for information were made concerning Belgian non-profit associations (ASBL) during the period under review. This type of entity, which was considered irrelevant during Round 1, is adequately regulated in Belgium since this status is subject to the approval of the Ministry of Finance and benefits from a system of deductible donations triggering close monitoring.

7. Shall be deemed to be beneficial owners of foundations or associations: (i) members of the management board; (ii) persons authorised to represent the association; (iii) persons responsible for the daily management; (iv) founders; (v) natural persons, or where such persons have not yet been designated the category of natural persons, in whose primary interest the entity has been established or operates; (vi) any other natural person exercising ultimate control on entity by other means (s. 4).

107. The 2017 Law has strengthened this regime by providing a definition of beneficial owners of associations together with that of beneficial owners of foundations. In addition, the 2017 Law modifies the Law of 27 June 1921 on non-profit associations, international non-profit associations and foundations. Associations and foundations are required to collect and keep adequate, accurate and up-to-date information on the identities of their beneficial owners. Such information includes at a minimum the name, date of birth, nationality and address of the beneficial owner. Information on beneficiaries and persons exercising control by other means are required to be transmitted to the UBO Register in the same way as for companies (see A.1.1).

A.2. Accounting records

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

108. The 2013 Report concluded that Belgian law ensures the availability of accounting information, including supporting documents. This information must be kept for seven years. No difficulty was raised during the previous review period concerning the availability of accounting information in practice. It was therefore noted that element A.2 was "in place" and rated "compliant".

109. There has not been major change to Belgian law since 2013 and it remains in line with the standard. Additional measures have been introduced to identify companies that are inactive or that do not comply with certain accounting obligations and allow their administrative deregistration by the BCE. An amendment to the Company Code aims at facilitating dissolution by court order.

110. During the review period (1 October 2013 to 30 September 2016), Belgium received more than 800 requests for accounting information (out of a total of 1 850 requests) and did not report any issue on the availability of such information in practice. Belgium's partners expressed their satisfaction with the quality of accounting information received.

111. The table of determinations and ratings remains as follows:

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

A.2.1. Obligations to maintain accounting records

Accounting obligations

112. The legal obligations of Belgian companies and relevant entities have not changed since the 2013 Report. Under the Law of 17 July 1975 on accounting for enterprises, ITC and the Royal Decree on the implementation of the Company Code, all relevant entities and arrangements are required to maintain reliable accounting records which must: (i) correctly explain all transactions, (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time and (iii) allow financial statements to be prepared.

113. With regard to dissolved companies, company books and records must be kept for at least five years and their location must be notified to the registry and the BCE and published in the *Moniteur belge* (s. 67, 73 and 195 of the Company Code). Companies with ongoing dissolution proceedings are not required to submit their annual accounts to the BNB but accounting obligations continue to apply until the conclusion of proceedings. The Belgian authorities add that a dissolved company, with or without liquidation, must also submit to the Belgian tax authorities its annual tax return in accordance with s. 305 ITC. During the liquidation, the usual rule of retention provided for in s. 315(3) ITC, applies: "Except where they have been seized by the judicial authorities, or a derogation has been granted by the authorities, books and documents which can be used to determine the amount of taxable income must be kept for possible consultation by the authorities, in the office, agency, branch or any other professional or private premises of the taxpayer where these books and documents were held, drawn up or sent, until the end of the seventh year or the seventh accounting year following the taxable period." The Belgian authorities explain that this provision covers the underlying documentation. Finally, article 195 of the Company Code provides that the books must be kept at a place decided by the general assembly after the liquidation of the company. When a request for accounting information concerns a dissolved company, curators and liquidators are solicited but they often have less information than the administration in tax files (previous audits, balance sheets, etc.).

114. Additional measures have been introduced to improve the identification and sanction of inactive or defaulting companies concerning their obligations to publish annual accounts.

Monitoring compliance with legal obligations and strengthened sanctions

115. Tax audits of entities with accounting obligations (both legal entities and natural persons with a professional activity) include an examination of accounts, representing 90% of all tax audits. In practice, on-site audits are

becoming less frequent, in favour of the submission of computer files to inspectors. Representatives of accounting professionals note that questions asked tend to be increasingly detailed, including in relation to small files. The tax services are not in a position to indicate whether sanctions are imposed for non-compliance with accounting requirements, since the examination of accounts is a means rather than the aim of audit – tax adjustments and administrative taxation are prioritised over administrative penalties, in particular given the small amounts of such fines (between EUR 50 and 1 250). The table below provides statistics on tax audits in relation to corporate income tax, which relate to a bit less than 10% companies every year.

	2014	2015	2016	2017
Tax returns audited	62 170	57 102	57 492	56 599
Amended tax returns	34 104	32 213	31 375	32 542
Percentage of amended tax returns	55%	56%	55%	57%

116. Before a tax audit takes place, the monitoring of accounts is the primary responsibility of accounting professionals, certified public accountants and company auditors.[8] In particular, the annual accounts of medium and large companies must be filed with the BNB within 30 days following their approval by the general assembly, as indicated in the 2013 report. They must also be attached to the tax return submitted by entities liable to corporate income tax or legal entities income tax. Company auditors are required to indicate non-compliance by the company in their annual reports. The BNB operates purely formal controls, however most accounts are filed electronically and subject to electronic plausibility checks (e.g. the asset/liability relationship, the existence of staff costs without staff). The Accountant, Certified Public Accountants and Tax Advisers Supervisory Authority (the Institute) is responsible for monitoring compliance by its members (on the basis of a sample of files). Its representatives report that there is a good level of compliance with accounting laws but that disparities can be observed in relation to the economic situation (for example, concerning calculation of depreciation). Representatives of the BNB consider that the intrinsic quality of accounts is good to very good. Representatives of the profession indicate that when an enterprise does not maintain its documentation correctly, in particular invoices, it is common to end business relations.

8. The auditors monitor the financial position, the annual accounts and the regularity of transactions recorded therein for SA, SCA, SPRL, SCRI and SE, except if they are small companies or financial companies (to which special rules apply; 141 of the Company Code). Belgium indicates that company auditors provide service to about 22 000 entities on a yearly basis.

117. Late submissions carry automatic financial penalties imposed by the BNB; they are included in the filing fee. In 2014 for example, the BNB imposed 88 300 surcharges (15% for submissions overdue by more than one year) of a total of EUR 11.2 million. Late submissions thus concerned 17% of the 514 000 businesses which were required to submit annual accounts in that year. By definition such penalties for late submission do not apply to defaulting companies.

118. Entities that have defaulted for more than 3 years can be wound up by court order. Although the BCE informs public prosecutors of entities that have been deregistered, dissolution proceedings are rare. Some prosecutors request the files from the BNB but others do not. This low level of follow-up is above all due to workload and a lower priority being given to these files. The Brussels attacks had a particular impact on such proceedings, while the capital city hosts 25% of Belgian businesses. The decriminalisation of company law has also resulted in a lower priority being placed on these issues.

119. In order to raise the visibility of defaulting companies, the Law of 15 July 2013 introduced a procedure for automatic deregistration by the BCE of companies which have failed to submit their annual accounts for at least three consecutive financial years or are no longer active (s. III.52, Code of Economic Law). Such deregistration is of an administrative nature; it does not necessarily lead to the dissolution of the company. Deregistration by the BCE serves to alert a company's business partners to its failure to meet certain legal obligations. Deregistration does not exempt the concerned companies with their obligation to keep accounting records.

120. The procedure for automatic deregistration of companies from the BCE register has started to have concrete results. In 2013, the first year of implementation of the new measure, the BCE deregistered more than 90 000 enterprises (SAs, SCRLs, SPRLs, economic interest groupings, SCAs and SEs), most of which were *de facto* dissolved companies which had not completed the formalities for dissolution. Deregistration continued in subsequent years with 4 687 entities struck off the register in 2014, 2 181 in 2015 and 2 111 in 2016. Each year a small percentage of such entities put matters in order, resulting in the cancellation of deregistration. This represents approximately 20% of the total number of legal entities registered (approximately 700 000 in 2016).

121. A new Law adopted on 17 May 2017 (Law modifying various laws to supplement the procedure for judicial dissolution of companies) is aimed at the systematic detection of inactive companies and encouraging negligent managers to get back on track. When some signals are identified, information is transferred to the investigation division of the commercial tribunal in order to detect companies in difficulty and take various measures, including dissolution or initiating bankruptcy proceedings in the commercial court. The

chapter of the Company Code dealing with judicial dissolution of companies has been amended. Involuntary dissolution of a legal entity could only be carried out at the initiative of an interested party or the public prosecutor. Yet, as discussed above, in practice the public prosecutor deems this mission to be of secondary importance. The investigation division of the commercial tribunal can now initiate the procedure at the end of a period of seven months from the closing date of the financial year, whereas previously a three-year defaulting period was necessary.

122. It is not yet possible to assess the impact of the Law of 17 May 2017 on judicial dissolution of companies. However, with the adoption of this law the authorities aim not only to reduce the number of dormant companies, which have little impact on the exchange of information, but also the number of shell companies and the phenomenon of fictitious registered offices for illegal purposes, which can be subject to EOIR and the Belgian authorities are recommended to monitor these measures.

A.2.2. Obligations to maintain underlying documents

123. As noted in the 2013 Report, the accounting records of Belgian businesses must be supported by underlying documentation, such as invoices, contracts, delivery notes, etc., which are required to be kept for a minimum of seven years.

124. The place where documents should be kept is governed by section 315 ITC: "Except where they have been seized by the judicial authorities, or a derogation has been granted by the authorities, books and documents which can be used to determine the amount of taxable income must be kept for possible consultation by the authorities, in the office, agency, branch or any other professional or private premises of the taxpayer in which they have been held, drawn up or sent, until the end of the seventh year or seventh financial year subsequent to the assessment period". The authorities state that in practice derogations can be granted particularly where documentation is kept by accountants for small companies and self-employed persons. In any case, documentation must be presented on request in Belgium.

125. Furthermore, section 315 bis of ITC sets out specific obligations concerning electronic accounting. The tax authorities state that these provisions are important to understand how an entity's computer system operates (for example, to see whether cancellations are possible or using double sets of books). An amendment was introduced in 2016 to clarify that these obligations apply whether data is digitally stored in Belgium or abroad.

Exchange of accounting information in practice

126. During the review period (1 October 2013 to 30 September 2016), Belgium received more than 800 requests for accounting information (out of a total of 1 850 requests).

127. The majority of these requests in fact related to non-business natural persons (not covered by the Terms of reference) and therefore not subject to accounting obligations, typically individuals who had sold vehicles to foreign companies. In many cases, the Belgian authorities nevertheless obtained the elements related to these sales, where the persons concerned had kept documents.

128. Most of the other requests for accounting information were processed without difficulty and concerned primary accounting documentation as well as supporting documents, mainly in relation to SAs and SPRLs. The active or inactive status of the company is not noted in the EOI statistics, and the agents in charge of the EOI files could not give concrete examples for the period concerned.

129. Some requests were more difficult to implement. In one case an EU partner requested accounting information concerning a company which turned out to be a letter box entity. The Belgian authorities nevertheless obtained some accounting documents, which were repatriated from abroad and these elements were sufficient to allow the requesting authority to impose taxation on the basis of this data (see further B.1). In this case the Belgian authorities determined that the Belgian residence of the company was fictitious and the administration will no longer produce residence certificates under the agreements; the company will no longer be able to benefit from the EU parent-subsidiary and interest-royalty directives.

130. In some cases, accounting information was not provided by Belgium but it is not possible to conclude that there had been non-compliance with accounting obligations, since blockages are linked to the Belgian tax procedure on access to information (see B.1.4). This was the case in a complex request concerning an entity which had been restructured. The requesting authority confirmed that the request was complex and necessitated a longer processing time, but the response time was also impacted by the fact that the taxpayer challenged access to information.

131. Some other requests relating to accounting information were still being processed at the time of the on-site visit, most of them dating from 2016. The Belgian authorities indicate that these other files have been closed in 2017.

132. Overall, there seems to be broad compliance with accounting obligations in Belgium and in any case compliance is sufficient not to interfere with the exchange of information.

A.3. Banking information

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

133. The 2013 Report concluded that the anti-money laundering legislation ensures the availability of banking information for a period of five years and that its practical application by financial institutions and the supervision measures implemented by the BNB ensure that financial institutions retain banking information concerning all account-holders. No difficulty was raised with respect to the availability in practice of banking information. Element A.3 was therefore considered "in place" and rated "compliant".

134. Under the 2016 Terms of reference, information on the beneficial owners of bank accounts must also be available, and banking information must be available for 5 years from the end of the period to which information relates (or following closure of the account), and practical implementation must be monitored and appropriate measures taken to ensure the availability of information. Only the information on beneficial owners was not assessed in the 2013 Report.

135. Since the 2011 review, the main development in Belgium has been the establishment of a centralised database of bank accounts. Furthermore, the Belgian anti-money laundering law of 1993, which was applicable during the current review period, was repealed and replaced by a new anti-money laundering law in 2017 entered into force on 12 October 2017. The obligations relating to the identification of customers and retention of documents remain similar to those under the 1993 Law. As noted in Section A.1, the 2017 Law requires financial institutions subject to the law to identify their customers and the beneficial owners of their customers, with the same focus on ensuring availability of information and documentary evidence for the competent Belgian authorities.

136. The updated table of determinations and ratings is as follows:

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

A.3.1. Availability of banking information

137. The 1993 AML Law imposes an obligation upon entities to identify and verify the identity of customers by means of a conclusive document and the Banking, Finance and Insurance Commission Regulation of 23 February 2010 states that in fulfilling their legal obligations to identify their customers, entities must take any appropriate measure to prohibit customers from opening anonymous accounts or ones under false or assumed names, and to verify compliance with this ban. This prohibition is repeated in section 20 of the 2017 AML Law. The existence of numbered accounts is clearly regulated and aims to allow famous clients not be identified by front line employees. The obligations on identification of customers apply to such accounts.

138. The rules regarding the retention of records in Belgium provide that all financial institutions should keep all documents necessary to reconstitute transactions. In particular, the 1993 AML Law required a copy of registrations, invoices, and documents concerning transactions to be kept for a period of at least five years, such as to allow them to be precisely reconstituted. The 2017 AML Law increases to ten years the period, during which it is necessary to retain supporting documents and records of operations needed to identify and reconstitute transactions accurately. Other laws and regulations complement the accounting obligations of financial institutions. The 2013 Report also noted that banking information on the identity of account-holders had to be retained for five years, following either the end of the business relationship or performance of the relevant operation. Representatives of the professional organisation representing the financial sector in Belgium (*Febelfin*) indicated that in practice information was kept for a period of between 7 and 10 years. The new 2017 AML Law specifies retention periods of between 7 and 10 years (s. 60 and 62).

A national database of bank accounts

139. The 2013 Report (para. 244) mentioned a project of creation of a database of all bank account-holders in Belgium: the central point of contact (CPC) at the BNB level.

140. This register was set up in 2014. Under section 332(3) ITC and a Royal decree of 17 July 2013, banks are required to provide the CPC with the bank account numbers (including IBAN numbers) as well as certain financial contracts entered into by any natural or legal person (Belgian or foreign, whether or not tax resident). This includes the identification number of Belgian nationals (BCE number for businesses) and the surname, first name, date and place of birth of foreign persons; and the legal form, name and country of foreign companies. The register covers accounts existing or which have existed since 2010, including numbered accounts.

141. This data is provided once per year (regardless of the dates of opening and closing during the year), at the latest by 31 March of the year following the year to which the data provided relates. Information is retained for eight years after closure of the account. 220 entities have provided information. The BNB considers that all the Belgian banks (and others subject entities) are in compliance with the reporting obligation to the CPC. Other representatives, in particular the Treasury, consider that some banks established under the freedom to provide services are less diligent (i.e. banks the place of management of which is in another EU Member State and which provide banking services in Belgium other than through a permanent presence).

142. Neither the ITC nor the Royal Decree provide for sanctions. The banking law contains a general obligation to comply with all financial or other legislation and in theory the supervisory authority can sanction the bank. However the BNB considers that it is not within its mandate to sanction non-compliance with a tax obligation and it would only consider doing so in cases of total absence of declaration, not for partial or erroneous declarations. The BNB limits its role to verifying the check digit of data containing such digits (IBAN number, national registration number and BCE registration number). Public prosecutors and the FUI can identify offenders, if they detect that information in the CPC is erroneous.

143. The tax administration does not have means of supervision. The authorities consider that until now the project has been in the adaptation and development phase and that sanctions (in the form of administrative penalties) and clarifications on the scope of application of the CPC are anticipated under a new draft law. The authorities then plan to implement controls and apply sanctions as necessary.

144. Furthermore, since 2015, the CPC receives information from natural persons who are residents in Belgium on the accounts that they hold abroad (s. 307 of ITC and Royal Decree of 3 April 2015 modifying Royal Decree of 17 July 2013). They are required to provide information on the existence (and closure) of an account to the CPC and to mention it in their tax return. This obligation does not apply to legal entities, in respect of which banking confidentiality is not comparable.

145. In 2016, the CPC contained 48.5 million accounts and 13.8 million contracts relating to 26.8 million persons. In 2015, the CPC included 10.7 million natural persons of Belgian nationality (for a population of 11 million inhabitants). In addition, 9.4 million persons are identified by data on surname, first name, date and place of birth, but not all of these are foreign nationals and there is significant overlap with the former group, as a result of the transition period in 2011-13, during which Belgian nationals could be identified in this way. The CPC also includes 1.3 million businesses, of which 800 000 are Belgian and 500 000 are foreign legal entities.

146. The tax authorities indicate that consultation of the CPC is frequent and useful. Three persons at the BNB respond to 15 000 to 17 000 consultations per year.

Information on beneficial owners of accounts

147. The CPC does not contain information on the beneficial owners of bank accounts – only the identity of the (co-)owners is recorded. Information relating to the beneficial owners is collected by the banks pursuant to anti-money laundering legislation. The definition of beneficial owners and the due diligence obligations described in Sub-Section A.1.1 apply to financial institutions, with the same defect concerning the non-availability of information for tax purposes.

148. The FATF report noted that in order to carry out the determination/identification of beneficial owners, banking and insurance institutions apply a system based firstly, and sometimes primarily, on a signed statement by the customer or the customer's representative (e.g. the trustee/administrator of a legal arrangement), which is subsequently verified. Financial institutions indicate that they apply additional due diligence measures in the event of difficulties. If there is still doubt as to the determination/identification of the beneficial owner even after taking "reasonable" steps (e.g. to understand the legal arrangements, in connection with taxation considerations), the institutions indicate that they submit a suspicious transaction report. While this alternative complies with provisions on AML, the ToR require information to be collected. During the on-site visit, representatives of the sector confirmed that they operate on the basis of an obligation to use reasonable means rather than an obligation to achieve specific results.

149. Belgian legislation provides for a simplification of identification and identity verification procedures in order to avoid the repetition of procedures for clients presented by a third party introducer. For this purpose, the third party must be subject to anti-money laundering legislation established in an EEA member state or in a third country whose legislation imposes obligations and control equivalent to those provided for in Belgium. It is up to each reporting entity to determine whether the legislation and control to which the third party is subject meets the conditions of equivalence to the Belgian system (BNB Regulation of 21 November 2017, s. 21). Countries identified as high risk are excluded (unless the third party is part of the same group and applies equivalent measures).

150. The Belgian financial institution has the obligation to obtain from the third party the immediate transmission of the information and to take appropriate measures so that the third party introducer can send it the supporting documents on request (in the 1993 AML law the transmission obligations were imposed on the introducer even though out of reach of Belgian control).

The responsibility ultimately rests with the professional who uses the third party (s. 42 to 44 of the 2017 AML Act).

151. In relation to implementation in practice, representatives of the financial sector indicate that they only accept customers known to an entity of the group and that they request a copy of documentary evidence, but they cannot affirm that this practice is followed by other banks. Given the strong external openness of the Belgian banking business, the Belgian authorities are recommended to ensure that the financial institutions apply these new obligations and that the underlying documents are always available in practice.

152. More specifically concerning the shortcomings described in Sub-Section A.1.1 §66 relating to updating information, the representatives of the financial sector indicate that in practice the frequency of updates is every one, three or five years depending on whether the risk level posed by the customer is low, medium or high. Furthermore, they indicate that it is frequent practice in the sector to refuse to enter a business relationship when information on identity and beneficial owners is not provided. This is the means by which the banks oblige customers to provide information. The same applies to the updating of information held: if the customer refuses to respond, the bank may decide to accept deposits but refuse withdrawals, block the account or even end the business relationship. This occurs several dozen times per year. The BNB representative confirms that checks conducted have shown that banks regularly close accounts following several unsuccessful attempts to obtain updated information.

Supervision measures and sanctions relating to the availability of banking information

153. The BNB is the supervisory authority for banks, insurance undertakings and stock broking firms. It is also in charge of controlling the implementation of anti-money laundering legislation pursuant to the 1993 AML Law and subsequently the 2017 AML Law. (With the introduction of the Single Supervisory Mechanism for banks in 2014, the European Central Bank (ECB) became the sole authority competent for the direct prudential supervision of significant European banks, including certain Belgian financial groups.) It operates two types of control: routine checks and horizontal checks on a specific issue.

154. The 2017 AML Law provides that supervision is undertaken on the basis of an ML/TF risk assessment and the risk profile of each entity, in particular in order to determine the frequency and intensity of supervision (s. 87). This was already the case in practice. Firstly, all banks respond to an annual questionnaire on the application of AML rules (including the identification of customers) and their compliance officer provides an annual report. AML supervision operates in the same way as prudential supervision

– off-site by communication of information and ongoing dialogue with the management of the financial institution and the officer in charge of AML to determine the likelihood of (non-)compliance of internal procedures. A small concern can result in correspondence being addressed to the financial institution. Then two levels of on-site inspection can be conducted depending on the risk level: basic (by sampling, in particular to establish whether previously requested corrective measures have been implemented) or extensive. The BNB inspects certain institutions and all the processes and rules and takes a sample of different types of customers. A several week notice of the inspection is given and it lasts several weeks (up to a maximum of three months).

155. The BNB recently strengthened its resources for AML supervision by increasing the number of persons and their specialisation (with prudential supervision as the main area of expertise). A new group of seven persons focusing on AML/CTF supervision was established in 2016 to deal with conceptual aspects and off-site supervision. The inspectorate remains within the prudential inspection service but the number of AML specialists has been increased from two to four persons. The BNB conducted five AML inspections in 2017 and plans to carry out 10 in 2018. With this strengthening of the resources dedicated to AML supervision, the authorities plan to continue increasing the frequency of inspections, while continuing to offsite inspections based on risks. More generally, each financial institution is inspected on average every five years by BNB, whatever the scope of the inspection (prudential rules, AML, etc.). At the end of an inspection, the BNB can ask the financial institution to produce an action plan (five were requested in 2015, four in 2014 and two in 2013), it can take serious administrative measures such as the replacement of managers (but has not done so over the last years) or can apply financial sanctions or accept a transactional settlement (one in 2016, two in 2015, none in 2014 and one in 2013).

156. The BNB also organises horizontal checks, meaning that it conducts monitoring on the same specific issue in all the financial institutions under its supervision. Two such checks focused on the identification of customers and transparency and had the desired awareness raising impact.

157. In 2012-13, the BNB conducted a horizontal check on the identification/verification of beneficial owners, at the expiry of the deadline set by the 1993 AML Law for the implementation of the requirements introduced in 2010. This initiative was conducted in the context of an off-site inspection and led to remedial actions in the form of "serious administrative measures" (letters giving deadlines for taking remedial action and the development of a corrective action plan) for 14 credit institutions and 9 insurance companies (based on provisions in the supervision laws) (FATF report, point 7.35). The BNB considers that this initiative resulted in "a large-scale clean-up of bank accounts". However, there are no statistics available since the BNB's concern

was not to inspect the accounts as such but to monitor the internal procedures aimed at ensuring that the law is correctly applied.

158. Following the revelations in the "Panama Papers", the BNB conducted a new horizontal initiative in 2016, on "specific mechanisms" defined in a circular adopted by the Banking, Finance and Insurance Commission as having the aim or effect of helping a customer to evade taxes. All financial institutions received a questionnaire. The replies were processed and linked to other elements known about the entities (business model, management quality, compliance culture). The BNB noted a good level of knowledge of beneficial owners, consistent with the results of the 2013 horizontal initiative, with no indication that the situation had deteriorated. Enhanced interviews were organised with the institutions most likely to have been involved.

159. The BNB's general approach is not to impose sanctions but to ensure that the law is applied. The annual obligations and the attention given to follow-up are important elements in this respect. Overall, the BNB imposes few sanctions but inspection and follow-up operations, combined with the horizontal initiatives conducted in 2012-13 and 2016, have had a preventive effect.

Availability of the banking information in practice (peers' experience)

160. During the review period (1 October 2013 to 30 September 2016), Belgium received 276 requests for banking information (out of a total of 1 850 requests). The banking institutions provided the information requested in all cases and the competent Belgian authority did not identify any problems with the availability of information. It has happened that a bank requested additional time to respond where information went back several years (see Section B). One of the requests concerned the identification of a beneficiary of interest payments on an account and this information was provided. The types of banking information that are most often requested are statements of account, identity of account holders and agents, opening and closing balances, the person who opened the account, interest paid and taxes withheld from interest.

161. Belgium's treaty partners expressed their satisfaction with the responses received.

Part B: Access to information

162. 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).

163. The 2013 Report noted that the Belgian tax authorities have extensive powers of access to information and did not identify any shortcomings in the existing legal framework or in the practice of the Belgian authorities concerning the powers of the competent authority to obtain and provide information requested for EOI.

164. Since 2013, a decision by the Supreme Court has limited the competent authority's access powers, by requiring taxpayers to be notified before the access to information be performed for taxable periods going back more than three years and up to seven years. A decision of the Constitutional Court also led to changes in the procedure for accessing banking information, by strengthening the requirement for notification of the taxpayer (see element B.2 on notification issues). Since then, legislation has been amended to address both issues. In addition, and contrary to the period reviewed in the 2013 Report, it happened in 2014-16 that the information holders refused to provide it. In these cases, the Belgian authority has been powerless in terms of enforcement and could not access the requested information.

165. The 2016 Terms of Reference specify that information on ownership to which the competent authority must have access also includes beneficial owners. As indicated in elements A.1 and A.3, prior to the entry into force

of the requirement for all companies to keep a register of beneficial owners in October 2017, the competent authority had no access to such information when the chain of ownership cross the Belgian border.

166. The updated table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	The Belgian authorities do not have effective enforcement provisions to compel the production of information; sanctions are not proportionate and sufficiently dissuasive. Exchange of information was impeded in practice in the rare cases when information holders refused to provide information to the Belgian authorities.	Belgium should provide the competent authority with effective enforcement powers to compel the production of information.
	Prior to legislative change in October 2017 inserting the requirement for companies to create and keep a register of their beneficial owners, the Belgian competent authorities and local tax offices had no access to information on beneficial owners in the event that the ownership chain extended beyond Belgium. This information was available with entities subject to the anti-money laundering law, but the tax authorities do not have access to it. Information is now available with companies and partnerships.	Belgium is recommended to monitor the implementation of the new provisions on access to information concerning registers of beneficial owners of Belgian entities and to ensure access for the tax authorities to information on beneficial owners available with the entities subject to the AML Law.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.		

Practical implementation of the standard		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice	Prior to legislative reform in July 2017, in the event that a request for information related to a tax year going back more than three years, the requesting authority was asked to confirm the existence of fraud indications to enable the collection of information. This condition impeded the exchange of information.	Belgium is recommended to monitor implementation of the new provisions on access to information concerning tax years going back more than three years.
Rating: Largely Compliant		

167. The 2013 Report reviewed the general procedures applied to access general information, as well as more specific rules on accessing banking information. Overall, the same rules still apply.

General rules on access to information

168. Pursuant to the Belgian Income Tax Code (ITC), the tax authorities have extensive powers to access information for their own needs, which enable them in particular to request information from any taxpayer or third party who may be in possession of information necessary to determine the amount of income or collect taxes (ss 315-327 ITC). The Belgian authorities use the same powers for the purpose of international exchange of information (cf. 2013 Report, para. 206-211). Where investigations are necessary, the central authorities request the assistance of local tax authorities.

169. The Belgian competent authority has been restructured since the 2013 Report: the DLO (central liaison office for direct taxes) was split into two departments at the end of 2015. One of them, EOS-Int (Operational Expertise and International Relations Support) remains within the central departments of the AGFisc and retains responsibility for representing Belgium in international fora and for drafting guidelines for other departments on exchange of information. The other, IEOI-DT (International Exchange of Information – Direct Taxes) is a department within the administration responsible for small and medium-sized companies and processes most of EOI requests. Two other departments process requests falling within their field of competence: the liaison office of the Special Tax Inspectorate (AGISI: *Administration Générale Inspection Spéciale des Impôts*) remains responsible for cases relating to serious and organised tax fraud and the liaison office of the Administration of Patrimonial Documentation (*Administration Générale de*

la Documentation Patrimoniale) is in charge of cases concerning immovable property and transactions governed by Directive 2011/16/EU. This restructuring did not have an impact on the powers available to delegated competent authorities: all departments have the access rights specified in the 2013 Report. However, it did affect the use made in practice of means of access, in particular in the area of banking information (see below B.1.1).

Standard process of EOI requests

170. In order to collect the information requested by foreign competent authorities, the Belgian competent authority (or the local tax office to which it has referred the case) operates in the same way as when acting on its own initiative or in response to a request from another Belgian authority. In practice, information gathering has not significantly changed since the 2013 Report (para. 229-242) and the same powers are used: consultation of tax records and databases (access to which was broadened), written requests and on-site visits with or without prior notice. The principal means used depend on whether the department in charge is a local office responsible for natural persons, small and medium-sized companies or large companies, or the AGISI. The former uses written requests more frequently. The AGISI has greater recourse to on-site visits, with or without prior notice, as cases falling under its jurisdiction are generally more complex. Cross-checking is fairly common regardless of the department involved, and aimed at guaranteeing the quality of the information provided.

171. A large number of requests concern information on tax or income of natural persons. The competent authority consults tax records and other available information in order to locate the person and when possible respond directly to the request. The number of databases directly accessible to the liaison offices has greatly evolved since the 2013 Report. They also have access to other databases (*Office national des pensions* for pensions allocated to non-residents, *Banque Carrefour des Entreprises* – BCE, *Moniteur belge*, etc.). If the person is not found in tax records, the competent authority refers the case to the Research Department, which can conduct investigations. Between 2013 and 2016, this scenario occurred most often in relation to false declarations of registered address, either in Belgian or foreign databases. In one case the natural person could not be identified in the national register and other data provided did not match with Belgian data. Additional information was requested to identify the person, but the lack of consistent data could indicate that false declarations had been made in the requesting country.

B.1.1. Ownership and identity information and bank information

Information on legal and beneficial ownership

172. Information on ownership of Belgian entities is collected in different ways depending on the case. The authorities can consult private databases or request the minutes of general meetings and registers of shareholders. The department responsible for small and medium-sized companies indicates that records are generally well kept and that in case they have any doubts on the correctness of the information gathered to answer an EOI request, this is mentioned in the response.

173. Where information on beneficial owners is only available from entities subject to the anti-money laundering law, Belgian tax authorities do not have access to such information or to substantiating documentation. Yet, during the review period, only entities subject to the AML law were required to collect and keep such information. Once Belgian companies will have implemented their obligation to keep a register of beneficial owners, tax authorities will have access to it, since the requirement has been inserted into the Company Code (rather than the AML law). Belgium is recommended to monitor the proper implementation of the new provisions and to broaden access to information kept by AML subject entities to the tax authorities.

174. While the authorities do not count the number of EOI requests relating to beneficial owners, they estimate that few were received. The authorities and peers do not mention difficulties in practice, which might mean that the beneficial owners were the legal owners or where the ownership chain remained in Belgium. The lack of access to information held by entities subject to the AML law did not affect the exchange of information in practice in 2013-16.

Banking information

175. The Belgian tax authorities have had powers to access banking information since 2011. The conditions for access for domestic purposes – indications of tax fraud, prior request sent to the taxpayer and notification of the taxpayer – were not applied in EOI cases (s. 322 and 333/1 ITC; 2013 Report para 222 to 226 and 241-244). A 2013 Constitutional Court decision sanctioned the relevant section, which was subsequently amended to introduce the right of the account holder to notification (see element B.2 below).

176. The collection of banking information for EOI purposes, unlike the gathering of ownership information and accounting records, lies within the exclusive competence of the AGFisc. The management of these requests is maintained at the central level in order to ensure better supervision and help financial institutions meet their obligations (within DLO before 2016 and now

within IEOI-DT). Over time, the level of authorisation necessary to proceed with the request has been downgraded one level (head of department level) since the practice has become well-established – during the review period Belgium responded to 276 requests.

177. The request is sent to the dedicated point of contact in the financial institution (never to a specific bank agency) with a deadline of one-month to process it (as opposed to the standard eight days for requests sent to third parties, by agreement with the representatives of the profession). At the same time as the request is sent to the bank, a notification is sent to the account holder unless the rights of the Treasury are at risk or the account holder has already been notified by the requesting party (see element B.2 below).

178. Before 2015, where the bank was not identified (either by the requesting authority or via the IBAN account number), requests were sent to all financial institutions in Belgium. Such an inquiry turned out to be burdensome and costly, both for the tax authorities and the financial sector. Since 2015, a request can be made to the BNB central point of contact (CPC) to provide the names of banks in which a person holds accounts and the answer is generally provided within two days (see element A.3 above). This is done without the need to notify the concerned person as the information requested is general.

179. Requests to consult the CPC must be sent by the tax authorities to the BNB, which conducts the research itself. This precaution is intended to ensure maximum data confidentiality and limit access to the sole purposes provided for by the legislator. As in the case of communication with banks, access to the CPC is not granted to all tax inspectors but requires a high level of authority. All requests to consult the CPC must: (i) identify the taxpayer as precisely as possible; (ii) specify the year(s) concerned by the request for consultation.

180. The Belgian authorities indicate that during the review period no financial institution refused to provide the information requested. Some requested additional time when information went back several years. Simple information is generally provided within a few days. Information requested can comprise the identification of all account joint holders, the signing authority, powers of attorney, etc. If the information provided by the requesting jurisdiction do not match that provided by the bank, the competent authority asks information to the bank and clarifications to the partner (for instance when the account holder is not the one mentioned in the request).

181. The competent authorities note that if the request for information does not expressly relate to banking information but such information is necessary to respond to the request (in particular in the case of complex requests), this procedure cannot be applied and local offices responsible for gathering the information have to use a procedure under Belgian law requiring information firstly to be requested from the taxpayer. Such cases are very rare.

182. Access to banking information was frozen with the establishment of the IEOI-DT department (see element C.5). The head of this department considered that the procedure put in place by the former DLO was unsatisfactory and blocked all requests pending the development and establishment of a new procedure, despite being urged by the Operational Expertise and International Relations Support (EOS INT) department to process requests quickly. Ultimately, the head of department changed position and information gathering resumed in accordance with the procedure described above. Processing of cases was therefore inevitably delayed and, at the time of the on-site visit in April, approximately thirty requests were still pending; one in December 2017. Belgium should ensure that access to banking information will not be interrupted in future.

B.1.2. Accounting records

183. Standard powers are used by local tax offices to collect accounting information. During the current review period, Belgium received 865 requests for accounting information. Information is requested from the entity concerned, which in practice requests its accountant to contact the authorities. As indicated in the 2013 Report, accounting information is usually collected by written means, sometimes through on-site visits (with or without prior notice) and more rarely via tax audits. The officer responsible for gathering the information determines which one is the most efficient measure in each case.

184. Written requests generally concern simple requests, for a particular invoice for example. The company has one month to respond. The accounting professionals interviewed confirmed this time limit, which is sometimes extended by one or two months (during the period of submission of accounts and mandatory declarations, summer holidays). Requests in writing are more frequent than ten years ago, since the digitalisation of accounting makes access to information easier.

185. In more complex cases, visits are conducted to verify the performance of services in practice, transport documents, invoices or, where documents are insufficient; visits enable checks to be carried out on the existence of personnel or interviews to be conducted. Visits without prior notice were organised in particular by the AGISI, when auditors were concerned that documents would be concealed if prior notification was given or a "staged" visit would be organised by the company (in particular where the objective of the visit is to verify the existence of the professional activity). Visits are carried out by tax auditors, accompanied by an IT expert when accounting data are to be extracted. Data are extracted during a single visit to avoid concealment or manipulation of files. After analysing the information, a second visit is organised to confront the company or ask additional questions.

186. Requests for information can trigger the opening of a Belgian tax audit in the event that a Belgian company is defaulting in several respects. In such cases, the authorities have provided the information requested, together with other information on a spontaneous basis. Sending information spontaneously is not uncommon, particularly in the case of cross-border exchanges. An agent from a regional office responsible for small and medium-sized companies indicated that she sometimes contacts the requesting authority when a request is deemed incomplete since the documents collected indicate operations which were not mentioned in the original request. This practice (which complies with the underlying EOI instrument) avoids the requesting authority having to make several supplementary requests.

187. In respect of frequent requests to provide invoices for cars purchased in Belgium, the authorities first consult the vehicle register. In practice, the seller is often a private individual rather than a company and therefore has no obligation to keep invoices, however the authorities still attempt to contact the person concerned to check whether they have kept a record of the transaction.

188. Overall, practice has not changed since the 2013 Report and remains satisfactory.

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

189. The concept of "domestic tax interest" describes situations in which a contracting party can only provide information to another contracting party if it has an interest in gathering this information for its own needs. Section 338 ITC expressly provides that in the context of exchange of information within the EU, "the Belgian competent authority implements its information gathering system to obtain the information requested, even if it is unnecessary for domestic tax purposes". For example, a partner made a request for verification of the authenticity of invoices and the payment of corresponding purchases to be obtained from non-trader Belgian taxpayer, which was of no interest to Belgium. The authorities indicate that they apply the same principle outside of the EU.

Time limits on the information gathering powers: three or seven years

190. With regard to information required for its own needs, the Belgian authorities have access for a three-year taxation period, which may be extended to seven years after expressly informing the Belgian taxpayer required to provide the information of the reasons for which the extension has been requested (ss. 333, 353 and 354 ITC). In the event of an international EOI request, on the basis of a 1999 case law of the Cassation Court, the Belgian authorities interpreted legislation as allowing it to access information for a

period of seven years, provided such access has been justified by the requesting authority (2013 Report, para 213-217). This interpretation is reflected in the practice of the Belgian authorities until a decision of the Cassation Court in May 2016 overturns it. The Belgian law was then amended in 2017 to allow a practice in compliance with the EOIR standard.

2011-15: Access extended to seven years in cases of suspected tax fraud in the requesting jurisdiction

191. The Belgian authorities interpreted the provisions of its domestic law as allowing access to information for a period of seven years for EOI purposes, on the simple provision, by the requesting authority of the reasons why access to information for a period exceeding 3 years was necessary. The foreseeable relevance of the request was considered to be a sufficient reason to meet the condition on "tax evasion". In addition, the Cassation Court had judged that the prior notification in article 333, al. 2 of the ITC (for extending the investigation period) was only applicable for requests for information/tax audits towards the taxpayer him/herself. Based on that Court decision, the Belgian tax administration concluded that audits towards third parties did not necessitate this prior notification (for instance when third parties such as suppliers, clients, public institutions, foreign tax administrations are inquired to provide information about the taxpayer under investigation). As a result, the 2013 Report concluded that Belgium was in a position to fully access information, in compliance with the standard.

192. Between 2013 and 2016, the Belgian tax authorities applied this interpretation. The conditions imposed by the law did however prevent information being gathered in some cases, in particular where the requesting authority failed to show indications of fraud in its request or to answer requests for clarification sent by the Belgian authority. A peer noted that the definition of fraud indications was unclear and did not know, for example, whether a pending investigation was sufficient. Peers indicated that this rule affected at least fifteen requests (from six partners).

193. Where the partner failed to provide indications or respond to a request for indications, Belgium only provided information contained in tax records and did not exercise its right to access information held by taxpayers or third parties. The same applies to requests concerning financial years going back a considerable time. The authorities consider that should they have tried to gather information from taxpayers or third parties, the latter would have refused to provide it (and disciplinary measures could have been taken against some third parties). A representative of the Bar confirmed that they would not provide information to the tax authorities without confirmation of suspected serious tax fraud.

194. A distinction is made between the tax year concerned and the year when the document requested was created. If the information requested is relevant to a taxation period less than three years old, information is gathered even if it is older: an invoice drawn up in 2000 which had an impact on the taxation in 2015, very old accounting documents in the event that losses are passed on to recent financial years, a management agreement dated 2010 justifying services provided in the year 2014, etc.

2016: Reversal in case law

195. A decision of the Cassation Court of 20 May 2016 changed the established case law and challenged the practice implemented by the Belgian authorities: where access powers envisaged in an extended period concern the situation of a particular taxpayer, the authorities must provide prior notification to that person, in writing and in a clear manner, setting out the indications of tax fraud relating to him/her, irrespective of the person targeted by the access powers (the taxpayer, a third party or another public administration).

196. The conclusions of this judgement apply not only to EOI requests received after its publication, but to all pending requests; for this reason, some partners have not received the information requested, where they did not want the taxpayer to be notified or where they failed to respond to Belgium's request for confirmation. In one case, the holder of the information requested refused to provide the information (which related to the structure of the company's capital and its organisation chart) based on the decision of 20 May 2016, since the foreign taxpayer had not been notified of fraud indications concerning him/her. The Belgian authority therefore only provided the information at its disposal and information which did not go back more than three taxable years.

197. The competent authority has not always explained the situation to it partners or always well explained the 3 year rule (date of documents vs taxable year). An explanation and references to case law have been added to the EOI Manual since the onsite visit.

2017: Systematic extension to seven-years

198. Recognising the negative impact of this judgement on exchange of information, Belgium amended the Income Tax Code to ensure that legislation and practice conform to international standards. The following sentence has been added to section 333(3):

> When inspections are carried out at the request of a State with which Belgium has concluded [an EOI instrument], the investigation period shall be extended, without prior notification, by four years, for the sole purpose of responding to the above-mentioned request.

199. This new provision applicable since 17 July 2017 solves the problems encountered during the 2013-16 period when the requesting authority failed to show fraud indications, as well as the problems encountered at the end of the review period regarding the prior notification of taxpayers. The Belgian authorities clarify that the notion of "States" in ITC is broad enough to cover jurisdictions that are not States, as confirmed by practice. The requests that could not be processed can be resubmitted to the Belgian competent authority. Belgium is recommended to monitor implementation of the new provisions on access to information concerning tax years more than three years prior to the request.

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

200. Compulsory powers have not changed since the 2013 Report (paragraphs 250 to 256): the refusal to answer may result in administrative penalties between EUR 50 and 650, with the possibility of deferring the person to court if the fine is not sufficient. In case of emergency, in particular when the statute of limitation is closed to an end in the requesting State, the Belgian authorities can ask a court to order the person to provide the requested documents.

201. In practice, in contrast to the situation noted during the previous review, several persons failed to respond to requests made by the Belgian authorities between 2013 and 2016 or refused to provide the information requested in EOI cases. While the authorities persist with their requests and may organise on-site visits, they do not have the powers of search or seizure of documents. The tax authority then attempts to gather information from third parties.

202. Thus, a Belgian company from which accounting documents were requested failed to respond to the tax authority's written requests. The Belgian tax auditor located the former accountant of the company (which was still in operation) who provided some information. The requesting authority accepted the information and closed the request due to time constraints in its internal procedure and Belgium imposed an ex officio taxation procedure on the company. In other cases, an enterprise may be uncooperative without formally obstructing the on-site visit, by failing to provide the information requested rapidly or answer questions, or, even, by pretending having lost or accidentally destroyed the documents.

203. Finally, a few taxpayers refused to provide information. In one specific case, a visit without prior notice was organised to verify the real nature of the company's economic activity but the taxpayer refused to co-operate until a second visit was organised with prior notice during which some accounting documents were provided, but the underlying documents were not

provided and the company refused to answer questions asked by the inspector. The Belgian legal department considered that a legal action was unlikely to succeed, since conservatory measures are only granted in urgent cases and not following a refusal by the taxpayer.

204. The Belgian authorities acknowledge that they do not have effective enforcement provisions to compel the production of information; sanctions are not sufficiently proportionate and dissuasive (moreover, in practice the administrative fine is not enforced) and administrative taxation, which only applies in some cases, does not enable missing information to be obtained. The lack of co-operation demonstrated by some taxpayers also explains why the Belgian authority does not always ask for information where there is no legal requirement for the holders to provide it following the expiry of the retention period.

205. In conclusion, although cases of non-co-operation represent a small minority, they demonstrate that the procedure can be blocked and prevent the gathering of the information requested, due to the absence of enforcement provisions and dissuasive sanctions. It is therefore recommended that Belgium revise the enforcement powers of the competent authority.

B.1.5. Secrecy provisions

206. As indicated in the 2013 Report (para. 225-226), banking activity is not strictly subject to professional secrecy but to a "duty of discretion" of a civil nature. The representatives of the profession interviewed confirmed that this duty does not hamper requests for information but underlined the need to strictly respect rules of access (as mentioned in Section B.1.1 above).

207. Professional secrecy under section 458 of the Criminal Code applies to accountants, certified public accountants, tax advisers, notaries and lawyers. In practice, requests are often handled by certified public accountants but they are not consulted as third parties – they intervene as their clients' representatives. The tax authorities have not encountered any difficulty in this area.

208. Representatives of the legal profession note that traditionally law firms can provide assistance in preparation for setting up companies, but are not strictly involved in their creation; neither are they involved in immovable property cases or trusts with the possible exception of some Anglo-American law firms. The limits of attorney-client privilege appear very clear: lawyers provide all information relevant to their own tax audit and in other cases they are able to provide their client's articles of association or even their annual accounts, where such items are in their possession. Tax advice or legal opinions would not be provided. Any request to waive privilege is subject to the agreement of the Bar of which the lawyer concerned is a member (the same procedure applies to notaries).

209. At the national level, tax auditors rarely request information from lawyers and notaries. On the one hand, the information sought can be more easily accessed from other sources (public sources in the case of notaries) and, on the other hand, the procedure for waiving privilege is demanding. Information were requested where they act as curators, which confirms that privilege is not absolute but depends on the functions performed.

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.

210. The 2013 Report did not identify any shortcomings in Belgium related to notification, rights or safeguards. The report noted that the Income Tax Code did not contain any provisions requiring the tax authorities to notify a taxpayer who is the subject of a request for information. The 2016 Terms of Reference specify that notification procedures must allow for exceptions not only to prior notification but also to time-specific post-exchange notification.

211. Belgium has amended its legislation: in 2013 and 2017 in relation to notification linked to requests for banking information and in 2017 to take into account the case law clarifying the rights to notification in cases of requests for information made more than three years after the relevant taxation period.

212. The updated table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	During the review period, exceptions to the requirement of prior notification or post-exchange notification were not applicable to all the cases in which the notification was likely to undermine the chances of success of the foreign investigation. A legislative reform of July 2017 amended the relevant provisions. It remains that the waiver of notification of access to banking information is subject to "serious indications of tax fraud" which does not allow for exception in line with the standard.	The Belgian authorities should ensure that the implementation of the concept of "serious indications of tax fraud" is compatible with an effective exchange of banking information.

Legal and Regulatory Framework		
	Underlying factor	**Recommendation**
Determination: In Place, but certain aspects of the legal implementation of the element need improvement		
Practical implementation of the standard		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Largely Compliant		

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

Prior notification for extension of the investigation time-limit

213. As indicated in Section B.1.3 concerning the three-year audit period and its possible extension to seven years, a reversal in case law affected a small number of requests for information, requiring the competent authority to notify the taxpayer concerned by the request before requesting information from third parties. Neither prior notification nor a challenge made by the person concerned prevents or delays the exchange of information. The problem was very quickly resolved by amendments to the relevant legislation and notification is no longer necessary, including in respect of pending requests. Where local offices gather information from taxpayers or third parties, they do not inform the person concerned of the foreign origin of the request.

Simultaneous or post-exchange notification allowing access to banking information

214. The requirement to notify the account-holder of a request of banking information has evolved since the 2013 Report and during the period under review. In respect of access to banking information, the Constitutional Court annulled the rule releasing the authorities, in EOI cases, from the obligation to inform the taxpayer of an investigation at his/her bank (Decision No. 66/2013 of 16 May 2013 (1 bis)). Legislators brought section 333/1 ITC in line with the court's decision with the adoption of the Law of 21 December 2013 and amended it again in 2017 to introduce an exception to notification. Today, the rule is the sending of a notification after the information was exchanged, to which some exceptions might apply.

	Until May 2013 (2013 Report)	May-Dec. 2013	Dec. 2013-July 2017	Since July 2017 (including for then ongoing EOI requests)
No notification	**always**	never	**If** the requesting authority indicates that a notification was made	**If** the requesting authority indicates that: • a notification was made, or • serious indication of tax fraud
Prior notification	never	**always**	**Starting point**	never
Ex post notification	never	never	**If** "Treasury rights at risk" (within 90 days of requesting information to the financial institution but at least 60 days after exchanging the information)	**Starting point** (at least 90 days after exchanging the information)

215. Section 333/1 ITC provides that the authorities must inform the taxpayer of "tax fraud indication(s) or elements on the basis of which it considers that the audit conducted could potentially lead to the application of section 341 (taxation by signs and indications) and which justify a request for information from a financial institution". The sentence annulled by the Court provided that the notification "does not apply to EOI requests from foreign States".

216. To address the concern of the Court, the law of 21 December 2013 adds that the notification does not apply where "the foreign State demonstrated that it has already sent a notification" (indent 4). Another amendment facilitated exchange of information: the notification can be carried out *a posteriori*, when the foreign State expressly requests that the taxpayer should not be informed of the request on the basis that "the rights of the Treasury are at risk". Notification should then take place within 90 days of sending the request for information to the financial institution but at least 60 days after sending the information to the foreign State. The issue of the interpretation of the concept of the "rights of the Treasury at risk" was not clarified and presented possibilities of legal action.

217. Section 333/1 ITC was further amended in July 2017. First, the post notification becomes automatic and is postponed from 60 to 90 days after the information has been sent to the requesting authority. The exception for notification already made by the requesting authority becomes an exception to the ex post notification.

218. A new exception to post notification was also introduced in July 2017, when "the application reveals serious indications of tax fraud and the

foreign State expressly requires that the person against whom the investigation is being conducted not be aware of this request". This amendment removes the fuzzy notion of "Treasury rights at risk" and replaces it with "serious indication of tax fraud" which is close to the notion of "indication of tax fraud" previously used to extend the investigation time to seven years (see B.1.3 above). The Terms of reference require that the law should provide for an exception from notification in cases where notification is likely to undermine the chance of success of the investigation or when the requesting authority so requests on reasonable grounds (footnote 24). The Belgian authorities indicate that in interpreting the notion "indication of tax fraud", it is appropriate to refer to the parliamentary proceedings of 2011 which provide a non-exhaustive list of indications of tax fraud, including the holding of an undeclared foreign bank account, information received by the tax administration and from which it appears that income was not reported, significant inaccuracies in the various parts of an invoice, false invoices, finding that a bank account mentioned on commercial documents is not found in the accounts, etc. If the requesting jurisdiction does not have to prove more than the fact that the notification could jeopardise the chances of success of the audit conducted by the applicant authority (which implies in principle that there are indications of tax fraud and thus reasonable grounds), then the legislation will conform to the international standard. In practice, therefore, this new provision should enable Belgium to better satisfy the investigations requested by the requesting jurisdictions. The Belgian authorities indicate that a draft circular on the new provisions of 30 June 2017 is being drafted; as soon as it is published, a communication to this effect will go to the partner jurisdictions.

219. During the review period, i.e. before the 2017 amendment, if the partner did not explicitly request not to notify the taxpayer, the standard procedure was applied and the competent authority informed the taxpayer of the request made to the bank. In order to send the notification to the account holder, the competent Belgian authority has sometimes contacted the requesting authority or the bank to obtain its address. Sending the notification is sufficient and proving its receipt is not required (in particular where the taxpayer refuses to sign the registered letter). Belgian law does not prohibit banks from informing their customers of requests for information (in order to avoid undermining the audit), but the representatives of Belgian authorities and financial institutions indicated that it was not done in practice and that the banks are aware of the issues and are co-operative.

220. The authority contacted the requesting authority to explain the Belgian notification procedure, only in the event that the latter asked for the taxpayer not to be notified (which was relatively rare). Most of the time, the partner accepted the notification of the taxpayer. In other cases, the authority renounced receipt of the banking information requested. In one case, the

requesting authority resent its request once notification no longer jeopardised its investigation.

221. In conclusion, the deficiencies of the Belgian system of notifications in case of requests for banking information appears to have been solved with an amendment in 2017 but the Belgian authorities must ensure that the application of the concept of "serious indications of tax fraud" is compatible with an effective exchange of information.

Other rights and safeguards

222. Where the competent authority exercises its rights to access information, the person concerned can bring a challenge under the appeal procedure applicable to all administrative acts; however this procedure does not have suspensive effect on exchange (unless the judge considers that the tax authority is undertaking fishing expeditions). The Belgian authorities have no knowledge of cases of EOI requests for information leading to such legal actions (the Court judgement of 20 May 2016 related to notification and not to exchange itself). However, practice is evolving: while legal actions are generally brought after the issue of a tax notice, a few recent pre-litigation actions have been aimed at preventing the use of information gathered by the tax authorities.

Part C: Exchanging information

223. Sections C.1 to C.5 evaluate the effectiveness of Belgium's EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether they respect the rights and safeguards of taxpayers and third parties and whether Belgium could 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.

224. The 2013 Report concluded that Belgium's treaty network was compliant with the standard. In 2013, this network covered 113 jurisdictions: 99 tax treaties, 14 tax information exchange agreements, the EU Directive on Administrative Co-operation in the Field of Taxation (2011/16/EU) and the multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Protocol to the multilateral Convention had been signed but not ratified). Belgium has also concluded cross-border co-operation agreements with France and the Netherlands on exchange of information in relation to direct taxes.

225. Since 2013, Belgium has ratified the Protocol to the multilateral Convention (which entered into force on 1 April 2015). In addition, Belgium has undertaken to modernise EOI provisions in its tax treaties. Its treaty network grew from 113 to 146 partners, mostly due to the multilateral Convention, but it also includes 101 tax treaties (and 31 protocols), 20 tax information exchange agreements and the EU Directive. In total, 115 partners are covered by the multilateral Convention (alone or in combination with a bilateral instrument) and 31 partners are covered only by a bilateral instrument.

226. The 2013 Report did not identify any major shortcomings in the text of existing Belgian EOI instruments nor in their practical interpretation, however a recommendation was made to Belgium to ensure the swift ratification

of all instruments signed. Since then, Belgium has ratified 18 of the 21 instruments concerned; the negotiation of two instruments was re-opened; and although one tax treaty remains unratified, exchange can take place under the multilateral Convention. While the duration of the ratification process has not improved in Belgium, ratification of the multilateral Convention has largely resolved this problem since today only three bilateral exchange relationships are not in force, either because the text was signed less than 18 months ago, or the procedure is blocked on the future partner's side. The recommendation is therefore no longer relevant.

227. Only two treaties fail to conform to international standards: the treaty with Kuwait (to which a protocol is being negotiated) and the treaty with the former USSR which does not contain any EOI provision and remains applicable to relationships with four countries (Kyrgyzstan, Moldova, Tajikistan and Turkmenistan) in respect of which an EOI relation cannot be considered to exist on this basis (this old treaty is therefore not included in discussions below). Moldova and Belgium are now bound by the multilateral Convention and Kuwait has signed the multilateral Convention. None of the other three countries are considered relevant partners of Belgium.

228. The standard now includes a reference to group requests in accordance with paragraph 5.2 of the Commentary to the Model Tax Convention. In addition, the foreseeable relevance of a group request must be adequately demonstrated and the information requested must enable compliance by taxpayers of the group to be determined. Belgium was in a position to submit group requests during the review period. Belgium had to process a small number of such requests.

229. The table of determinations and ratings remains as follows:

Legal and Regulatory Framework		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	Belgium needs more than two years to ratify treaties.	Belgium should ensure the swift ratification of all the treaties signed, in particular when the multilateral Convention is not applicable.
Determination: In Place		
Practical implementation of the standard		
Rating: Compliant		

Other forms of exchange

230. In addition to exchanges on request, Belgium continues to exchange information spontaneously (several hundred a year) and participate in cross-border co-operation agreements on VAT matters with France, Germany and the Netherlands, as well as multilateral audits and to accept the presence of foreign tax officials on the Belgian territory for audit purposes (and vice versa). Belgium also receives and executes requests for notification of documents (fewer than 10 per year).

231. In addition, Belgium exchanges information on an automatic basis under the EU Savings Directive 2003/48/EU of 3 June 2003 and agreements on taxation of savings income (in the form of interest payments) and EU Directive 2011/16/EU (DAC1) where the following information is available within the tax administration: ownership of and income from immovable property, income from employment, director's fees, pensions and income from life insurance products (since 2014). EU Directive 2011/16/EU as amended several times. The agreements in savings taxation with Andorra, Monaco, Liechtenstein, San Marino and Switzerland are also amended.

232. Outside the EU, Belgium is also involved in the automatic exchange of information on income, firstly on the basis of tax treaties and the multilateral Convention using stf (Standard transmission formats) and smf (Standard magnetic format) and from income year 2014 with the United-States pursuant to the Intergovernmental Agreement between Belgium and the United States to improve compliance with international tax obligations and implement the Foreign Account Tax Compliance Act.

233. Finally, Belgium undertook to apply the Common Reporting Standard in matters of automatic exchange of information and exchanged first financial information in September 2017 on the basis of the multilateral Convention and Directive 2014/107/EU and amended agreements on taxation of savings. Belgium has already activated 79 exchange relationships. The first exchange of information on tax rulings and advance agreements on transfer pricing in the context of the BEPS project took place in September 2017. Belgium is also committed to exchanging information on Country-by-Country Reports in 2018.

C.1.1. Foreseeably relevant standard

234. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration or enforcement of the domestic tax laws of the requesting jurisdiction. The 2013 Report concludes that Belgium's DTAs are based on the OECD Model Tax Convention and are implemented in accordance with the Commentary

on foreseeable relevance. Similarly, Belgium's TIEAs are based on the 2002 Model Agreement on Exchange of Information on Tax Matters.

235. Among those instruments signed since 2013 with partners not also covered by the multilateral Convention, only one contains slightly different wording, which nonetheless complies with paragraph 5.3 of the Commentary to Article 26 of the Model Convention (the Protocol to the DTA with Qatar, which refers to information "which may be relevant").

236. Belgium continues to interpret and apply its DTAs in accordance with these principles.

237. In practice, upon receiving a request, the officer in charge of the case checks the following: (i) the legal basis of the request and its scope of application (taxes covered, period concerned); (ii) whether the request comes from the competent authority of the requesting authority; (iii) the existence of reciprocity; (iv) whether the requesting party has exhausted all domestic procedures on its own territory to obtain the information; (v) the foreseeable relevance of the request received; and (vi) whether the request is sufficiently detailed to understand and process it. Where an objective requirement is not met, the request is rejected (for example, lack of legal basis). Belgium asks the requesting jurisdiction to provide sufficient information to show the foreseeable relevance of its request.

238. The EOI Manual indicates that everything should be done to avoid rejecting a request. In the event that one of these elements is missing or unsatisfactory, the Belgian competent authority contacts the requesting authority to obtain the necessary clarification. The Manual on EOI provides that the officer responsible for a request must send the request for clarification within one month. Peer inputs indicate that requests for clarification are rare (less than a ten) and justified.

239. It is very rare for requests to be rejected: three requests were refused on the grounds that the requesting partner had not exhausted all domestic procedures on its own territory and 88 requests from the same partner were refused since they concerned a tax falling outside the scope of the treaty (VAT). None of these refusals were challenged by partners. The only refusals to have been challenged by partners are those related to the 3-year time limit described under Section B.1 of this report, which were not related to interpretation of treaties but to the provisions of Belgian law on access.

240. No requests have been rejected on the grounds of a lack of foreseeable relevance. The competent authority always checks whether the partner state has communicated the reason why the information requested is relevant to the investigation carried out in its jurisdiction. No partners have raised issues in this regard and Belgian practice appears to be compliant with the standard.

241. Belgium does not maintain statistics on requests for clarification received or issued but the Belgian authorities consider this to be rare. Requests for clarification were sent in the following cases:

- Error in the bank account number or on the identification data concerning the taxpayer (for example a date of birth which does not match);
- Clarifications needed in relation to the circumstances of the investigation;
- Missing or incorrect annexes/attachments;
- Vague terminology requiring further details or translation problems.

242. Only a few partners indicated having received requests for clarification from Belgium, confirming that such requests are rare and concern the issues listed above. No partners have challenged the relevance of these requests for clarification, which appear justified and compliant with the standard. They have not caused any delay.

Requests concerning a group of persons

243. None of Belgium's international EOI instruments exclude group requests nor do they specify particular conditions to be applied to such requests.

244. In Belgium, the procedures applicable to processing group requests are very similar to those that apply to individual requests and are set out in the Manual (see element C.5 for more details). The main difference concerns the information which must be included in the request in accordance with paragraph 5.2 of the Commentary to Article 26 of the OECD Model Convention; the requesting jurisdiction must provide the following information: (i) a detailed description of the group; (ii) the specific facts and circumstances that have led to the request; (iii) an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law, supported by a clear factual basis (in particular when a third party is involved); and show that (iv) the requested information would assist in determining compliance by the taxpayers in the group. A group request that merely describes the provision of financial services to non-residents and does not establish a potential breach committed by foreign clients, does not meet the standard of "foreseeable relevance" and will be considered to be a "fishing expedition" in accordance with the Commentary to Article 26 to the OECD Model Tax Convention.

245. During the review period, Belgium received approximately ten group requests. The Belgian authorities do not have statistics identifying this type of requests in respect of the review period (an identifier was introduced in 2017) but they indicate that they were not subject of any request for clarification.

Belgium provided a response to all of them. The Belgian authorities described an example of a group request received: the foreign competent authority requested the identification of beneficiaries of specific financial products. The case and the product were described in detail and the Belgian authorities were able to identify approximately 250 persons concerned.

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

246. The 2013 Report noted that all exchange of information relationships allowed for the exchange of information in respect of any person without restriction. The same applies to the new instruments which have been signed since then.

247. This issue did not present any problems in practice or elicit any comments from partners. For example, the Belgian authorities exchanged banking information regarding persons who were not residents in Belgium for tax purposes.

C.1.3. Obligation to exchange all types of information

248. The 2013 Report noted that Belgium guarantees access to banking information to all its treaty partners able to ensure reciprocity, without the need for the instrument to contain a provision similar to Article 26(5) of the Model Tax Convention. Such exchanges were not possible with Switzerland due to a lack of reciprocity, however this has since been rectified (see Phase 2 report on Switzerland). All other partners to treaties which do not contain paragraph 5 have been contacted to confirm the reciprocity of exchange and have since received banking information requested from Belgium. As for the others, many are now covered by the multilateral Convention, which explicitly allows for exchange of banking information. The remaining partners (most of which are not members of the Global Forum) have not requested banking information from Belgium, however should any such requests be received, each would be assessed on a case by case basis. No requests were refused (Belgium processed about twenty requests for banking information between 2009 and 2011 and received 276 requests during the review period).

249. The new international instruments signed since 2013 do not restrict exchange of information; information held by trustees or nominees and banking information is expressly covered. This issue did not present any problems in practice or elicit any comments from partners.

C.1.4. Absence of domestic tax interest

250. The 2013 Report noted that Belgium could exchange information without the need for it to have a domestic tax interest in obtaining the requested information, regardless of whether the applicable international

instrument included a provision equivalent to Article 26(4) of the Model Convention. The new EOI instruments do not limit exchange to cases in which there is a domestic tax interest. This issue did not present any problems in practice or elicit any comments from partners. Thus, a partner requested verification of the authenticity of invoices and payment of corresponding purchases to be obtained from a Belgian taxpayer that was not a trader, which was of no interest to Belgium.

C.1.5. Absence of dual criminality principles

251. The 2013 Report noted that none of the EOI instruments concluded by Belgium provide for the application of the dual criminality principle. The same applies to the new instruments which have been signed since then. In practice, the competent authority checks that the request comes from the foreign competent authority rather than from judicial authorities, however the definition of the offence is not compared to that under Belgian law. This issue did not present any problems in practice or elicit any comments from partners.

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

252. The 2013 Report noted that the EOI instruments concluded by Belgium provide for the exchange of information for both criminal and civil purposes. The same applies to the new instruments which have been signed since then. This issue did not present any problems in practice or elicit any comments from partners with regard to the criminal, civil or administrative nature of ongoing proceedings in the requesting jurisdiction.

C.1.7. Provide information in specific form requested

253. The 2013 Report noted that Belgian instruments do not contain any restriction as to the form of information exchanged, provided it is consistent with Belgian administrative practices. The same applies to the instruments which have been signed since then. This issue did not present any problems in practice or elicit any comments from partners. While it is rare for a requesting authority to ask for documents in a specific form, there have been instances in which the competent authority has sent authenticated copies.

C.1.8. Signed agreements should be in force

254. The 2013 Report raised a problem relating to the ratification procedure and its duration. This remains a problem, although it has considerably less impact today. Since 2009 and the Opinion issued by the Belgian Council

of State concluding that tax treaties are generally to be considered as "mixed treaties", i.e. treaties that come within the jurisdiction of both the federal state and the federated entities (regions and communities), none of the agreements concluded by Belgium have entered into force within two years of signature, despite the work pursued by the working groups set up during Phase 2.

255. Since then, Belgium has ratified 18 of the 21 offending instruments; the negotiations have been reopened on two instruments; and although one tax treaty remains unratified, exchange can take place under the multilateral Convention. At the time of writing, a number of EOI relationships are not in force, either because a partner has not ratified the multilateral Convention or bilateral instrument, or because the signed draft treaty did not contain paragraphs 4 and 5 of the Model Convention and Belgium asked the partner to negotiate a protocol to include them, or because the ratification procedure is ongoing.

256. The table below provides an overview of the level of compliance of bilateral instruments concluded by Belgium with the standard. Since Belgium is also party to the multilateral Convention, the table shows the overall results, as well as the results concerning exclusively bilateral relationships – 31 at the time of writing, since in the context of other relationships the multilateral Convention compensates for any shortcomings (compliance or entry into force) or will do so once it has been ratified by the partner. Of these 31 relationships, 19 are with states which are not members of the Global Forum.

Bilateral EOI Mechanisms

		Total	Bilateral EOI Mechanisms not complemented by the MAC
A	Total Number of DTCs/TIEAS (A= B+C)	121	31
B	Number of DTCs/TIEAs signed (but pending ratification), i.e. not in force (B = D+E)	14	3
C	Number of DTCs/TIEAs signed and in force (C = F+G)	107	28
D	Number of DTCs/TIEAs signed (but pending ratification) and to the Standard	14	3
E	Number of DTCs/TIEAs signed (but pending ratification) and not to the Standard	0	0
F	Number of DTCs/TIEAs in force and to the Standard	104	25
G	Number of DTCs/TIEAs in force and not to the Standard	4	3*

* As noted in the overview of the current section, the three bilateral relationships that are not to the standard are those with Kirghizstan, Tajikistan and Turkmenistan, which are not relevant partners.

257. In addition to bilateral instruments, Belgium is party to the multilateral Convention, signed its protocol in April 2011 and deposited instruments in December 2014. The Convention covers 115 of Belgian's partners, representing 78% of the network, either on its own (in respect of 25 partners), or in conjunction with a bilateral instrument and/or the European Directive.

258. While there does not seem to have been progress regarding the duration of the ratification process in Belgium, ratification of the multilateral Convention has largely resolved this problem since today only 3 bilateral exchange relationships are not in force (representing 2% of the network), either because the text was signed less than 18 months ago, or because the procedure is blocked on the partner's side. This recommendation therefore no longer applies. Belgium is nevertheless recommended to ensure the swift ratification of all instruments that have been signed, in particular where the multilateral Convention is not applicable.

C.1.9. Be given effect through domestic law

259. In order for information exchange to be effective, the contracting parties must take the necessary measures to ensure compliance with their commitments. Once a treaty or an agreement has entered into force, Belgium does not need to take any additional measures for it to take effect. Belgian legislation allows for the exchange of banking information, subject to reciprocity.

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

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

260. The 2013 Report concluded that Belgium had a network of EOI instruments covering all relevant partners and no gaps were identified. However, Belgium was asked to continue to develop its EOI network to the standard with all relevant partners. Element C.2 was therefore considered to be in compliance with the standard. Element C.2 has not been amended by the 2016 Terms of Reference.

261. The network of EOI instruments covers a large number of jurisdictions from all continents. Today, Belgium's treaty network covers 146 jurisdictions of which 127 are members of the Global Forum. Growth in the exchange networks of members of the Forum is mainly based on the multilateral Convention, which is now in force in Belgium.

262. During preparations for the current review none of the Global Forum members indicated that Belgium had refused to negotiate or sign an EOI agreement. On this basis and given its vast EOI network, the recommendation

made in 2013 to Belgium to continue to develop its network can be removed from the box below. Belgium should nonetheless continue to conclude EOI agreements with any new relevant partner who would so require.

263. The updated table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of EOIR legal and regulatory framework		
Determination: 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.

264. The 2013 Report did not identify any shortcomings in the text of Belgian's international EOI instruments or with regard to their interpretation in practice by the Belgian authorities. Legal and regulatory provisions support these texts.

265. The 2016 Terms of Reference clarify 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. Given the legal framework in place and its implementation in compliance with the standard, the rating remains unchanged.

266. The updated table of determinations and ratings is as follows:

Legal and Regulatory Framework		
Deficiencies identified in the legal and regulatory framework		
Determination: In Place		

Practical implementation of the standard		
Deficiencies identified in the implementation of EOIR in practice	Law of 11 April 1994 on disclosure of information by the administration includes an exception when documents are covered by secrecy. A new ICT provision introduces an explicit exception for exchange of information when disclosure of information would prejudice an ongoing investigation, based on explicit refusal of the foreign authority. The exception has not yet been tested in practice or another exception in the Law of 1994 on the protection of international relations.	Belgium is recommended to monitor the application of the Law of 1994 to guarantee that treaty provisions on confidentiality are respected.
Rating: Largely Compliant		

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

Tax secrecy obligation

267. As indicated in the 2013 Report, all the EOI instruments concluded by Belgium contain provisions relating to confidentiality based on the provisions of the OECD Model Convention or TIEA.

268. Furthermore, section 337 of the ITC provides that all persons involved in the enforcement of tax laws or who have access to the offices of the tax authorities must maintain absolute secrecy in respect of any information to which they may have had access in the course of carrying out their duties. Failure to comply with the rules of professional secrecy is punishable by a term of imprisonment of between eight days and six months and a fine of between EUR 100 and 500 (s. 458 of the Criminal Code) as well as disciplinary sanctions (from a warning to dismissal).

269. There are exceptions to rules on professional secrecy. Firstly, the Belgian authorities indicate that regarding exchange of information, treaty provisions are directly applicable and authorise the Belgian authorities to share tax information with foreign competent authorities. In addition there

are specific provisions in section 338 of the ITC concerning exchange of information within the EU, but does not affect obligations in Member States concerning wider administrative co-operation which may result from other legal instruments, including bilateral and multilateral agreements. The Belgian authorities indicate that this issue is generally dealt with in the act of ratification.

270. There are also exceptions to the professional secrecy obligation for other public administrative services, including the prosecuting authorities and court registries, the communities, the regions and public institutions, regarding information needed to discharge their responsibilities (s. 337(2)). However the primacy of international law has been confirmed by the case law of the Belgian Cassation Court (Judgement of 27 May 1971). Thus provisions in Belgian treaties on confidentiality take precedence over section 337 and the competent authority cannot transmit the information received from a foreign authority to public services other than tax services without its written consent. This is clearly explained in the EOI Manual. In practice, while Belgium did not request such consent during the review period, it did receive several such requests and always granted authorisation to share information that it had sent.

Exceptions to access to personal data amended in 2017

271. The Belgian authorities do not disclose the letter received to the concerned person. The request for information sent to persons simply mentions the information requested and the notification for banking information indicate the name of the requesting jurisdiction and the number of the bank account involved. Although the Law on access to personal data of 8 December 1992 (applicable to the whole of Belgium) and the Law on processing personal data of 2 August 2012 (which governs processing by the FPS) are applicable, they contain exceptions on ongoing tax investigations.

272. In addition, Law of 11 April 1994 on disclosure of information by the administration provides that all persons have the right to access any administrative document (defined as "any information under any form held by the administration"). The taxpayer can therefore in principle access information (which concerns him/her) contained in these documents, including exchanges of tax information. There are exceptions, in particular where access violates a secrecy obligation established by law. The Belgian authorities explain that in practice, before any access is granted to a taxpayer, the foreign authorities are informed of the request for access. If the partner state considers that documents cannot be transmitted to the taxpayer (for example, on grounds connected to the investigation), it must give reasons. On the basis of this information, the Belgian administration has refused access to the taxpayer under section 337 ITC on tax secrecy. However a Council of State judgement of 2015 weakened this interpretation. In that case a taxpayer had applied for

access to requests for information received by Belgium and the Commission on access to and re-use of administrative documents had issued a negative opinion concerning the grounds given for refusing access, indicating that section 337 ITC was not a valid basis for refusal. The Commission nonetheless notes in its decision that it does not decide on the applicability of the other grounds for derogation mentioned in Article 6 of the Law of 1994 Since the authority which received the application eventually accepted that the Belgian administration provide full access to the letters of request for information concerned, the Council of State did not rule on the application.

273. In order to provide its practice with a legal basis and to address the Court decision, an explicit exemption to the Law of 11 April 1994 was inserted into the ITC (s. 337/1) regarding requests for information transmitted by foreign authorities and the responses provided to those authorities, as well as any related correspondence. These documents are not subject to disclosure while the investigation by the foreign authority has not been closed and disclosure would prejudice that investigation, unless the foreign authority expressly authorises disclosure or fails to react within 90 days of submission of the request for disclosure by the Belgian state. With this addition, the competent authority hopes to block future applications against tax secrecy. The limits are clearly set in the EOI Manual. While the provision does not clearly specify to whom the information may be disclosed since paragraph 1 remains silent on this point, paragraph 2 mentions "the taxpayer concerned" and the explanatory memorandum to the law lays states that "It is self-evident that only the taxpayer can have access to his file and no third party, who has delivered the information that was requested". Further, while the standard makes it clear that correspondence between competent authorities is confidential, it is understood that the requested party may disclose the minimum information contained in a request letter that is necessary to enable the requesting party obtaining the requested information or provide it to the requesting party. It seems that all the correspondence could be disclosed even though the information would have been collected from third parties. In addition, it is unclear on what basis the Belgian authorities could decide the prejudice of disclosure on an ongoing investigation abroad. The competent authority could therefore exercise discretion over an investigation that does not fall within its competence. The Belgian authorities nevertheless indicate that they would rely on the statement of the foreign authority in application of the principle of territorial competence, which prohibits courts from verifying the legality of the confidentiality that the foreign tax administration has attributed to a request for information. The main concern is that disclosure may take place even though the requesting authority has not formally agreed. The Belgian authorities indicate that they will send several reminders and will ensure receiving a reply within 90 days in all cases. The Belgian authorities insist that the new section 337/1 reinforces the exception protecting tax secrecy.

274. The Belgian authorities add that the Law of 1994 includes other exceptions (in addition to the one on secret) which can be used in case of absence of response from the competent foreign authority, in particular the protection of Belgium's international relations (article 6 §1, 3°), and thus the letter has never been disclosed and will continue to never be disclosed in case the foreign jurisdiction does not wish so. In particular, Belgium indicates that courts are generally reluctant to engage upon the sovereignty of foreign states. The Belgian authorities have not provided case law confirming the applicability of this exception to exchange of information for tax purposes. Belgium is recommended to monitor the application of the Law of 1994 to guarantee that treaty provisions on confidentiality are respected.

Preventive measures

275. In general, the human resources policy of FPS Finance incorporates the concepts of confidentiality of tax data and information security, in particular in respect of staff recruitment, training and departure. Thus, for example, all FPS Finance staff must sign and respect the Ethical Framework Guide which sets out the rules governing the code of conduct and professional secrecy. Access to premises and hard copy files is strictly regulated and computer access to data is only authorised through a centralised identification and authentication system (IAM), according to access rights granted on an individual basis (username and password) linked to the user's profile. Access is recorded in a log which is regularly audited in order to detect unwarranted access or attempted access (following authorisation by the Privacy Commission).

276. More specifically in relation to the exchange of information, hard copy files are kept in locked cabinets on premises which can only be accessed by archivists; a clean desk policy is applied. All documents are digitalised and recorded in a dedicated application (STIRInt) to which the delegated competent authority and local offices have access uniquely in respect of documents falling under their competence. When access to a document concerning information exchange is requested, a message appears indicating the treaty-based nature of the source and the restricted use imposed by the relevant treaty. When a request is received by a local tax office, it is placed in the file of the person concerned, in a separate and confidential section for information coming from other jurisdictions.

Detection and investigation

277. In accordance with section 7(3) of the Royal Decree of 2 October 1937 governing the status of state officials, each official must inform his/her immediate superior of illegalities and irregularities observed while performing his/her duties. This supplements the detection of unwarranted access by

the IT department and checks by superiors. Taxpayers can also make referrals to the FPS. The FPS receives approximately one report a month from taxpayers or FPS officers.

278. The Organisation Control Division, under the authority of the General Administration of Taxes, analyses the evidence. If the breach of confidentiality is proven, disciplinary measures are taken (see above, legal framework) by the Personnel Department and the case can be referred to the judicial authorities if a criminal offence is suspected. The Belgian authorities responsible for monitoring data confidentiality consider that there is a strong confidentiality culture within the FPS Finance, in particular as result of the forms of preventive action.

279. FPS Finance has detected improper communication by agents concerning tax return data. The contract agents concerned were dismissed, while statutory agents were subject to disciplinary sanctions, up to and including compulsory retirement. Fewer than five cases a year are referred to the prosecuting authorities for criminal investigation (mostly linked to family disputes involving an FPS agent). Existing procedures are followed in practice and risks appear to be properly identified and managed. At the time of writing, FPS Finance had not detected any breaches concerning data received from abroad and peers did not raise any concerns in this regard.

C.3.2. Confidentiality of other information

280. The provisions on confidentiality contained both in relevant agreements and Belgian domestic legislation do not distinguish in matters of confidentiality between information received in response to a request and information that forms part of the request itself. These provisions apply in the same manner to requests, accompanying documents and all communication between the jurisdictions involved in the exchange. All information received from a treaty partner is kept confidential.

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.

281. The 2013 Report did not identify any shortcomings in the text of Belgian's international EOI instruments or with regard to their interpretation in practice by the Belgian authorities. All the EOI mechanisms concluded by Belgium ensure that the parties concerned will not be required to provide information which would disclose any industrial, commercial or professional secret, or information that is the subject of attorney-client privilege or information the disclosure of which would be contrary to public order.

282. According to replies received from peers, there have not been any cases in which Belgium failed to respect taxpayers' rights or safeguards. Neither have the Belgian authorities identified any requests in respect of which sending certain information to the partner state could have had an impact on rights or safeguards applicable in Belgium.

283. The Terms of reference have not changed this element and the situation remains the same. The table of determination and rating remains as follows:

Legal and Regulatory Framework
Determination: 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.

284. 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

285. The 2013 Report concluded that Belgian practice in terms of effective processing of EOI requests complied with the standard. Nevertheless Belgium received a recommendation aimed at ensuring that EOI services set appropriate internal deadlines to be able to respond to EOI requests in a timely manner by providing the information requested within 90 days of receipt of the request or providing a status update. Since 2013, all deadlines set for the various persons involved in the process of handling requests have been reduced and the provision of status reports within 90 days has been made systematic. The 2013 recommendation can therefore be withdrawn.

286. Under the 2016 Terms of Reference, the review also concerns the quality of requests issued by Belgium. The high quality of outgoing requests and communication with foreign competent authorities is reflected in peers' comments.

287. Belgium is an important partner in respect of exchange of information. During the review period (1 October 2013 to 30 September 2016) Belgium received 1 850 EOI requests and sent 1 143 EOI requests. Taking into account that the same request may relate to several types of information, the requests received concerned (i) accounting information (865), (ii) banking information (276), (iii) ownership and identity information (at least 106), and (iv) other types of information (more than 1 300, in particular tax data on immovable property ownership and salaries). The Belgian authorities do not keep statistics on the type of persons concerned (capital companies, etc.). However, according to peers' contributions, it may be noted that most requests concerned natural persons and companies. In accordance with their economic links with Belgium, some partners request significantly more information about natural persons (in particular on their residents working in Belgium, letting of immovable property, verification of tax residence) and others about accounting elements relating to legal persons.

288. Belgium received requests from 28 partners and 98% of requests came from EU partners, mainly Poland, France, the Netherlands and Germany, the latter three bordering Belgium.

289. During the period under review, processing times and the quality of responses remained at a high level, as indicated by the contributions received from Belgium's exchange partner peers, despite a decline at the end of the review period.

290. The table of determinations and ratings remains as follows:

Legal and Regulatory Framework		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.	
Practical implementation of the standard		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

C.5.1. Timeliness of responses to requests for information

291. The percentages of requests to which Belgium responded within 90 days, 180 days, one year or more than one year, were:

Statistics on response time

	1/10/2013 to 30/09/2014		1/10/2014 to 30/09/2015		1/10/2015 to 30/09/2016		Total	
	Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	631		691		528		**1850**	
Full response (including declined requests): ≤90 days	381	61	370	54	226	43	977	53
≤180 days (cumulative)	541	86	584	85	357	67	1482	80
≤1 year (cumulative)	608	96	652	95	485	92	1745	94
>1 year	23	4	39	5	43	8	105	6
Status update provided within 90 days (for responses taking longer than 90 days)	180	72	251	78	96	32	527	60
Response declining to provide information for valid reasons	6	<1	88 (VAT)	12	0	-	94	5
Failure to obtain and provide information requested	n.a.		n.a.		n.a.		n.a.	
Requests withdrawn by requesting jurisdiction (not included in the total)	2	<1	3	<1	1	<1	6	<1
Requests still pending as at 17 December 2017	0	-	0	-	2	<1	2	<1

* In order to keep a record of requests, Belgium applies the rules developed by the EU in the document "Explanatory Notes and Guidelines for the completion of statistical data sheets by Member States" in relation to EU Member States and non-EU Member States: the highest number of persons concerned in one of the two States involved in the request is recorded. Thus where one person is concerned in the requesting State and several persons are involved in the requested State, the number of persons in the requested State is taken into account to determine the number of requests. Where several persons are concerned in the requesting State and one person in the requested State, the number of persons in the requesting State is taken into account to determine the number of requests.

Improved response times compared to previous review period for a constant quality

292. The times taken to process requests are lower than those recorded during Phase 2 in relation to the period 2009-11. Belgium has a good response rate within 90 days, partly because the databases and tax records were sufficient to provide responses in slightly under a third of cases (tax residence, salaries, etc.). The competent authority received greater access to certain tax administration databases in order to be able to respond directly to simple requests (without going through the local offices), in particular in relation to natural persons.

293. Requests for clarification are exceptional and principally due to material errors in the request (bank account number, identification of the person, missing documents), loose terminology, or are related to the circumstances of the investigation. Such requests have no impact on response statistics.

294. DLO representatives indicate that the practice of providing partial answers is common: where part of the information is directly available, it is sent directly to the partner and the rest of the information is requested from the operational department. This good practice is not reflected in the table of statistics, which only takes into consideration the last response sent.

295. In general, a lack of response within 90 days is not related to the type of request but to its complexity, in particular where it concerns several taxpayers or several departments. Some requests have required detailed investigations, in particular those handled by the AGISI, with the organisation of on-site visits, or those relating to transfer prices. Another complex request concerned more than 20 taxpayers and was accompanied by a request for multilateral audits. The input received from peers confirms that responses that take the longest time are connected to complex files and partners expressed general satisfaction with response times and quality. The Belgian authorities give importance to quality and accept small delays when the official in charge makes efforts to collect information of quality. Peers are also grateful for additional information sometimes provided by Belgium spontaneously.

296. Another reason for response times over 90 days concerns the relationship to the person to whom the request was addressed: he or she may have requested a longer period to respond, or may have provided incomplete responses leading to supplementary requests. As indicated in Section B.1.4, there are also (rare) cases in which persons are reluctant to provide answers.

297. The Belgian statistics do not allow identifying the number of failure to obtain or transmit information requested. As noted above, there have been cases in which information is no longer available where the transactions concerned have not been the subject of invoices (sales by natural persons) or in which it is not accessible as a result of the reversal in case law regarding the 3-year and 7-year time periods for retention (if such information is not in tax records). These cases are counted in Belgium as responded to (in 90 days, 180 days, etc. depending on the time between receiving the request and sending the response to the requesting authority that the 3 year statute has elapsed or that the information cannot be collected without a notification). The Belgian authorities indicate however that in most cases a partial answer is provided based on information in the tax file or databases accessible to the liaison office. The pending cases are linked to requests for confirmation of tax fraud in order to exceed the 3-year time limit.

Improved management of internal deadlines for processing requests

298. These positive results also result from changes to internal deadlines for processing requests. It was noted in the 2013 Report that these deadlines may be an obstacle to timely processing of requests. Belgium has implemented the recommendation to set internal deadlines in order to be able to respond to EOI requests in a timely manner even though the main benchmark remains the deadlines in the EU Directive of two months when the information is directly available and six months when access powers are needed.

299. During the period 2009-11, the central liaison office (DLO) had one month to analyse the request (legal basis, reciprocity) and where necessary transfer it to the local offices; local offices had an initial 3 months to process the file and could be granted extensions of one month followed by a further two weeks; finally the DLO had one month to verify the response before sending it to the requesting authority. The Belgian authorities have since revised these time limits. The deadlines for preliminary analysis and verification by the DLO have been reduced from one month to twelve days; and the three month deadline for local offices has been reduced to two months, where investigative work is necessary and to one month where information requested is contained in tax records. These deadlines have been programmed in the computerised EOI management application and are linked to a task in the computerised task manager application used by all officers at FPS Finance. The recommendation to revise internal deadlines has therefore been implemented.

300. Where part of the information is directly available, it is immediately sent to the partner while the operational department collects the rest of the information. The EOI Manual specifies that the information directly available must be sent within 2 months. The application issues reminders to the IEOI-DT agent. Awareness of time limits in local offices seems adequate but where a local office fails to respect a deadline, reminders are sent at regular intervals and if necessary the case may be referred to a higher level of authority. Processing is longer during the summer period when a significant number of officers are on holiday or when requests require translation. The IEOI-DT can handle requests directly in Dutch, French, English and German. In respect of other languages, the FPS Finance translation service is used or the requesting authority is asked to translate the request and/or its annexes.

301. The competent authorities, both the former DLO and the new IEOI-DT, indicate that it is very difficult to respect these new deadlines. Thus, the average time taken by the central administration (DLO then IEOI-DT) to process requests was 35 days in 2014, 29 days in 2015 but 77 days in 2016 (including necessary translation), which remains a long way off the target of 12 days. Each month, management discusses the list of cases attributed to each agent to assess progress and identify possibilities for accelerating the process. At the level of the AGISI, the issue of processing requests and time limits is

also regularly discussed at strategic meetings with heads of department. EOI requests have also been incorporated into the work plans of local offices, what facilitates processing by officers and ensures they are taken into account by their superiors.

302. The efforts made should be commended, since the rate of response within 90 days increased from 23% in 2009 to 61% in 2014, while there has been no real change in the type of request received. Likewise, the number of requests to which responses were provided more than a year after receipt fell to 5%, indicating that reforms undertaken both in organisational terms and in relation to internal processing deadlines produced results during the period from October 2013 to September 2016.

A decline in 2016

303. Response times increased during final third of the period under review, mainly due to major restructuring of the AGFisc during the period 2014-16, leading to the disappearance of operational departments and the incorporation of activities into new departments organised differently (see C.5.2). In 2016, local offices were also restructured and none of the agents are in the same department as they were in 2014. At the time transfers took place (March-June 2016), these changes had an effect on the timeframe for processing EOI requests.

304. The need for a period to train the competent authority's new agents and supervisors should also be taken into account (even though half of the DLO staff were transferred to the new department).

305. Furthermore as indicated under element B.1, the processing of banking requests was interrupted when the IEOI-DT now responsible for EOI was established by the new head of department for one year and the resume of process by his replacement. The processing of cases was inevitably delayed and at the time of the on-site visit in April 2017 approximately thirty requests were still being processed; one in December 2017.

306. The assessment team found understanding of EOI by the management of the new department to be poor, despite having received seemingly adequate training and support from the Expertise department (see also C.5.2). Internal divisions may also have influenced the team results, in particular with the departure of two experienced persons. The Belgian authorities have monitored the development of this new department after the onsite visit, in order to ensure that the processing of requests recovers the high level of quality achieved at the beginning of the review period and that the decline in response times does not persist longer than the adaptation period of the new department. The authorities have considered that the handling of EOI requests during the year after the review period has not improved as

quickly expected. AGFisc therefore reintegrated EOI-DT into the EOI-INT department (the former DLO). Belgium considers that with this decision the handling of EOI will go back to the best practices. The Belgian authorities are recommended to continue monitoring the development of this department, in order to ensure that the processing of requests recovers the high level of quality achieved at the beginning of the review period.

Progress at 90 days and communication with partners

307. Since January 2013, in addition to an acknowledgement of receipt of requests (to be sent within seven days), status reports on requests are sent to partners if a response cannot be provided within 90 days of receipt of the request, indicating the date when information will be sent. This policy is facilitated by the automatic reminders issued by the computerised application for management of EOI cases which are sent to the case manager. Most peers confirmed having received these status reports. Only two partners, of medium significance in terms of the volume of exchanges, indicated that they received such reports irregularly.

308. During the first two thirds of the review period, a status report was sent in approximately 75% of cases where processing took more than 90 days. In general, if the response was received by the central office (DLO), a status report was not sent since the response should be sent within two weeks. The Belgian authorities cannot provide statistics to support this practice, as statistics on the response time within the central office and those on status updates are not interlinked.

309. This rate fell to 32% in the third year. Again, the restructuring of the department was at issue; since management in the new department did not immediately realise the importance of these notifications for partners, this task was not a priority. During the on-site visit the Belgian authorities indicated that they would address this problem and have immediately sent status updates on the then 76 ongoing requests. The Belgian authorities are recommended to ensure that status updates continue to be sent systematically.

310. Status reports are generally sent by post. Where contact has been made by telephone or a partial response has been sent, this serves as a status report. Meetings or regular telephone communication take place with France, the Netherlands and the United States to review progress in EOI requests. Contact developed in the context of OECD and European Commission working groups is also significant and regarded as very useful by the competent Belgian authority. Since the reorganisation of AGFisc, most EOI cases will no longer be dealt with by Belgian representatives in these bodies, however they can pass on any concerns that the new department may have with specific partners or about particular cases.

311. Furthermore, the Belgian authorities indicate that they asked for feedback in 66 cases (and received requests for feedback in 112 cases), in particular in relation to certain complex requests and when it was requested by the local office. No negative feedback was received.

312. Exchanges within the EU are performed through a secured common communication network and with other partners through secured email when possible.

C.5.2. Organisational processes and resources

313. In Belgium, the Federal Public Service Finance (FPS Finance) is the competent authority for exchange of tax information (as the principal authority or by delegation from the Minister for Finance), irrespective of the underlying international instrument.

314. The FPS underwent extensive restructuring in 2014-16, during the review period. Within the AGFisc in particular, at the level of both the central offices and local offices, new departments have been established with a new allocation of staff and tasks. On 1 January 2016, the DLO was divided into two departments: the Department of International Exchange of Information-Direct Taxes (IEOI-DT) and the Department of *Expertise opérationnelle et Support Relations Internationales* (Operational Expertise and Support – International Relations or EOS INT), both within the AGFisc. EOI files were therefore processed by the DLO until 31 December 2015 and by IEOI-DT since 1 January 2016. The IEOI DT department was created by a decree of the SPS Chairperson dated 15 December 2015, designated liaison office in the framework of Directive 2011/16/EU and assigned management and practical co-ordination of international exchange of information related to direct taxes.

Previous organisation

315. The organisation in place until the end of 2015 was largely that described in the 2013 Report. The AGFisc was the contact point for requests concerning direct taxes (and VAT), irrespective of whether they are made pursuant to a bilateral agreement, EU Directive 2011/16/EU or the multilateral Convention. Within the AGFisc, Section III/1A (the central liaison office for direct taxes – DLO) was the competent authority for direct taxes and processed requests received from other jurisdictions from September 2009 to December 2015, i.e. during the period reviewed in the 2013 Report and the majority of the current review period.

316. Where the requested information was not available to the DLO, the request was transferred either to another administration (the ISI in cases of tax fraud and avoidance; the investigation department if the person was not identified or located) or to the competent local tax office (based on where the

information was available). In addition to the central offices, the AGFisc was divided into regional divisions, which were also divided into local tax offices for direct taxes (449) and local tax offices for VAT (127).

New organisation of EOI in 2016

317. Since 2016, the EOS INT department has had a co-ordination function in relation to exchange of information. It is responsible for the development of guidelines on international exchange of information and administrative co-operation (guides, IT tools, support to the various liaison departments, etc.). This department is also responsible for international relations and acts as the contact point for partner States and international organisations such as the EU and the OECD. It is also the central liaison office in the framework of the 20111/16/EU Directive.

318. From 1 January 2016 the IEOI-DT is the competent liaison department for the operational processing of EOI files. It is the unique contact point for receipt of all EOI files.

319. The transition seems to have been properly implemented, since half of the DLO staff were transferred to the IEOI-DT and the rest of the DLO and its management are now at the EOS INT and participated in the training of other members of the IEOI-DT. Meetings between the two departments are organised on a regular basis. In 2018 AGFISc decided to reintegrate the IEOI-DT department into the EOS INT department (former DLO) to increase efficiency.

320. Where on receipt of the EOI request it appears that it is a matter for another liaison department, IEOI-DT promptly transfers the request to the appropriate liaison department. IEOI-DT processes all the files which fall under the responsibility of AGFisc, irrespective of whether they concern natural persons, small, medium-sized or large enterprises (even if this department is part of the Administration for SMEs). The other two liaison departments designated for processing files falling within their responsibility are:

- The Operational Expertise and Interdepartmental and International Collaboration Support liaison department within the AGISI which processes files relating to serious organised tax fraud. Neither this department nor the AGISI have been restructured and they therefore experienced continuity in the management and processing of EOI requests. While they handled 43 requests over the past three years, representing less than 3% of all requests, these were complex and important requests for partners.

- The Gathering and Exchange of Information liaison department within the *Administration Générale de la Documentation Patrimoniale* (the General Administration of Patrimonial Documentation), which processes cases concerning ownership of immovable property and the characteristics of immovable property or transactions defined in EU Directive 2011/16/EU. This department has been created but is not yet in operation.

321. There are exceptions to this organisational structure for cross-border agreements with France and the Netherlands, under which the local offices have direct competence and know their partners very well.

322. The list of all the competent Belgian authorities is provided to the OECD and the European Commission on a regular basis. When changes occur, an updated list is forwarded to them, as well as to Belgium's regular partner states. This information is available to public officials within FPS Finance via the intranet.

Human resources and training

323. Half of the staff of the former DLO joined the new IEOI-DT department, ensuring an element of continuity in the processing of EOI requests. Other members of the department were recruited on the basis of a recruitment profile which included competence in accounting, languages (English and French) and tax (in order to be able to understand the practical problems experienced by tax inspectors). Since the initial training of FPS Finance agents did not include a focus on exchange of information, a specific training programme was provided by EOS-INT composed of the other half of the former DLO. This is supplemented by continuous training, with the new agents supervised by those more experienced and agents can draw on the Manual on EOI. In addition to training, there is frequent contact between the two departments, in particular on recent regulatory changes and requests for interpretation. It therefore appears that training of the new department is being adequately ensured. While EOS INT was aware of the status of files during the first year, it was no longer the case in 2017.

324. The local offices have access to an intranet page showing guidelines for processing EOI files, an overview of the competent authorities and contact persons for the various types of exchange (on request, spontaneous, automatic, etc.), requirements relating to forms, etc. Information sessions specifically on the issue of exchange of information are offered six times a year and reached about 300 persons during the review period, mainly high and medium level managers of AGFisc, AGISI and autonomous departments (following the train the trainer approach, each being invited spread information within its department).

325. Training appears to be adequate; however, resources appear to be stretched to the limit and all the departments concerned have requested additional staff to deal with the heavy workloads: in addition to monitoring policies and international initiatives on EOIR, EOS-INT is responsible for automatic exchange of information (AEOI) and new types of exchange linked to the BEPS Project, while the new IEOI-DT department lost two of its six experienced agents from the former DLO. As a result of staffing constraints, problems are encountered during the summer vacation period. The AGISI only has one (highly experienced) person responsible for EOI; while they processed 43 complex incoming requests in 3 years, they also dealt with 446 outgoing requests. This makes follow-up difficult during vacation periods as well as during the period from October-December, with the expiry of limitation periods and deadlines for sending administrative taxation notices; work on requests for information is not a priority at that time. All departments indicate that despite progress in case management and timeliness, agents' workload is still the main problem.

326. Overall, the total number of persons processing EOI requests in the competent authority has remained stable since the 2013 Report (11 persons), while the number of requests doubled in the current review period. The Belgian authorities are therefore recommended to assess whether resources are adequate to maintain the quality of responses.

Quality of outgoing requests

327. Under the 2016 Terms of Reference, the quality of requests issued is also assessed.

328. Belgium sent 1 143 requests between 1 October 2013 and 30 September 2016. The main recipient countries were the Netherlands, France and Luxembourg. 85% of Belgian requests are directed at other EU Member States. The departments responsible for processing incoming requests are also responsible for outgoing requests (the DLO then the IEOI-DT, AGISI and local officials under the cross-border agreements) and they apply the same quality controls to incoming and outgoing requests. The Manual on EOI contains a chapter on outgoing requests. The computer application which assists the competent authority in managing incoming requests is also used for outgoing requests. Requests are translated into the working language agreed with the partner.

329. While the AGISI processes less than 3% of requests received, it is the source of 40% of requests issued by Belgium. The local AGISI offices and its liaison department, the Operational Expertise and International and Interdepartmental Collaboration Support Department, have a good understanding of the way in which questions should be formulated for a request

to be properly processed and effective; it is therefore rarely necessary for the liaison department to rework a request. The AGISI takes into consideration specific requests from partners.

330. Belgium uses standard forms for outgoing requests. An online form is used for EU partners and online training for supervisors is available. The European Commission also organised online training on completing the EU form.

331. There is also a form for other partners. Where a partner asks Belgium to use a standard form, it is added to the intranet and accessible to local offices. If a local supervisor has a doubt about a form, he or she can easily contact the central liaison department to request explanations and clarifications.

332. Requests are checked by the liaison service, which verifies in particular that questions are sufficiently precise to elicit clear answers. The number of outgoing requests fell in the past two years, during the period in which the AGFisc was restructured, however the figures should rise again when the local offices are up to speed.

333. The high quality of outgoing requests and communication with foreign competent authorities is reflected in peers' comments.

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

334. There are no unreasonable, disproportionate or unduly restrictive conditions in the Belgian law or EOI instruments that would unduly restrict exchange of information as the pitfalls of the system have been eliminated.

Annex 1: List of in-text recommendations

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

- Element A.1: The Belgian authorities are recommended to ensure a better keeping of information on legal owners of liquidated companies.
- Element A.1: Belgium is recommended to consider the opportunity to strengthen its legal and regulatory framework to ensure that the holders of beneficial ownership information provide this information to companies.
- Element A.2: It is not yet possible to assess the impact of Law of 17 May 2017 on judicial dissolution of companies which aims at reducing the number of dormant companies, which have little impact on the exchange of information, and the number of shell companies and the phenomenon of fictitious registered offices for illegal purposes, which can be subject to EOIR. The Belgian authorities are recommended to monitor these measures.
- Element A.3: Belgian law allowing the use of third party introducers with a simplification of identification and identity verification procedures was amended in July 2017 and complemented by a November 2017 regulation of the BNB. The Belgian authorities are recommended to ensure that the financial institutions implement the new obligations and that the supporting documents are always available in practice.
- Element B.1: Access to banking information was frozen during one year with the establishment of the IEOI-DT department as the head

had a doubt on the procedure of access to this type of information. Belgium should ensure that access to banking information will not be interrupted in future.

- Element C.1.8: Belgium is recommended to ensure the swift ratification of all instruments that have been signed, in particular where the multilateral Convention is not applicable.
- Element C.2: Belgium should continue to conclude EOI agreements with any new relevant partner who would so require.
- Element C5: The Belgian authorities are recommended to assess whether resources are adequate to maintain the quality of responses by the authorities involved in the gathering of information for EOI purposes.
- Element C.5: The Belgian authorities are recommended to ensure status updates continue to be sent systematically.
- Element C5: The organisation of the competent authority has been largely modified, with the renewal of management and part of the staff. These changes impacted in the end of the review period and the Belgian authorities have decided to reintegrate the EOI unit into the department which was in charge of EOI during the beginning of the review period. The Belgian authorities are recommended to continue monitoring the development of this department, in order to ensure that the processing of requests recovers the high level of quality achieved at the beginning of the review period.

Annex 2: List of Jurisdiction's EOI mechanisms

1. Bilateral international agreements for the exchange of information

No.	EOI partner	Type of agreement	Date signed	Date entered into force
1	Albania	DTC	14-Nov-2002	1-Sep-2004
2	Algeria	DTC	15-Dec-1991	10-Jan-2003
3	Andorra	TIEA	23-Oct-2009	13-Jan-2015
4	Anguilla	TIEA	24-Sep-2010	no
5	Antigua and Barbuda	TIEA	7-Dec-2009	9-Nov-2017
6	Argentina	DTC	12-Jun-1996	22-Jul-1999
7	Armenia	DTC	7-Jun-2001	1-Oct-2004
8	Aruba	TIEA	24-Apr-2014	no
9	Australia	DTC	13-Oct-1977	1-Nov-1979
		Protocol	24-Jun-2009	12-May-2014
10	Austria	DTC	29-Dec-1971	28-Jun-1973
		Protocol	10-Sep-2009	1-Mar-2016
11	Azerbaijan	DTC	18-May-2004	12-Aug-2006
12	The Bahamas	TIEA	7-Dec-2009	11-Feb-2014
13	Bahrain	DTC	4-Nov-2007	11-Jan-2014
		Protocol	23-Nov-2009	11-Dec-2014
14	Bangladesh	DTC	18-Oct-1990	9-Dec-1997
15	Belarus	DTC	7-Mar-1995	13-Oct-1998
16	Belize	TIEA	29-Dec-2009	4-Mar-2014
17	Bermuda	TIEA	23-Mar-2013	no
18	Bosnia-Herzegovina	DTC	21-Nov-1980	26-May-1983
19	Botswana	DTC	30-Nov-2017	no

No.	EOI partner	Type of agreement	Date signed	Date entered into force
20	Brazil	DTC	23-Jun-1972	13-Jul-1973
21	Bulgaria	DTC	25-Oct-1988	28-Nov-1991
22	Cayman Islands	TIEA	24-Apr-2014	no
23	Canada	DTC	23-May-2002	6-Oct-2004
		Protocol	1-Apr-2014	no
24	Chili	DTC	6-Dec-2007	5-May-2010
25	China (People's Republic of)	DTC	18-Apr-1985	11-Sep-1987
		DTC	7-Oct-2009	29-Dec-2013
26	Democratic Republic of the Congo	DTC	23-May-2007	24-Dec-2011
27	Cook Islands	TIEA	8-Sep-2015	no
28	Cyprus*	DTC	14-May-1996	8-Dec-1999
29	Korea	DTC	29-Aug-1977	19-Sep-1979
		Protocol	8-Mar-2010	1-Dec-2015
30	Côte d'Ivoire	DTC	25-Nov-1977	30-Dec-1980
31	Croatia	DTC	31-Oct-2001	1-Apr-2004
32	Czech Republic	DTC	16-Dec-1996	24-Jul-2000
		Protocol	15-Mar-2010	13-Jan-2015
33	Denmark	DTC	16-Oct-1969	31-Dec-1970
		Protocol	7-Jul-2009	18-Jul-2013
34	Dominica	TIEA	26-Feb-2010	24-Nov-2015
35	Egypt	DTC	3-Jan-1991	3-Mar-1997
36	Ecuador	DTC	18-Dec-1996	18-Mar-2004
37	Estonia	DTC	5-Nov-1999	10-Jul-2003
38	Finland	DTC	18-May-1976	27-Dec-1978
		Protocol	15-Sep-2009	18-Jul-2013
39	Former Yugoslav Republic of Macedonia	DTC	21-Nov-1980	20-May-1983
		DTC	6-Jul-2010	17-Jul-2017
40	France	DTC	10-Mar-1964	17-Jun-1965
		Protocol	7-Jul-2009	1-Jul-2013
41	Gabon	DTC	14-Jan-1993	13-May-2005
42	Georgia	DTC	14-Dec-2000	4-May-2004

No.	EOI partner	Type of agreement	Date signed	Date entered into force
43	Germany	DTC	11-Apr-1967	30-Jul-1969
44	Ghana	DTC	14-Jun-2005	17-Oct-2008
45	Gibraltar	TIEA	16-Dec-2009	17-Jun-2014
46	Greece	DTC	25-May-2004	30-Dec-2005
		Protocol	16-Mar-2010	24-Jul-2017
47	Grenada	TIEA	18-Mar-2010	13-Jan-2015
48	Guernsey	TIEA	7-May-2014	no
49	Hong Kong (China)	DTC	10-Dec-2003	7-Oct-2004
50	Hungary	DTC	19-Jul-1982	25-Feb-1984
51	Iceland	DTC	23-May-2000	19-Jun-2003
		Protocol	15-Sept-2009	no
52	Ile of Man	DTC	16-Jul-2009	no
53	India	DTC	26-Apr-1993	1-Oct-1997
		Protocol	9-Mar-2017	no
54	Indonesia	DTC	16-Sep-1997	7-Nov-2001
55	Ireland	DTC	24-Jun-1970	31-Dec-1973
		Protocol	14-Apr-2014	no
56	Israel	DTC	13-Jul-1972	4-Nov-1975
57	Italy	DTC	29-Apr-1983	29-Jul-1989
58	Japan	DTC	28-Mar-1968	16-Apr-1970
		Protocol	26-Jan-2010	27-Dec-2013
		DTC	12-Oct-2016	no
59	Jersey	TIEA	13-Mar-2014	26-Jul-2017
60	Kazakhstan	DTC	16-Apr-1998	13-Apr-2000
61	Kirghizstan	DTC	17-Dec-1987	8-Jan-1991
62	Kosovo	DTC	21-Nov-1980	20-May-1983
63	Kuwait	DTC	10-Mar-1990	28-Oct-2000
64	Latvia	DTC	21-Apr-1999	7-May-2003
65	Liechtenstein	TIEA	10-Nov-2009	12-Jun-2014
66	Lithuania	DTC	26-Nov-1998	5-May-2003
67	Luxembourg	DTC	17-Sep-1970	30-Dec-1972
		Protocol	16-Jul-2009	25-Jun-2013
68	Macao (China)	DTC	19-Jun-2006	no

No.	EOI partner	Type of agreement	Date signed	Date entered into force
69	Malaysia	DTC	24-Oct-1973	14-Aug-1975
70	Malta	DTC	28-Jun-1974	3-Jan-1975
71	Morocco	DTC	4-May-1972	5-Mar-1975
72	Mauritius	DTC	4-Jul-1995	28-Jan-1999
73	Mexico	DTC	24-Nov-1992	1-Feb-1997
		Protocol	26-Aug-2013	19-Août-2017
74	Moldova	DTC	17-Dec-1987	8-Jan-1991
75	Monaco	TIEA	15-Jul-2009	no
76	Mongolia	DTC	26-Sep-1995	30-Mar-2000
77	Montenegro	DTC	21-Nov-1980	20-May-1983
78	Montserrat	TIEA	16-Feb-2010	18-Nov-2015
79	New Zealand	DTC	15-Sep-1981	8-Dec-1983
80	Nigeria	DTC	20-Nov-1989	27-Oct-1994
81	Norway	DTC	14-Apr-1988	4-Oct-1991
		Protocol	10-Sep-2009	19-Jul-2013
		DTC	23-Apr-2014	no
82	Oman	DTC	19-Jun-2016	no
83	Pakistan	DTC	17-Mar-1980	2-Sep-1983
84	Netherlands	DTC	5-Jun-2001	31-Dec-2002
		Protocol	23-Jun-2009	1-Sep-2013
85	Philippines	DTC	2-Oct-1976	9-Jul-1980
86	Poland	DTC	20-Aug-2001	29-Apr-2004
		Protocol	14-Apr-2014	no
87	Portugal	DTC	16-Jul-1969	19-Feb-1971
88	Qatar	DTC	6-Nov-2007	no
		Protocol	22-Mar-2015	no
89	Romania	DTC	4-Mar-1996	17-Oct-1998
90	Russia	DTC	16-Jun-1995	26-Jun-2000
		DTC	19-May-2015	no
91	Rwanda	DTC	16-Apr-2007	6-Jul-2010
		Protocol	17-Mai-2017	no
92	San Marino	DTC	21-Dec-2005	25-Jun-2007
		Protocol	14-Jul-2009	18-Jul-2013

No.	EOI partner	Type of agreement	Date signed	Date entered into force
93	Saint Kitts and Nevis	TIEA	18-Dec-2009	20-Feb-2014
94	Saint Lucia	TIEA	7-Dec-2009	20-Feb-2014
95	Saint Vincent and the Grenadines	TIEA	7-Dec-2009	24-Mar-2014
96	Senegal	DTC	29-Sep-1987	4-Feb-1993
97	Serbia	DTC	21-Nov-1980	26-May-1983
98	Seychelles	DTC	27-Apr-2006	10-Sept-2015
		Protocol	14-Jul-09	22-Jun-2016
99	Singapore	DTC	6-Nov-2006	27-Nov-2008
		Protocol	16-Jul-2009	20-Sep-2013
100	Slovak Republic	DTC	15-Jan-1997	13-Jun-2000
101	Slovenia	DTC	22-Jun-1998	2-Oct-2002
102	South Africa	DTC	1-Feb-1995	10-Oct-1998
103	Spain	DTC	14-Jun-1995	25-Jun-2003
		Protocol	15-Apr-2014	no
104	Sri Lanka	DTC	3-Feb-1983	12-Jun-1985
105	Sweden	DTC	5-Feb-1991	24-Feb-1993
106	Switzerland	DTC	28-Aug-1978	26-Sep-1980
		Protocol	10-Apr-2014	19-Jul-2017
107	Tajikistan	DTC	17-Dec-1987	8-Jan-1991
		DTC	10-Feb-2009	no
108	Taiwan	DTC	13-Oct-2004	14-Dec-2005
109	Thailand	DTC	16-Oct-1978	28-Dec-1980
110	Tunisia	DTC	7-Oct-2004	5-Jun-2009
111	Turkmenistan	DTC	17-Dec-1987	8-Jan-1991
112	Turkey	DTC	2-Jun-1987	8-Oct-1991
		Protocol	9-Jul-2013	no
113	Uganda	DTC	27-Jul-2007	no
		Protocol	25-Apr-2014	no
114	Ukraine	DTC	20-May-1996	25-Feb-1999
115	Unis Arab Emirates	DTC	30-Sep-1996	6-Jan-2004
116	United Kingdom	DTC	1-Jun-1987	21-Oct-1989
		Protocol	13-Mar-2014	no

No.	EOI partner	Type of agreement	Date signed	Date entered into force
117	United States	DTC	27-Nov-2006	28-Dec-2007
118	Uruguay	DTC	23-Aug-2013	no
119	Uzbekistan	DTC	14-Nov-1996	8-Jul-1999
		Protocol	18-Feb-2015	no
120	Venezuela	DTC	22-Apr-1993	13-Nov-1998
121	Viet Nam	Protocol	13-Mar-2012	no
		DTC	28-Feb-1996	25-Jun-1999

* 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.

2. Convention on Mutual Administrative Assistance in Tax Matters (amended)

The Convention on Mutual Administrative Assistance in Tax Matters (the 1988 Convention) was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the amended Convention).[9] The Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

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

Belgium signed the amended Convention on 7 February 1992 (entered into force for Belgium on 1 December 2000) and its Protocol on 4 April 2011. The instruments of ratification of the Protocol were deposited on 8 December 2014 and it entered into force on 1 April 2015.

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

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

3. EU Directive on Administrative Co-operation

Belgium 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 cooperation in the field of taxation (as amended). The Directive came into force on 1 January 2013. All EU members were required to transpose it into their domestic legislation by 1 January 2013. Belgium can exchange information within the framework of the Directive with

Austria, 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.

The present assessment was based on the information provided to the assessment team, including Belgium's EOI instruments signed, laws and regulations in force as at 8 January 2018, Belgium's EOIR practice in respect of requests made and received during the three year period from 1 October 2013 to 30 September 2016, Belgium's responses to the EOIR questionnaire, information supplied by partner jurisdictions, independent research and information provided to the assessment team prior, during and after the on-site visit, which took place from 18-20 April 2017 in Brussels, Belgium.

Laws, regulations and other material received

Company Code and Royal Decree on the implementation of the Company Code

Law of 17 July 1975 on accounting for enterprises

Law of 17 May 2017 modifying various laws to supplement the procedure for judicial dissolution of companies

Income Tax Code 1992

Law of 21 December 2013 on various fiscal and financial provisions

Law of 7 July 2017 on measures to combat tax fraud

Law of 11 January 1993 on preventing the use of the financial system for purposes of money laundering and the financing of terrorism

Law of 15 July 2013 laying down urgent provisions for the fight against fraud (amending the AML Law and the Code of Economic Law)

Law of 18 September 2017 on the prevention of money laundering and terrorist financing and the limitation of the use of cash

Regulation of the National Bank of Belgium of 21 November 2017 on the prevention of money laundering and terrorist financing

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

Authorities interviewed during on-site visit

Federal Public Department of Finances

General Administration of Taxes

- EOIS Int : Operational Expertise and International Relations Support
- EOS IPP : Operational Expertise and Support – tax on individuals
- EOS PT&O (Taxation process and Obligations)
- TACM Tax Audit Compliance Management
- Management of organisation Unit, IAM Unit
- SME Pilar: IEOI-DT : International exchange of information – Direct Tax
- Natural persons Pilar

General Administration of Special Tax Inspectorate

Treasury General Administration

Patrimonial General Administration

Central management department Expertise and Strategic Support

Federal Public Department of Justice

Commercial court registry

Federal Public Department of the Economy

Belgian register of legal persons

Caisse des dépôts et consignations (official depositary of the government)

Other public authorities and professional bodies

Financial Intelligence Unit

Financial Services and Markets Authority

Belgian Federation of financial sector Febelfin

National Bank of Belgium (BNB) including the Central point of contact (CPC)

Bar association (NL)

Chamber of Notaries

Accounting professionals

Current and previous review(s)

This report provides the outcomes of the fourth peer review of Belgium conducted by the Global Forum. Belgium previously underwent EOIR peer reviews in 2011 (assessment of the legal and regulatory framework and supplementary assessment after Belgium has amended its rights of access to bank information) and in 2013 (Phase 2 assessment on the implementation in practice of EOIR) conducted according to the ToR approved by the Global Forum in February 2010 and the Methodology used in the first round of reviews.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
Round 1 Phase 1 report	Shauna Pittman, Counsel, Canada Revenue Agency; Rajesh Sharma Ramloll Assistant Solicitor General at the Attorney General's Office in Mauritius; and Rémi Verneau for the Global Forum Secretariat.	–	October 2010	April 2011
Round 1 Phase 1 Supplementary report		–	July 2011	September 2011
Round 1 Phase 2 report	Manon Hélie, manager, EOI services section of Canada Revenue Agency; Rajesh Sharma Ramloll, Assistant Solicitor General at the Attorney General's Office in Mauritius; Mélanie Robert and Rémi Verneau for the Global Forum Secretariat	2009-11	January 2013	April 2013 (November 2013 for the report with ratings)
Round 2 EOIR report	Ms Émeline Détré, EOI officer, Treasury and Resources Jersey; Ms Tamar Gabruashvili, chief inspector, department of international affairs, Ministry of Finance, Georgia; and Ms Gwenaëlle Le Coustumer for the Global Forum Secretariat	1 October 2013-30 September 2016	January 2018	30 March 2018

Annex 4: Jurisdiction's response to the review report[10]

Belgium would like to express its high appreciation for the hard work done by the assessment team and for the constructive way they guided Belgium during the peer review.

Belgium agrees with the contents of the 2018 Peer Review Report on the Exchange of Information on Request. In all aspects EOI is, and will continue to be, a priority in Belgian tax policy and practice. Consequently Belgium will give serious consideration to the recommendations made by the PRG in order to be able to report on its implementation by 30 June 2019.

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

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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

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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 BELGIUM 2018 (Second Round)

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

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

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

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

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

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