GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

FRANCE

2018 (Second Round)

OECD

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

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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

OECD
BETTER POLICIES FOR BETTER LIVES

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

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

Please cite this publication as:
OECD (2018), *Global Forum on Transparency and Exchange of Information for Tax Purposes: France 2018 (Second Round): Peer Review Report on the Exchange of Information on Request*, OECD Publishing, Paris.
http://dx.doi.org/10.1787/9789264291058-en

ISBN 978-92-64-29104-1 (print)
ISBN 978-92-64-29105-8 (PDF)

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

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

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

Corrigenda to OECD publications may be found on line at: *www.oecd.org/about/publishing/corrigenda.htm*.
© OECD 2018

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

Table of contents

Reader's guide 5

Abbreviations and acronyms 9

Executive summary 13

Overview of France 19

Part A: Availability of information 25

A.1. Legal and beneficial ownership and identity information 25
A.2. Accounting records 57
A.3. Banking information 64

Part B: Access to information 69

B.1. Competent authority's power to obtain and transfer information 69
B.2. Notification requirements, rights and safeguards 78

Part C: Exchanging information 81

C.1. Information exchange mechanisms 81
C.2. Exchange of information mechanisms with all relevant partners 87
C.3. Confidentiality 89
C.4. Rights and safeguards of taxpayers and third parties 93
C.5. Requesting and providing information in an effective manner 94

Annex 1: List of in-text recommendations 105

Annex 2: List of juridictions EOI mechanisms 106

Annex 3: Methodology for the Review 114

Annex 4: Jurisdiction's response to the review report 118

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.

Abbreviations and acronyms

General terms

TIEA	Tax Information Exchange Agreement
Competent authority	The competent authority or authorities designates the person(s) or public authorities designated by your jurisdiction as competent for exchange of information purposes, in accordance with an EOI agreement (for example, a double taxation agreement, a multilateral agreement, a tax information exchange agreement (TIEA), an EU Directive or any other regional exchange of information agreement.)
2010 Terms of Reference (ToR)	Terms of reference for Exchange of Information on Request as approved by the Global Forum in 2010.
2016 Note on assessment criteria	Note on the 2016 assessment criteria, approved by the Global Forum on 29 and 30 October 2015.
2016 Methodology	2016 Methodology for the peer review and non-member reviews, as approved by the Global Forum on 29 and 30 October 2015.
2016 Terms of Reference (ToR)	Terms of Reference for Exchange of Information on Request as approved by the Global Forum on 29 and 30 October 2015.
4th AML/CFT Directive	4th Anti-Money Laundering Directive from the European Union.
EOI	Exchange of Information
AEOI	Automatic Exchange of Information
EOIR	Exchange of Information on Request
DNFBP	Designated non-financial businesses and professions

AML	Anti-money laundering
AML/CFT	Anti-money laundering and terrorist financing
CDD	Customer Due Diligence
CRS	Common Reporting Standard
DTC	Double Tax Convention
EU	European Union
FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
Multilateral Convention (MAC)	Convention on Mutual Administrative Assistance in Tax Matters, as revised in 2010
PRG	Peer Review Group of the Global Forum
Phase 1 Report	Report on the legal and regulatory framework
Phase 2 Report	Report on the Implementation of the Standard in Practice
VAT	Value Added Tax

Terms specific to France

ACPR	*Autorité de contrôle prudentiel et de resolution* (prudential supervision and resolution authority)
AMF	*Autorité des marchés financiers* (financial markets authority)
al.	*Alinéa* (Paragraph)
ARJEL	*Autorité de régulation des jeux en ligne* (online gaming regulatory authority)
Art.	Article
ECB	European Central Bank
BNDP	*Base Nationale des Données Patrimoniales* (national assets database)
CET	*Contribution économique territoriale*

CFE	*Centre de formalité des entreprises* (Business formalities centre)
CF1C	Exchange of Information Unit within the Tax Auditing unit. Central competent authority
CGI	*Code général des impôts* (Tax Code)
CMF	*Code monétaire et financier* (Monetary and Financial Code)
CNGTC	*Conseil national des greffiers des tribunaux de commerce* (National Council of Clerks of Commercial Courts)
CNS	National sanctions committee
DDFiP	*Direction départementale des finances publiques* (public finance departmental directorate)
DGE	*Direction des grandes entreprises* (large enterprises directorate)
DGFiP	*Direction générale des finances publiques* (General Directorate of Public Finances)
DIRCOFI	*Direction spécialisée de contrôle fiscal au niveau interregional* (Specialised inter-regional tax inspection directorate)
DNEF	*Direction nationale des enquêtes fiscales* (National tax investigation directorate)
DNVSF	*Direction nationale des vérifications de situations fiscales* (National tax inspection directorate)
DRESG	*Direction des résidents étrangers et services généraux pour les entités non residents* (Foreign residents directorate and general department for non-resident entities)
DRFiP	*Direction régionale des finances publiques* (Regional public finances directorate)
DVNI	*Direction des vérifications nationales et internationales* (national and international audit office)
EEA	European economic area
EIP	Public-interest entity

EIG	Economic interest groupings
H3C	*Haut Conseil du commissariat aux comptes* (statutory auditors supervisory body)
INPI	*Institut national de la propriété industrielle* (National Institute of Industrial Property)
INSEE	*Institut national des statistiques et des études économiques* (National Institute for Statistics and Economic Studies)
ISF	*Impôt de solidarité sur la fortune* (solidarity tax on wealth)
AML/CFT	Anti-money laundering and terrorist financing
LPF	*Livre des procédures fiscales* (Tax Procedures Code)
RCS	*Registre du commerce et des sociétés* (Commercial and Companies Register)
RNCS	*Registre national du commerce et des sociétés* (national Commercial and Companies Register)
RNF	*Registre national des fiducies* (National register of fiducies)
SA	*Société anonyme* (public limited company)
SARL	*Société à responsabilité limité* (Limited Liability Company)
SAS	*Société par actions simplifiée* (simplified joint-stock companies)
SCA	*Société en commandite par actions* (Partnership limited by shares)
SCS	*Société en commandite simple* (Limited partnership)
SNC	*Société en nom collectif* (general partnership)
Tracfin	French finance intelligence unit (FIU)
VAT	Value Added Tax

Executive summary

1. This report analyses the implementation of the EOIR standard by France, the implementation of the legal and regulatory system in practice and the practice of exchanging information on request in respect of EOI requests received during the period of 1 October 2013-30 September 2016 against the 2016 Terms of Reference (ToR). This report concludes that France continues to be "compliant" with the international standard for exchange of information on request. In 2011, the Global Forum evaluated France in a combined review (legal implementation of the standard and its operation in practice) against the 2010 ToR, The report concluded that France (2011 EOIR Report) was overall "Compliant" with the standard.

2. The following table shows a comparison between the earlier report and the most recent one:

Comparison of ratings for the Combined Review (2010) and Current EOIR Review (2018)

Element		2010 Report	2018 Report
A.1	Availability of ownership and identity information	C	C
A.2	Availability of accounting information	C	C
A.3	Availability of banking information	C	C
B.1	Access to information	C	C
B.2	Rights and Safeguards	C	C
C.1	EOIR Mechanisms	C	C
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	C	C
C.4	Rights and Safeguards	C	C
C.5	Quality and timeliness of responses	C	LC
	OVERALL RATING	C	C

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

Progress made since previous review

3. The 2011 Report on France contained two recommendations relating to timeliness of response to EOI requests and providing updates to the requesting jurisdictions regarding the status of their requests when the competent authority is not in a position to respond within 90 days. To facilitate the processing of requests and improve response times, an automatic system of reminders for the various departments has been added to the EOIR management tool, although this has had a limited effect on improving response times in practice. No measures have been taken to address the recommendation on the communication of the status of requests. These recommendations remain to be addressed.

Key recommendations

4. France has not made much progress since the 2011 Report in its timeliness in responding to partners' EOI requests. Furthermore, the failure to provide regular updates on the status of the EOI request to the requesting jurisdiction was already the subject of a recommendation in the 2011 report, and France has not corrected this shortcoming. Consequently, a recommendation is made to France to put in place a system to gather the requested information in a timely manner and inform the requesting jurisdictions of the status of their EOI requests when the competent authority is not in a position to respond within 90 days.

Overall rating

5. Since the 2011 Report, France has continued to apply standards for transparency and EOI in tax matters in a generally satisfactory manner. Overall, France is rated "Compliant" against the EOIR standard. France continues to perform well in terms of availability and access to information. However, there has been less progress in the area of exchange of information, as the recommendations made in the 2011 report have only been partially addressed. Only element C.5 is rated lower than Compliant (Largely compliant).

6. Two new features of the 2016 ToR were of particular note during the evaluation of the legal framework and the experience in practice in France, namely the availability of beneficial ownership information and the quality of the outgoing EOI requests.

7. The legal framework in France ensures that beneficial ownership information is available through the Anti-Money laundering and financing terrorism legislation (AML/CFT) which has recently been enhanced by the

transposition of the 4th AML/CFT Directive of the European Parliament and of the Council of 20 May 2015. The new system creates a register of beneficial owners in France whereas before this, beneficial ownership information was available as a result of the legal requirement of all traders to open a bank account, including companies with share capital and partnerships, as well as the requirement for banks to identify their clients and beneficial owners pursuant to the AML/CFT rules. An "in-text" recommendation for follow-up is made to France with regards to the implementation of the new register of beneficial owners.

8. As for the quality of the requests for information sent by France to its partners, the peers are generally satisfied. The cases where a request for clarification was sent remain marginal. France is an important EOIR partner with 2 381 requests received and 48 496 requests sent during the last three years. Its main partners remain the other members of the EU, especially its neighbours.

9. The report was approved by the PRG during its meeting in February 2018 and was adopted by the GF on 30 March 2018. A follow-up report on the measures taken by France to address the recommendations made in this report should be provided to the PRG no later than 30 June 2019 in accordance with the procedure set out under 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: Compliant		
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		

Determination	Factors underlying recommendations	Recommendations
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		
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.		
EOIR rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2.)*		
The legal and regulatory framework is in place.		
EOIR rating: 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		

Determination	Factors underlying recommendations	Recommendations
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.		
EOIR rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4.)*		
The legal and regulatory framework is in place.		
EOIR rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner. *(ToR A.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: Largely compliant	The internal processes within the tax administration do not always ensure the collection of the requested information in a timely manner and France rarely informs the requesting jurisdictions of the status of their EOI request when the competent authority is not in a position to respond within 90 days.	France is recommended to rapidly put in place a system to gather the requested information in a timely manner and inform the requesting jurisdictions of the status of their EOI request when the competent authority is not in a position to respond within 90 days.

Overview of France

10. This overview presents basic information about France to provide a context in order to understand the analysis in the main body of the report. It is not intended to be a comprehensive overview of France's legal and commercial systems.

Legal system

11. France is a republic, and member of the European Union. It is organised on a decentralised basis, and consists of 18 regions, including the regional authority of Corsica and five overseas regions,[1] to which can be added five overseas collectivities[2] with a specific status.

12. The French legal system is based on the civil law legal system, giving precedence to written law. There is a hierarchy of legal instruments, meaning that the superior instrument systematically supersedes the lower instrument, in the following order: Constitution and body of constitutional rules; international treaties and agreements (including EU law); statutes of parliament, regulations and other administrative decisions.

13. The EU regulations are directly applicable in France and the EU directives, particularly in the field of information exchange and the fight against money laundering, must be transposed into domestic law.

14. In application of the fundamental principle of the separation of powers, executive power in France lies with the President of the Republic and the Government, led by a Prime Minister appointed by the President of the Republic. The Government applies statutes, and has regulatory power under common law.

1. Overseas Departments and Regions are territories of France located outside the metropolis (the territory of France which is located in Europe). These are Guadeloupe, French Guiana, Martinique, Réunion and Mayotte.
2. Overseas collectivities are French territories outside the metropolis. These are French Polynesia, Saint Barthélemy, Saint Martin, Saint Pierre and Miquelon, Wallis and Futuna.

15. Legislative power is exercised by the Parliament which is comprised of two houses: the National Assembly and the Senate. Laws can be proposed by Parliament and the Government but only Parliament has the power to vote laws.

16. In principle, national legislation is unique for France as a whole. With regard to the overseas collectivities, some are subject to the principle of legislative identity, which means that all the laws and regulations are applicable in full in the territory, without special mention, or the principle of legislative speciality, where the laws and regulations can only be applied when mention is expressly made. These derogations to the national rules are notably possible in tax and commercial matters. In commercial matters, New Caledonia[3] and French Polynesia enjoy an autonomy that allows them to ensure the maintenance of the Commercial and Companies Register. However, these derogations do not bear any consequences with regard to the international standard.

17. The judiciary is independent. There are two types of system: the judicial system comprises the criminal and civil courts, competent for resolving disputes between natural persons and/or legal persons and for punishing infractions of criminal laws; the other is the administrative system, in charge of resolving conflicts between natural persons and/or legal entities and the State. Tax disputes can be dealt with by both systems.

Tax system

18. The foundations of the French tax system can be found in the Declaration of the Rights of Man and of Citizens of 26 August 1789, which has a constitutional value. The rules governing the base, rates and methods of collection of all types of taxes are determined by statute. The Tax Code (Code Général des Impôts, CGI) includes the legal provisions relating to the base and the collection of income tax, company tax, value added tax (VAT), registration fees, local taxes and other direct and indirect taxes levied by the State and the local and regional authorities. In conjunction with the Tax Code, the Tax Procedures Code defines the rules governing the supervisory and inquiry rights of the tax authorities.

19. The tax authority tasked with collecting tax from taxpayers is the General Directorate of Public Finances (Direction Générale des Finances Publiques, DGFiP), within the Ministry in charge of Budget, which is also the competent authority for information exchange purposes.

3. New Caledonia has a special status governed by Title XIII (Articles 76 and 77) of the Constitution. It does not therefore fall into the category of overseas collectivities governed by Article 74 of the Constitution.

20. There are four categories of taxes in the French tax system: income taxes, wealth taxes, sales taxes and local taxes.

21. There are three categories of income tax: corporation tax (impôt sur les sociétés, IS), income tax (impôt sur le revenue, IR) and social taxes.

22. Corporation tax is generally an annual tax that covers all profits earned in France by companies and other legal persons. It is also applied to certain legal persons as a result of their legal form. The following types of company are liable for corporation tax, irrespective of their purpose: public limited companies (SA), simplified joint-stock companies (SAS), private limited companies (SARL), partnerships limited by shares (SCA) and, in some cases, co-operatives and their unions. Under certain conditions, certain companies with share capital can opt for the partnership regime (Family SARL and SA, small SARL or SAS, or those that are less than five years old).

23. Corporation tax also applies to other legal persons, depending on the nature of their activity. This is the case of "société civiles" that carry out industrial or commercial activities and, more generally, other legal persons carrying out profit-making activities. In addition, partnerships and assimilated groupings, whose results are normally included in the taxable income of members due to the profit share earned through their rights in the company or the group, can opt in certain cases to be subject to corporation tax.

24. In France, corporation tax respects the principle of territoriality. Therefore, corporation tax can only be levied on profits made by companies operating in France, irrespective of their nationality (article 209 of the Tax Code). The result being that the profits made by a French company in its business operating abroad are not subject to French corporation tax, and that a foreign company is eligible for corporation tax on the benefits made by the companies it operates in France. According to the *Conseil d'Etat* which is the highest administrative court in France, the expression "company operating in France" means the usual exercise of an activity in France, which can take the form of an autonomous establishment or, in the absence of an establishment, by the intermediary of representatives without an independent professional personality, or can be the result of the performance of operations forming a complete business cycle. In 2015, the net income from corporation tax stood at EUR 33.5 billion.

25. Tax on the income of natural persons is a global tax levied on all the income of natural persons during the given year. It concerns industrial and commercial income, non-commercial income, agricultural income, real estate income, salaries, pensions, life annuities, income from movable capital and capital gains. Natural persons resident in France are taxable on their worldwide income. Persons whose tax residency is outside France are liable for tax on their French source income. In 2015, the net income from income tax stood at EUR 69.3 billion.

The financial services sector

26. In total, the French financial sector as a whole accounted for value added of EUR 95 billion in 2015, some 4% of GDP. The system is structured around three main categories of institutions: banks, insurance companies and asset managers. In each of these sub-sections, the three to five leading entities are institutions of a global level.

27. The banking sector is dominated by credit institutions (taking deposits or other repayable funds from the public, granting credit, providing payment services), along with finance companies (institutions making credit operations), investment companies (75 were certified in 2015), payment institutions (24 in 2015) and electronic money institutions (6 in 2015).

Development in the number of institutions carrying out banking operations

	2013	2014	2015
Credit Institutions	561	413	383
• Commercial banks	201	198	180
• Mutualist or co-operative banks	92	91	90
• Municipal savings banks	18	18	18
• Specialised credit institutions	250	106	95
Finance companies	N /A	80	78

28. The insurance sector is another key component of the French financial sector with total assets amounting to 113% of GDP in 2015. They hold a significant part of household savings and the sector can be divided into four categories, illustrating the various sectors: (i) life insurance (and mixed) which hold 86% of investment portfolios; (ii) non-life insurance companies with 9%; (iii) mutual societies with 2.7% and provident societies with 2.5%.

29. The insurance sector is governed by specific regulations set out in the insurance code, the mutual societies code and the social security code. Pursuant to article L. 531-2 of the Monetary and Financial Code, insurance and reinsurance companies may provide investment services. Their number is stable, as shown in the table below.

Developments in the number of recognised insurance organisations in France

	2013	2014	2015
Life insurance and mixed companies	97	93	90
Non-life insurance companies	212	206	191
Reinsurance companies	16	15	16
Providence societies	46	41	37
Mutual societies	599	550	448

30. The asset management sector represents the final pillar of the French financial sector with a total of assets that amounted to 160% of GDP at the end of 2015. Asset management is mainly provided by management companies who offer portfolio management operations for third parties, or collective management. In 2015, there were 627 asset management companies (against 635 at the end of 2014) managing portfolios on behalf of third parties, and 18 200 collective management companies.

31. The banking and insurance sectors are governed by the Prudential Supervision And Resolution Authority (Autorité de Contrôle Prudentiel et de Resolution, ACPR) while the asset management sector is supervised by the financial markets authority (l'Autorité des marchés financiers, AMF). These two organisations regulate the players and the products on the French financial market and seek to maintain the stability of the financial system and the protection of clients, policy holders, members and the beneficiaries of the entities under their control. They have the power to regulate, authorise, monitor, supervise, investigate and sanction, as the case may be. Their remit is, among other, to ensure that the financial institutions placed under their supervision respect the measures of the anti-money laundering regulations.

FATF Evaluation

32. The FATF published its third and latest mutual evaluation report on France in February 2011, available from the FATF website: www.fatf-gafi.org/publications/mutualevaluations/documents/mutualevaluationoffrance.html. The third mutual evaluation of France by FATF followed the transposition into domestic law of the 3rd European Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing by Ordinance No. 2009-104 of 30 January 2009 and subsequent regulations. This evaluation identified weaknesses including, for example, that lawyers were exempt from customer due diligence obligations, the low number of controls and sanctions of certain non-financial professions (such as persons dealing in or organising the sale of precious stones and precious metals) and the difficulty for the competent authorities to obtain adequate, timely, relevant and up-to-date information on the beneficial owners of all the types of legal persons. As a result, France was found to be Non-compliant with Recommendation 24, partially compliant with Recommendation 25 and Largely compliant with Recommendations 5, 10, 22, 33 and 34. A monitoring report was prepared and then discussed during the plenary session in February 2013, setting out the progress made by France with regard to the recommendations made by FATF.

33. Since 2013, a number of laws and changes in regulations have been added to the French AML/CFT system to enhance its compliance with FATF standards. Ordinance No. 2016-1635 of 1 December 2016 strengthening the

French AML/CFT system transposes the 4th AML/CFT Directive from the European Union of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. This Ordinance creates a register of beneficial owners and requires all commercial entities to identify their beneficial owners since 1 August 2017.

Recent developments

34. The Amending Finance Act 2016 (Act 2016-1918 of 29 December 2016, article 19) provided the tax administration with the power to interview persons – other than the taxpayer – who were likely to be able to provide useful information in the fight against fraud and international tax evasion. This new procedure is codified in article L. 10-0 AB of the Tax Procedures Code (*Livre des Procédures Fiscales*). It strengthens the information access powers of the French tax.

Part A: Availability of information

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

A.1. Legal and beneficial ownership and identity information

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

36. The 2011 Report concluded that the information relating to the owners of entities or arrangements subject to registration and taxation obligations in France is available either to the Government authorities (tax authorities, Commercial and Companies Register) or directly from the entities (shareholder register) or from regulated third parties (banks). Some information are also available from public databases. Element A.1 was thus considered to be "in place".

37. In practice, the 2011 report did not identify any shortfall in the implementation of the legal framework relating to the availability of legal ownership information of entities and arrangements. That is why element A.1 was rated compliant.

38. Since the evaluation report was published in 2011, there has not been any change in the legal framework examined. In practice, the monitoring measures applied during the review period were enough to guarantee the availability of information on legal ownership. During the same period, France received approximately 900 requests for information concerning legal persons and covering information on ownership and/or accounting and its information exchange partners were generally satisfied with the answers they received. Only 21 requests were still being processed as of 5 January 2018.

39. Beneficial ownership information is a new aspect of the 2016 ToR and had not been assessed in 2011. The legal framework in France contains a number of measures relating to the identification of beneficial owners of legal entities and arrangements. These are the commercial law and AML

legislation recently reinforced by the transposition of the 4th directive of the European Union against money laundering and financing Terrorism (4th AML/CFT Directive).

40. In application of the provisions of the Commercial Code, all commercial enterprises are required to open a bank account. All banks are bound by AML/CFT legislation which requires them to obtain and hold accurate and current information about their beneficial owners, in compliance with the standard. The supervisory authority for banks and insurance companies is the Prudential Supervision and Resolution Authority (*Autorité de Contrôle Prudentiel et de Régulation, ACPR*), which implemented a supervisory programme during the review period resulting in effective penalties against certain banks for non-compliance with the AML/CFT requirements.

41. In addition, since 1 August 2017, all commercial entities with their registered office or premises in France are required to obtain and hold accurate and current information about their beneficial owners. Entities provide information about their beneficial owners to the Commercial and Companies Register at registration, then regular updates are provided. All of these mechanisms ensure that information on the beneficial owners of commercial entities in France is available to banks and to the Commercial and Companies Register. The information kept by the Commercial and Companies Registers is centralised at the national level by the National Institute of Industrial Property (INPI).

42. The concept of trusts does not exist in the French legal system, but it nevertheless requires the administrator of a foreign trust and with a link with France to file a declaration of existence in France. This declaration should include but not be limited to information on the identity of the administrator, the settlors and the beneficiaries. This information is held in a central register of trusts. France also has a central register of "fiducie"

43. The record-keeping requirements (at least five years, or for an unlimited duration, according to the situation) and the penalties for non-compliance should ensure the availability of information in practice.

44. France is not in a position to know how many requests for beneficial ownership information it has received during the review period.

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

Legal and regulatory framework		
	Underlying factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework.		
Determination: the element is in place		

Practical implementation of the standard		
	Underlying factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

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

46. There are two main types of commercial entities in France, companies and partnerships. Companies (*sociétés de capitaux*) are commercial entities where shareholder liability for the company's debts is limited to the amount of their contribution. In contrast, partnerships are entities where the partners are indefinitely liable for the company's debts, regardless of the amount of their contribution. However, in the limited partnerships, limited partners' liability is limited to the amount of their contribution in the capital. This section, *A.1.1,* looks at companies, while partnerships are examined in section *A.1.3*.

47. The 2011 Report analyses the legal framework for the creation of companies in France and the information that is made available by the applicable legislation. The creation of companies is mainly governed by the Commercial Code which sets out requirements for the availability of information on identity and legal ownership. Additional requirements are set out in the Tax Code. Beneficial ownership information is available as a result of application of the AML/CFT legislation. The following table shows the legal sources of available information on the legal and beneficial ownership of various types of companies with share capital in France.

Legislation governing information on the ownership of companies with share capital

Type	Commercial law	Tax legislation	AML/CFT legislation (including 4th AML/CFT Directive)
Public limited company (société anonyme, SA)	Legal ownership	Legal ownership	Legal ownership and beneficial ownership
Limited Liability Company (société à responsabilité limité, SARL)	Legal ownership	Legal ownership	Legal ownership and beneficial ownership
Partnership limited by shares (société en commandite par actions, SCA)	Legal ownership	Legal ownership	Legal ownership and beneficial ownership
Simplified Joint-Stock Companies (société par actions simplifiées, SAS)	Legal ownership	Legal ownership	Legal ownership and beneficial ownership

Legal ownership and identity information requirements

48. The legal ownership and identity information availability requirements are mainly governed by the Commercial Code, although the Tax Code, and to a lesser extent, the AML/CFT legislation also contain provisions relating to the availability of legal ownership information. The following table gives a summary of the various types of companies with share capital in France.

Summary of the various types of companies with share capital in France

Type of company	Description	Commercial Code article	Number registered as at 31 January 2017
Public limited company (SA)	An SA is a company where the capital is divided into shares and held by shareholders who are liable for losses up to the amount of their contribution. There may not be fewer than two shareholders. (except for publicly traded SA that cannot have less than seven shareholders)	Art. L. 225-1 to L. 225-270 Art. R. 225-1 to R. 225-172	34 126
Limited Liability Company (SARL)	An SARL is an entity whose capital is divided into shares and formed by one or several persons (not more than 100) who are liable for losses only up to the amount of their contributions.	Art. L. 223-1 et seq.	1 563 849
Partnership limited by shares (SCA)	An SCA is formed by one or more managing partners, who are traders and are indefinitely and jointly liable for the partnership's debts, and limited partners who are shareholders and liable for losses only up to the amount of their contributions. There may not be fewer than three limited partners.	Art. L. 226-1 et seq.	556
Simplified Joint-Stock Companies (SAS)	An SAS may be formed by one or more persons who only bear the losses up to the amount of their contributions The SAS is a public company governed in principle by the freedom of contract, leaving a certain flexibility when setting out the articles of association. Several provisions governing the SA apply to the SAS	Art. L. 227-1 to L. 227-20 Art. R. 227-1 to R. 227-2	553 512
European Companies	A European company can operate in all EU Member States in a single legal form common to all Member States and defined in EU law. A European company's head offices must correspond to the place where it has its central administration, i.e. its real headquarters. A European company can be formed by a single partner. Apart from the mandatory rules laid down by the Regulation, the European company is subject in the French law, for its operation, to the regime of the public limited company.	Art. L. 229-1 et seq. Regulation No. 2157/2001 of 8 October 2001	79

Company law requirements

49. Under the provisions of company law, regularly updated information about the legal ownership of SARL are available from the Commercial and Companies Register. Information on the legal ownership of SA, SCA and SAS are also available from the Register but only when the company is created (founders), as the law does not require the information to be updated when there is a change of shareholders.

50. In application of article L. 123-1 of the Commercial Code, all companies, whatever their form or their nature, are required to register with the Commercial and Companies Register. The Register is maintained by clerks in the commercial courts and certain magistrates courts and mixed commercial courts. The information held by the various registers is centralised in the National Commercial and Companies Register held by the National Institute of Industrial Property (Institut National de la Propriété Industrielle, INPI). It can be consulted by the public, online, at www.infogreffe.fr, for a fee.

51. In parallel to the Commercial and Companies Register, companies with share capital are subject to record-keeping requirements about the identity of their owners, as stated in the 2011 Report. For SA, SCA, and SAS, the identity of shareholders is known or can be known at any time by the company if they hold the securities account. A securities account is an account that holds securities (shares, bonds etc.). This account can be maintained by the issuing company or by an intermediary such as a bank. Any change in the ownership of a share is recorded in the account. When the account is held by a third party, the company can obtain this information on simply request to the intermediary (articles L. 228-3 and seq. of the Commercial Code and L. 211-5 of the Monetary and Financial Code).

52. For SARL, which are companies where the capital is divided into shares which are not easily transferred, the articles of association held by the company must show the distribution of shares between partners. A written record is made of any transfer of shares and must include the identity of the former and new owners of the shares (art. L. 221-14 et L. 223-17 of the Commercial Code). It is not binding on the company until the company has received notice of the transfer and publication of amended articles of association in the Commercial and Companies Register.

Tax law requirements

53. All companies including companies with share capital are required to register with the tax authorities when the company is created (registration requirement) through the declaration of existence which all new companies must file within one month of their definitive creation, or from the day when they become eligible for corporation tax. For SA, SCA and SAS, the

declaration of existence must include information on the full names and addresses of directors. For SARL, the declarations of existence must also include the full name and address of partners.

54. As described in the 2011 Report, over their lifetime companies with share capital are required for the purposes of the corporation tax to submit a number of declarations that allow the tax authorities to collect information on the legal owners. As a minimum, they must file an annual tax return (art. 223 of the Tax Code) that indicates the composition of the company's capital and provides details how profits are distributed among partners, shareholders or members.

55. Foreign companies that have a permanent establishment in France are subject to the registration requirement with the Commercial and Companies Register, in the same way as companies created in France (art. L. 123-1 of the Commercial Code). Just like French companies, they must file an annual tax return including annexes identifying shareholders.

Nominees

56. The concept of "nominee shareholder" which is specific to common law does not exist in French law. All shares have to be registered in the name of their owner except for foreign investors (shareholders who do not have their residence in France) on whose behalf an intermediary must be registered. In this case, the intermediary is required to declare his/her status as a *mandataire* holding the shares for another person and to disclose the identity of the shareholder on a request from the issuing entity. Moreover, the information on the beneficial owners would be available in France as intermediaries are clients of financial institutions, AML/CFT obligated persons (see A.1.2 Bearer shares).

Legal ownership information – enforcement measures and oversight

57. The 2011 Report described the penalties applied in France for failure to fulfil the various registration requirements, such as the refusal by the business formalities centre (CFE) to register a company, a EUR 4 500 fine and six months imprisonment pursuant to art. L. 123-5 of the Commercial Code (voluntarily giving of inaccurate or incomplete information with a view to registration, deletion or a supplementary or amending statement to the Commercial and Companies Register), three years imprisonment and a fine of EUR 45 000, a fine of EUR 225 000 (exercise of an activity without registration with the Commercial and Companies Register or declaration to the social welfare organisations or the tax authorities), and the role of the judicial authorities. These penalties continue to apply.

58. Furthermore, when the taxpayer fails to file the required tax returns within the given deadline, particularly the annual tax return, and has not registered the company with a business formalities centre or is engaged in an illegal activity, this will be considered a concealed activity (Tax Procedures Code, art. L. 169, al. 3) and is punishable by an 80% tax surcharge (art. 1728 1c of the Tax Code).

59. With regard to declaration requirements, late presentation or non-presentation of statement and other documents to accompany the annual tax declaration are punishable by a fine of EUR 150 and omissions or inaccuracies in these documents, are likely to result in fine of EUR 15 per omission for omissions and inaccuracies, with a minimum fine of EUR 60 and up to a maximum of EUR 10 000.

Availability of legal ownership information in practice

60. The company creation process involves a number of departments which have access to information on the identity of company owners: the business formalities centre, the Commercial and Companies Register and the tax authorities. In addition to the publication of a notice in an official journal (art. R. 210-3 and R. 210-4 of the Commercial Code), a single business creation application must be registered with a CFE (art. R. 123-1 et seq. of the Commercial Code.) This application must include declarations relating to the creation, any modifications to the situation or the termination of the activity, that companies are required to file with certain administrations, persons or organisations. This notably includes the declaration of existence that must be filed with the tax authorities. After having examined this application, the CFE will provide information and supporting documentation to the various organisations involved in the process (clerk of the commercial court, National Institute for Statistics and Economic Studies (INSEE) and tax authorities).

(a) Availability of legal ownership information from the Commercial and Companies Register in Practice

61. The clerk in charge of maintaining the Register verifies the applications that are presented (art. R. 123-94 of the Commercial Code) and performs a formal check. When the clerk considers that the application does not comply with requirements, registration is refused (art. R. 123-97 of the Commercial Code.)

62. The President of the Commercial Court or the designated judge in charge of supervising the Register issues orders on the initiative of a third person or the public prosecutor. The trader or the legal entity can be ordered to comply with the registration requirements or the requirement to file any changes in circumstance with the Register. During the review period, the

following number of orders were issued with regard to supervision of the Register:

- 1 390 orders from October to December 2013;
- 6 119 orders from January to December 2014;
- 7 417 orders from January to December 2015; and
- 6 752 orders from January to October 2016.

63. The reasons for these orders were many and varied. By way of illustration, a natural person had engaged in business as a regular occupation without requesting his registration with the Commercial and Companies Register. Similarly, a corporation had failed to mention a change of head office address to the Commercial and Companies Register in the month following this change.

64. In addition, there are various levels of oversight that ensure the clerks of the commercial courts operate correctly. Clerks of commercial courts are independent professionals and are therefore personally liable for their professional failings according to the terms of article 1240 et seq. of the Civil Code. The profession is self-regulated by the National Council of Clerks of Commercial Courts (*Conseil national des greffiers des tribunaux de commerce*, CNGTC) which organises inspections of clerks. They can be brought before the CNGTC or the High Court for disciplinary action (art. L. 743-2 et seq. of the Commercial Code). The following penalties can be applied: a call to order, a warning, a reprimand, temporary suspension, dismissal or expulsion (art. L. 743-3 of the Commercial Code).

65. As public and ministerial officials, the clerks of commercial courts perform a public service mission and are therefore subject to inspection by the Justice Ministry (art. L. 743-1 and R. 743-1 et seq. of the Commercial Code). These inspections are performed under the authority of the Justice Minister, the Keeper of the Seals. During these inspections, clerks are required to provide all useful information and documents and cannot invoke professional secrecy. In addition to these periodic inspections, which take place at least once every four years (Quadrennial Inspections), clerks of the commercial courts can be subject to Unannounced Inspections, looking at a particular area or a number of areas of the clerk's professional activity, or to General Inspections of Justice. Each year the CNGTC proposes to the Ministry of Justice a list of inspectors and a breakdown of these between the registries concerned by a quadrennial inspection. This list and this inspection programme are subject of a specific order of the Ministry of Justice. Two inspectors are appointed to carry out the inspection of the registry under the supervision of the public prosecutor. Between 2012 and 2016, 143 Quadrennial Inspections and 10 General Inspections were carried out.

66. The CNGTC has a commission called "Inspections and Ethics" whose main mission is to read the inspection reports and alert the president of any difficulties noted. The objective is to implement a follow-up of the recommendations, to propose axes of evolution of the inspections and reports, to ensure the renewal and the formation of the body of the inspectors and to follow the application of the professional and ethical rules.

(b) Availability of legal ownership information from the company in practice

67. In practice, by maintaining a securities account companies with share capital should have information about the identity of their shareholders. When this account is maintained by the company itself, the registration of ownership information in this account forms part of the accounting requirements, and therefore oversight is the same as for any other accounting information (see A.2 Accounting Records).

(c) Availability of information on legal ownership from the tax authority in practice

68. Once the INSEE number has been allocated, the tax authorities receive the relevant documents in the single company creation file. These include the documents identifying the new company and its articles of association. This information is held by the tax authority in its databases in order to monitor the tax requirements of the company. As mentioned earlier, the company is required during its lifetime to regularly submit a certain amount of information to the tax authority, during its periodic declarations such as annual tax returns, or in the form of occasional declarations such as the transfer of shares established in writing before a notary.

69. Using the information provided by the business formalities centre and the information obtained from the declarations made by the company, the French tax authority maintains three constantly-updated databases:

- Transparence Structure Ecran (TSE). This computer database is a tool for identifying shareholders/partners enabling the tax authorities to recreate shareholder/manager links between natural or legal persons and entities. For a given entity, TSE provides identification data (full name, date of birth and address of an individual or name and address of a legal person) for the manager or managers and the shareholders/partners and the name of any other legal person of which the entity is itself a shareholder/partner. For each entry, hypertext links give access to the data of the designated legal or natural persons. In many cases, this tool provides the tax authority with information about the natural persons concealed behind shell companies (beneficial owners) and allows them to track informal groups.

- The Base Nationale des Données Patrimoniales (national assets database, BNDP) This database contains information at the national level drawn from instruments and declarations relating to assets, such as articles of association, changes to share capital, windings-up, mergers, business transfers and business pledges. From the information, it is thus possible to find out a company's assets.
- MOOREA. This computer database provides information about the sale of shares and immovable property that is required to be registered with the tax authorities.

70. The tax authority carries out reviews to ensure that all commercial entities regularly comply with their declaration requirements in accordance with the provisions of the Tax Code. These reviews can be desk-based document reviews or on-site inspections (accounting reviews). During the review period, the tax authority applied penalties for a number of failures to comply with taxpayer declaration requirements as shown in the table below. The first table explains the 80% tax surcharge applied when a concealed activity is identified. A concealed activity is defined as activity carried out by a tax payer who has failed to declare this activity to a Business Formalities Centre or the Commercial and Companies Register, or is carrying out an unlawful activity, and who has not respected the timeframe for making required declarations. The second table describes the penalties applied for failing to register documents. The third table shows the penalties applied for failure to file an annual tax return The final table shows the rate of taxpayer compliance with their declaration requirements (spontaneously and after reminders).

Penalties imposed for concealed activities

	From 01/10/2013 to 30/09/2014		From 01/10/2014 to 30/09/2015		From 01/10/2015 to 30/09/2016	
	Number of cases	Fines imposed	Number of cases	Fines imposed	Number of cases	Fines imposed
80% surcharge on income tax – concealed activity	734	EUR 31 079 817	689	EUR 29 879 450	639	EUR 51 824 488
80% surcharge on corporation tax – concealed activity	93	EUR 141 117 007	106	EUR 61 351 694	99	EUR 14 988 864
80% surcharge on VAT – concealed activity	517	EUR 212 263 691	479	EUR 31 895 966	442	EUR 45 182 000
80% surcharge on registration fees – concealed activity	1	EUR 6 391	2	EUR 55 685	2	EUR 12 992
80% surcharge – miscellaneous – concealed activity	14	EUR 2 885 719	20	EUR 1 862 093	29	EUR 1 638 791

Penalties imposed for failure to present documents for registration

	From 01/10/2013 to 30/09/2014		From 01/10/2014 to 30/09/2015		From 01/10/2015 to 30/09/2016	
	Number of cases	Fines imposed	Number of cases	Fines imposed	Number of cases	Fines imposed
Late payment interest – registration fees	2 214	EUR 16 591 784	2 138	EUR 22 985 385	2 243	EUR 16 033 383
10% surcharge – registration fees	1 143	EUR 1 868 243	1 095	EUR 1 987 709	1 229	EUR 1 762 914
40% surcharge – registration fees	51	EUR 3 819 332	53	EUR 2 484 636	55	EUR 3 064 162

Penalties imposed for failure to file an annual tax return

	From 01/10/2013 to 30/09/2014		From 01/10/2014 to 30/09/2015		From 01/10/2015 to 30/09/2016	
	Number of cases	Fines imposed	Number of cases	Fines imposed	Number of cases	Fines imposed
EUR 150 fine – failure to produce tax declaration	29	EUR 47 400	33	EUR 98 400	30	EUR 67 750
EUR 150 fine – failure to produce various declarations	21	EUR 44 400	26	EUR 75 600	14	EUR 36 900

Rate of taxpayer compliance with declaration requirements

	2013	2014	2015
Rate of natural persons respecting their declaration requirements	98.47%	98.40%	98.26%
Rate of entities respecting their declaration requirements	95.77%	95.57%	94.77%
Total rate of taxpayers respecting their declaration requirements after a reminder	99.48%	99.21%	99.12%

Record-keeping requirements for information on the legal ownership of companies with share capital

71. Since 1954, information in the Commercial and Companies Register is held indefinitely by the clerks of commercial courts and the INPI, in order to be able to provide, on request, the extract from the Register for companies registered since 1954 (art. A. 123-65 et seq.of the Commercial Code).

72. The tax legislation requires ledgers, registers, documents or items to which the administration has access to be kept for six years in order to examine tax declarations and the accounts of taxpayers who are required to maintain and present accounting documents (art. L. 102 B of the Tax Procedures Code).

Availability of legal ownership information in practice (peer experience)

73. During the review period, France received 2 381 requests for information, of which approximately 900 requests covered ownership and/or accounting information of companies. The request tracking system did not provide a breakdown of ownership requests per type of entity. France was able to provide this information in a generally satisfactory manner for its EOIR partners. The difficulties sometimes expressed by peers were not related to the availability of this type of information, rather the response time, which is covered in section C.5 of this report.

Availability of beneficial ownership information

74. According to the 2016 ToR, a new requirement of the EOIR standard is to make available information about the beneficial owners of companies. In France, this aspect of the standard is governed by the AML/CFT legislation, commercial legislation and to a lesser extent, tax legislation. AML/CFT legislation derives from the various laws grouped in the Monetary and Financial Code. These include Directive 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 (4th AML/CFT Directive). This Directive was transposed into French law by an Ordinance on 1 December 2016 which modifies or creates certain provisions of the Monetary and Financial Code, along with the Act of 9 December 2016. The terms of the Ordinance of 1 December 2016 are set out in the Decree 2017-1094 of 12 June 2017 relating to the register of beneficial owners.

75. This legislation defines the beneficial owner as "the natural person who indirectly or directly controls the client on whose behalf a transaction is performed or an activity carried out." (article L. 561-2-2 of the Monetary and Financial Code). When referring to a company, the beneficial owner designates "the natural person or persons who either directly or indirectly hold more than 25% of the capital or voting rights, or who exercise by another means a supervisory power over the management, administration or executive bodies of the company or the general assembly of its shareholders" (art. R561-1 and R. 561-2 Monetary and Financial Code).

76. The availability of information on the beneficial owners of companies is ensured in France by banks (i) and by the Commercial and Companies Register (ii).

- (i) information on the beneficial owners of entities is available from credit institutions as a result of the requirement of all commercial entities to open a bank account (article L123-24 of the Commercial Code), and the obligation of all banks in application of AML/CFT legislation to identify all clients and their beneficial owners.
- (ii) Information on the beneficial owners of entities is available from the Register. This follows from the transposition of the 4th AML/CFT Directive to Member States to keep adequate, accurate and up-to-date information on the beneficial owner in a central register.

Requirements of AML/CFT law

General analysis of AML/CFT legislation

77. A number of provisions of the Monetary and Financial Code had been modified towards the end of the review period, as a result of:

- Act 2016-731 of 3 June 2016 strengthening the fight against organised crime, terrorism and the financing of them and improving the effectiveness and guarantees of the criminal procedure
- Ordinance 2016-1635 of 1 December 2016 strengthening the French anti-money laundering and terrorist financing measures
- Act 2016-1691 of 9 December 2016 on transparency, anti-corruption and the modernisation of economic life
- Decree 2017-1094 of 12 June 2017 on the register of beneficial owners.

Scope of persons subject to the legislation.

78. The scope of persons subject to know-your-customer and record-keeping requirements in France is particularly large. Under the terms of article L. 561-2 of the Monetary and Financial Code, all persons engaged in a financial activity, such as credit institutions, financial companies, financial conglomerates and the *Caisse des dépôts et consignations* for its banking operations; payment institutions; brokers in banking and payment services to the extent that they receive funds from their client, investment service providers, asset management companies and management companies as a result of the investment services they provide or the commercialisation of shares in collective investment undertakings that they may or may not manage, as well as central depositaries of financial instruments and managers of payment and delivery systems and financial investment advisors.

79. The scope of persons covered also includes a certain number of designated non-financial businesses and professions (DNFBP), such as: regulated judicial and legal professions (lawyers, bailiffs, notaries, etc), accounting professions (accountants, auditors), company domiciliation businesses and lawyers acting as fiduciaries. In particular, the regulated legal and judicial professions are subject to AML/CFT requirements when, within the context of their professional activity, they participate in the name of and on behalf of their client in any financial or property transaction, or when they act as a fiduciary or assist their client in the preparation and implementation of transactions relating to the creation, management and executive management of companies or "fiducies" under French or foreign law or any other similar structure including trusts (art. L561-3 Monetary and Financial Code).

The requirement to gather certain information relating to clients

80. Article L. 561-5 of the Monetary and Financial Code, clarified by article R. 561-5 of the same sets out that reporting persons must identify their client, whether permanent or occasional, using suitable means and verify these elements of identification on the presentation of any substantiating written document. It also requires these persons to identify and verify the identity of the beneficial owner of the business relationship, other than in a limited number of cases, where the risk of money laundering or terrorist financing is low (art. R. 561-8 of the Monetary and Financial Code).

81. Furthermore, articles L 561-5-1 and L. 561-6 of the Monetary and Financial Code clarified by article R. 561-12 of the same set out that the reporting persons are required to gather information relating to the purpose and nature of the business relationship and any other relevant information on this customer before entering into a business relationship with them. Reporting persons are also required to maintain current information records by "careful examination of the operations performed, ensuring that they are coherent with the updated knowledge that they have of their customer".

82. Thus, the Monetary and Financial Code expects reporting persons to be able, when entering into a business relationship as well as during any transaction, to identify the beneficial owners in a "permanent" way "throughout" the business relationship and to collect any useful information on them.

83. These know-your-customer provisions must also apply to:

- occasional customers, when the amount of the operation exceeds a certain amount or when the reporting persons carry out a funds transmission operation, offer safe custody facilities (Art. R. 561-10 I and II of the Monetary and Financial Code) or carry out foreign exchange transaction via the Internet

- when they carry out transactions using electronic money, in accordance with European Regulation 1781/2006
- when they have good reason to think that the identity of their customer and the elements of identification that were previously obtained are no longer accurate or relevant, in which case they should once again verify the identity of their customer (art. R. 561-11 Monetary and Financial Code).

84. The Monetary and Financial Code also includes additional know-your-customer provisions, strengthening their due diligence according to the risk of money laundering and terrorist financing presented by a customer, a product or a transaction. These provisions, set out in article 561-10 are either "complementary" vigilance measures in situations provided for by the regulation which apply in addition to those set out in article L. 561-5 (know your customer and, where necessary, the beneficial owners) and L. 561-5-1 (purpose and nature of the business relationship) or enhanced vigilance measures given the high risk identified by entities subject to the fight against money laundering.

Record-keeping requirements

85. Unless subject to more binding measures, reporting persons must keep records identifying their regular or occasional customers for a period of five years following closure of the account and termination of their relationship (art. L. 561-12 of the Monetary and Financial Code). The reporting persons must also gather and keep all appropriate documentation or proof of the identity of the beneficial owners (aforementioned art. R. 561-7 of the Monetary and Financial Code).

86. The aforementioned article R. 561-5 of the Monetary and Financial Code thus sets out that:

- When the customer is a natural person, the information that should be kept includes their full name, date and place of birth, as well as the type of document, the date and place of its delivery, the name and the authority of the person who delivered it and, where necessary, authenticated it.
- When the customer is a legal person, the information that should be kept includes the original or the copy of all documentation or extract from an official register, dating from within the last three months, showing the name, the legal form, the address of the registered office and the identity of partners and company executives.

87. The record-keeping procedures for the documents mentioned above must be included in written internal procedures, drafted by the professions in question, in accordance with any regulatory measures for the sector.

Analysis of AML/CFT legislation in terms of the availability of information about the beneficial owners of companies with share capital.

88. The AML/CFT measures in force in France cover many categories of reporting persons under the international AML/CFT standards, including banks and DNFBP. In addition, since the 4th AML/CFT Directive was transposed into law, the French legislation requires commercial companies to obtain and hold information on their beneficial owners (article L. 561-46 of the Monetary and Financial Code). The current regime therefore makes it possible to access a number of sources of information about the beneficial owners of companies with share capital.

(a) Requirements of the AML/CFT legislation before the transposition of the 4th AML/CFT Directive

89. Before 1 August 2017, the date of the entry into force of the Ordinance of 9 December 2016 transposing the 4th AML/CFT Directive into domestic law, the AML/CFT measures of the Monetary and Financial Code were essentially derived from the first three European AML/CFT Directives, and particularly the 3rd Directive 2005/60/EC which was transposed into French law by Ordinance 2009-104 of 30 January 2009 and the subsequent texts. These measures already required reporting persons to identify their customers or, where necessary, the beneficial owners before entering into a business relationship with them or providing them with assistance in the preparation or implementation of a transaction.

90. This legislation sets out that the beneficial owner is defined as "the natural person who indirectly or directly controls the client or on whose behalf a transaction is performed or an activity carried out" (article L. 561-2-2 of the Monetary and Financial Code). When referring to an entity, the beneficial owner designates "the natural person or persons who either directly or indirectly holds more than 25% of the capital or voting rights, or who exercises by another means a supervisory power over the management, administration or executive bodies of the company or the general assembly of its shareholders (art. R561-1 Monetary and Financial Code). Thus, the beneficial owner of an entity is:

- the natural person or persons who directly or indirectly holds more than 25% of the capital or more than 25% of the voting rights, or
- the natural person or persons who by any other means has a governing influence over the management, administrative or executive bodies of the entity or the general assembly of partners or shareholders.

91. If no natural person fulfils the above conditions, the default beneficial owner is the legal representative of the company. The term "legal representative" refers to the director of the entity.

92. The definition of the beneficial ownership in the AML/CFT measures as well as their scope of application are in line with the standard. However, the measures in force before the transposition of the 4th AML/CFT Directive only covered financial institutions and DNFBP, with commercial entities not being required to identify their beneficial owners. Under these conditions, the availability of information on the beneficial owners of commercial entities was entirely dependent on the implementation by financial institutions and DNFBP of their due diligence in identifying their customers when these were commercial entities. For these measures to ensure the availability of information on the beneficial owners of all commercial entities, these entities had to be required to engage the services of a DNFBP or hold a bank account with an entity subject to AML/CFT legislation.

93. In France, all "traders" must, in application of article L123-24 of the Commercial Code, open an account in a credit institution (bank) or a post cheque account (*La Banque Postale*). This requirement came into force with Act 2003-7 of 3 January 2003. The term "trader" designates persons whose regular occupation is to carry out commercial transactions. This includes natural persons and commercial entities. The expression "commercial entities" covers both companies with share capital (SA, SAS, SCA, SARL, SE) and partnerships (SNC, SCS), except the *sociétés civiles*. Apart from the *sociétés civiles*, the requirement to open a bank account covers all entities relevant in France for the purposes of EOIR.

94. Although the Commercial Code does not expressly require that the bank account be opened in France, the French authorities consider it to be impossible for a commercial entity and a *société civile* to perform their activities in France without having a bank account, given the many requirements that it would be unable to fulfil, starting with the creation of a commercial entity.

95. One of the essential documents for the registration of any entity is the funds deposit certificate showing that share capital has been deposited in full. The Commercial Code stipulates that funds from the share capital should be paid by the persons who received them and in the name of the company being created into the Caisse des dépôts et consignation, or deposited with a notary or with a credit institution (articles R. 223-3 for SARL and R. 225-6 for SA). The French authorities indicated that in practice, the founder generally opens an account with a banking institution in the name of the company being created and then pays the sums into it, creating the initial capital.

96. Secondly, the payment of taxes of all kind of more than EUR 300 can only be done via a bank account (transfer, cheque, etc. article 1680 of the Tax Code). This amount is subject to change by Decree and might be reduced up to EUR 60. This requirement applies for all types of taxes, including direct taxes such as corporation tax and indirect taxes such as VAT, local taxes, as well as withholding taxes, such as the income tax of employees. It is difficult to imagine there being a commercial entity in France paying no taxes at all or whose total tax bill never exceeds EUR 300. For example The *Cotisation Foncière des Entreprises* (Property tax on enterprises) is payable by individual persons and legal entities that carry out a non-salaried professional activity, regardless of their legal status and their activity. All companies and partnerships are subject to this tax no matter the nature of their activities and whether they are making profit or not.

97. Finally, French law prohibits individual traders and entities from making payments in cash or using electronic money when the amount exceeds EUR 1 000 (Article L. 112-6 Monetary and Financial Code and Decree No. 2015-741 of 24 June 2015). Above EUR 1 000, the payment should be done using a bank account, via a check or a bank transfer. This concerns all entities that are relevant for the purposes of EOIR (all types of companies and all types of partnerships).

98. The combination of requirements relative to the deposit of funds when creating the entity, the payment of taxes and any payment above EUR 1000 means that in practice, commercial entities as well as a *sociétés civiles* must have a bank account in France to carry on their business. As credit institutions are bound by AML/CFT legislation, they must have information on the beneficial owners of all entities set up in France (see section A.3 below for an analysis of the supervision of banks' know-your-customer requirements).

(b) Requirements of the AML/CFT legislation since the transposition of the 4th AML/CFT Directive

99. Since 1 August 2017 (Order No. 2016-1635 of 1 December 2016), the French law has complied with the provisions of the 4th AML/CFT Directive which sets out that "Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held."

100. In application of the new article L. 561-46 of the Monetary and Financial Code, commercial entities and economic interest groupings having their registered office or an entity in France and other legal persons who should be registered under the legal and regulatory measures in force, are required to obtain and hold accurate and current information about their

beneficial owners. This new requirement is accompanied by the creation of a register of beneficial owners held by the Commercial and Companies Register. Companies provide information about their beneficial owners to the Commercial and Companies Register at registration, then regular updates are provided. These requirements entered into force on 1 August 2017 and completed the AML/CFT measures on the identification of beneficial owners, which did not directly concern commercial entities until that date. The list of information gathered as well as the conditions and procedures for obtaining, holding, updating and communicating this information to the Register by companies and legal entities as well as the conditions for providing documents to the competent authorities are set out in Decree 2017-1094 of 12 June 2017.

101. Decree 2017-1094 of 12 June 2017 relating to the register of beneficial owners defined in Article L. 561-2-2 of the Monetary and Financial Code sets out that commercial entities and other legal persons registered in the Commercial and Companies Register (Economic interest groups, associations issuing bonds) are required to (i) obtain and hold accurate and current information on their beneficial owners from 1 August 2017, and (ii) file this beneficial ownership information with the Register. Legal entities registered before 1 August 2017 have until 1 April 2018 to comply with these measures. The only legal persons exempt from these new obligations are those whose shares are traded on a regulated market, in other words listed companies, as their transparency requirements already ensure the availability of beneficial ownership information.

102. The beneficial ownership information must be filed with the Register via a document that has been dated and signed by the legal representative during the business creation application or no later than 15 days from the receipt of the application. Any rectification or additional information must be filed within 30 days of the incident or act generating the modification.

103. The required beneficial ownership documentation should contain, in addition to identification of the company or legal entity, the names, usual names, pseudonyms, first names, dates and place of birth, nationality, and home address of any natural persons, the supervisory measures applicable to the company or the legal entity, and the date when the natural person or persons become beneficial owners.

104. Failure to file beneficial ownership information with the Register, or the filing of inaccurate or incomplete information, is punishable with six month's imprisonment and a EUR 7 500 fine, as well as certain additional penalties (art. L. 561-49 Monetary and Financial Code). It should be noted that natural persons (the legal representative of the entity) or legal entities (the entity itself) may be found guilty of this offense.

105. The President of the Commercial Court can order the reporting person to file the beneficial ownership information in their own name or in response to a request from the Public Prosecutor or any other person justifying their interest in doing so (article L. 561-48 Monetary and Financial Code).

106. In conclusion, from the point of view of the requirements of AML/CFT legislation, the availability of information on the beneficial owners of commercial entities is ensured in France by the following two sources of information:

- credit institutions, due to the fact that all commercial entities are required to open a bank account, and all credit institutions are required to identify their customers and their beneficial owners
- the Commercial and Companies Register as a result of implementation of the requirement for commercial entities to obtain and hold accurate and current information on their beneficial owners (as from 1 August 2017).

Tax law requirements

107. Tax law itself does not cover information about the beneficial ownership of entities registered in France. However, implementation of tax law allows the tax authority to partially obtain this information, As a result of the implementation of the declaration requirements outlined in the section *Legal Ownership and Identity Information Requirements – tax law requirements,* companies are required to provide a variety of information documents in support of their annual tax declaration (art. 223 of the Tax Code), such as the list of persons or groups of persons who de jure or de facto directly hold at least 10% of the company's capital (form 2059-F-SD). The compiling and cross-referencing of this information in the Transparence Structure Ecran database enables company partners to be identified, which then gives the tax authority information on the beneficial ownership of entities when the persons who hold at least 10% of the capital are natural persons.

108. In summary, in addition to credit institutions and the Trade and Company Register, which are the main sources of information on the beneficial ownership of entities, this information may also be available from the tax authorities under certain conditions.

Beneficial ownership information – enforcement measures and oversight

109. The supervision of the implementation of AML/CFT legislation in France is carried out by various bodies, the most important of which include:

- the *Autorité des marchés financiers* (Financial Markets Authority, AMF) for financial markets

- the *Autorité de contrôle prudentiel et de résolution* (Prudential Supervision and Resolution Authority, ACPR) for the banking and insurance sectors
- the professional orders and bodies for certain DNFBP (such as lawyers, notaries, bailiffs, chartered accountants, court-appointed administrators and court-appointed agents)
- the Ministry of the Economy and Finance, in particular the administration in charge of competition, consumption, the repression of fraud and the domiciliation of companies.

110. It should be noted that through their oversight activities, the banking and accounting and legal professions will continue to play a leading role in ensuring the availability of information on company ownership in France, until the register of beneficial owners becomes effective.

Supervision of the banking sector by the ACPR.

111. ACPR is an independent administrative authority working to ensure the stability of the financial system and the protection of customers, policy holders, members and the beneficiaries of persons subject to its oversight (article L. 612-2 of the Monetary and Financial Code). In addition to monitoring the financial position and operating conditions of entities under its supervision, the ACPR is also mandated to ensure that the AML/CTF rules are being respected by these persons, under the conditions set out in article L. 561-36 and L. 561-36-1 of the Monetary and Financial Code. It is within this context that ACPR performs regular desk-based document reviews and on-site inspections. Document reviews are based on the AML/CFT questionnaire which is sent annually to banks and other reporting persons, as well as annual reports on internal control. Where necessary, analysis of this document results in monitoring letters being sent out and in-depth supervision interviews being organised. On-site reviews are organised based on a risk approach which underpins the oversight programme. The review looks at the AML/CFT measures in place, examines a sample of cases and carries out interviews with people working for the entity being reviewed, following the adversarial principle.

112. Should any violation be found, ACPR can apply sanctions which range from a follow-up letter to a formal warning, or the instigation of a disciplinary procedure that can result in penalties being handed out to the entity under inspection. The sanctions are the warning, the blame, the partial or total withdrawal of licence or cancellation, the prohibition to perform certain operations and all other limitations in the exercise of the activity, the temporary suspension of one or several directors of the entity concerned, the automatic resignation of one or more directors. The ACPR may also impose

a financial penalty of up to EUR 100 million or 10% of the turnover of the entity concerned.

113. During the review period, ACPR served 17 formal notices and carried out 19 disciplinary procedures that resulted in sanctions (18 reprimands, 4 warnings and 1 withdrawal of licence.) Financial penalties totalling EUR 24.35 mln were handed out. In 2016 alone, 691 follow-up letters were sent. The table below summarises the on-site inspections made during the review period and the number of sanctions handed out.

On-site inspections carried out by ACPR during the review period

Year	Number of on-site inspections of AML/CFT compliance performed by ACPR	Number of sanctions handed out for AML/CFT violations	Number of formal warnings sent out for AML/CFT violations
2013	83	5	9
2014	38	1	6
2015	22	5	0
2016	30	6	2

114. In its supervisory role, ACPR published guidelines for reporting entities to assist them with the implementation of AML/CFT legislation (such as instruction 2016 I-22 of 3 October 2016 modifying Instruction 2012 I-04 of 28 June 2012 on information about the AML/CFT measures.)

115. The regularity of the ACPR's controls, the effectiveness of sanctions and the monitoring of corrective measures ensure the availability of beneficial ownership information held by banks.

Supervision of accounting and legal professions by professional orders and bodies

116. In France, oversight of the accounting and legal professions is carried out by the professional orders. This covers, among other:

- the Bar where lawyers are registered and their national Bar Council
- the notary chambers, for notaries
- the Bar Council of the Conseil d'Etat and the Court of Cassation, for the bar of the Conseil d'Etat and the Court of Cassation
- for auditors, the *Haut conseil du commissariat aux comptes* (H3C) which is not a professional order but an independent public authority
- the *Ordre des experts-comptables* for chartered accountants.
- the *Conseil national des administrateurs judiciaires et des mandataires judiciaires* for court-appointed administrators and court-appointed agents.

117. Accounting and legal professions are also under the supervision of the Directorate of Civil Affairs and the Seal (DACS) of the Ministry of Justice and the General Prosecutor's Offices, with the exception of accountants, whose supervision is provided by the Directorate General of Public Finance (DGFiP) of the Ministry of the Economy and Finance

118. All of these supervisory authorities have an existing organisation dedicated to the oversight of the various professions, with a particular emphasis placed on respect for AML/CFT legislation. As an illustration, in 2016 the *Haut conseil du commissariat aux comptes* inspected 983 audit firms, representing around 15% of the total number of firms. The current disciplinary procedure for auditors was implemented during 2016. But under the previous procedure, the number of disciplinary sanctions handed out each year by the regional disciplinary chambers was between 20 and 30 on average. In 2015, the H3C formulated eight disciplinary decisions. For notaries, two sanctions were handed out between 2013 and 2016, namely one temporary suspension for 10 years in 2015 and one dismissal in 2016. For lawyers, of a sample representing 23 Bar Councils and 38 000 lawyers (out of a total of 68 000), a number of inspections have been made but no sanctions handed out. For example, the Bar Council of Versailles (which has 780 lawyers) performs an average of 1000 desk-based document reviews and 8 on-site inspections a year. With respect to chartered accountants, 5 975 (of the 20 000 in practice in France) were inspected between 2013 and 2016. Sanctions are handed out by the regional disciplinary chambers.

119. Although most of these professions supervise the AML/CFT obligations of their members on a regular basis, the experience of some of them such the lawyers is relatively new in this area. This does not, however, affect the availability of beneficial ownership information, as the entities are themselves required under the new AML/CFT regime to identify their beneficial owners and to file the beneficial ownership document to the Commercial and companies register.

The implementation of the new register of beneficial owners in practice

120. The implementation of the register of beneficial owners is set out in the aforementioned Ordinance of 1 December 2016 and its implementing Decree 2017-1094 of 12 June 2017, as well as the aforementioned Act 2016-1691 of 9 December 2016. All of the related provisions are contained in the Monetary and Financial Code.

121. In practice, the register of beneficial owners is held at a local level by the Commercial and Companies Register and centralised at the national level by the *Institut National de la Propriété Intellectuelle* (INPI). The clerk of the commercial court should receive and verify that the information on the beneficial owner is complete and in line with the legislative and regulatory

provisions and correspond to the supporting documents and documents filed in the appendix and are compatible, in the case of a modification request, with the file. Beneficial ownership information are communicated to the register through a form called the "Beneficial Owner Document" and can be downloaded from the Iinfogreffe website. This form contains several boxes to complete, including the names, usual names, pseudonyms, first names, date and place of birth, nationality and personal address of any natural persons, the oversight measures applied to the company or legal entity, the date when the natural person or persons became the beneficial owners. Beneficial ownership information communicated by companies and legal entities to the Register form part of the registration documents and other documents mentioned in the Commercial Code. They are sent electronically by the clerk of the commercial court to the National Institute of Industrial Property, INPI, meaning that INPI centralises beneficial ownership information at the national level in the same way that other information are held by the Register.

122. A system of sanctions is designed to guarantee respect of the obligation to file documents with the register of beneficial owners:

- Article L. 561-48 of the Monetary and Financial Code allows the President of the court, in their own right or following a request from the Public Prosecutor or any other interested person, to require a company to provide information about the beneficial owner, subject to penalties if necessary. The President may also designate a third party to carry out these formalities.
- The article L. 561-49 sets out sanctions of six months imprisonment and a EUR 7500 euro fine for failure to file the document relating to the beneficial owner with the Register or to file a document containing inaccurate or incomplete information. Additional penalties (prohibition of management functions and partial deprivation of civil and civic rights) may also be imposed. The maximum amount of the financial penalty is multiplied by five in the case where the author of the breach is a legal person.

123. However, if sanctions are provided in the event of non-filing or inaccurate information on the beneficial owners of entities, the legal representatives of entities do not have any binding power to obtain information on the beneficial owners where the shareholders are corporate or legal entities, unlike AML/CFT obliged entities that may terminate a business relationship or take other restrictive measures. The implementation of the new obligation will therefore need to be monitored to assess its effectiveness. As the register of beneficial owners is a recent initiative, France is recommended to take the necessary measures to ensure the monitoring of its implementation.

Availability of beneficial ownership information in practice (peers experience)

124. The availability of beneficial ownership information was not reviewed under the 2010 ToR in the 2011 Report. France does not collect statistics on how many requests for beneficial ownership it receives.

A.1.2. Bearer shares

125. The concept of "bearer shares" continues to exist in French law, although since 1981 they have not respected the classic features of bearer shares insofar as they must be dematerialised, like registered shares (articles 94-I et 94-II of the Finance Act of 30 December 1981 and its implementing texts). Dematerialisation means that all shares must be entered into an account held either by the issuing company or by a financial intermediary (article L. 211-3 of the Monetary and Financial Code). As a result of this, the ownership title is no longer a printed paper that can be passed from person to person. Under these conditions, what distinguishes the registered share from a "bearer" share is not its material format but the identity of the organisation in charge of holding them.

126. It should also be noted that although the shares have to be registered in the name of their owner, either in the account opened by the issuing entity or in the account opened by the intermediary, this rule does not apply to foreign investors on whose behalf all intermediaries can be registered. However, the intermediaries are clients of financial institutions and as such are covered by the requirements of the AML/CFT legislation, particularly with regard to the identification of the customer and beneficial owner.

Bearer shares in practice

127. In practice, in the case of bearer shares, the issuing company can obtain certain information about the owners of these shares (article L. 228-2): Name, nationality, address, number of shares held by each one, date of birth of the shareholder, and in the case of a legal person, the year of incorporation. The request is made by the issuing company to the central depositary which manages the shares register (Euroclear France). The issuing company can then ask either the depositary or the persons on the list whether they are holding these shares in their own name or on behalf of a third party, and in this latter case to provide information that identifies the beneficial owners of the shares. When a person has been asked to provide information about the beneficial owners of their shareholding and has failed to provide this information or has provided incorrect information, the shares or securities giving access to the capital and for which this person has been registered may not be used to vote in any shareholder assembly until the situation has been

regularised and the payment of the dividend will be deferred until this date (Art. L. 228-3-3 of the Commercial Code).

128. The French authorities have indicated that they have not yet had to gather any ownership information on bearer shares at the request of their treaty partners. However if they were to do so, the issuing company would be contacted first and, if it does not provide the information or if it is incomplete, Euroclear France could then be contacted.

A.1.3. Partnerships

129. A partnership is defined as a commercial entity in which each member agrees to participate taking into consideration each other member in their personal capacity (*intuitu personae*) and which requires their personal collaboration in the pursuit of the partnership's purpose, meaning that the holding of each member can only be transferred under the terms of an express clause and with the consent of all other members. In addition to *sociétés civiles*, this category covers two types of commercial entity (art. L. 210-1 of the Commercial Code.) : *Sociétés en nom collectif* (general partnerships, SNC) and *sociétés en commandite simple* (limited partnerships, SCS). The table below shows the key features of each type of partnership.

Summary of the various types of partnerships in France

Type of company	Description	Commercial Code article	Number registered as at 31 January 2017
SNC	An SNC is defined by article L. 221-1 al. 1 of the Commercial Code as a company where all the members are traders. The fundamental feature of an SNC is that the traders are jointly and severally liable for the partnership's debts. The partnership has a legal personality and its assets are separate from those of the members. Each member is liable for the partnership's debts, explaining the closed nature of an SNC.	Art. L. 221-1 to L. 221-17 and R. 221-1 to R. 221-10 of the Commercial Code	53 785
Limited partnership (SCS)	An SCS has the same hybrid structure as an SCA described in the companies with share capital section: it includes managing partners who are traders and who are indefinitely and jointly liable for the partnership's debts, and limited partners who are liable for debts only up to the amount of their contributions. There may not be fewer than 2 partners in an SCS.	Art. L. 1 and following of the Commercial Code	844

Type of company	Description	Commercial Code article	Number registered as at 31 January 2017
Société civile	All entities not otherwise defined, in terms of their form, nature or purpose, are *societés civiles*. An entity is therefore considered to be *civil* if it is not a commercial entity, either due to its formal criteria or its activity.	Art. 1832 to 1870-1 of the Civil Code Art. 30 to 69 of Decree 78-704 of 3 July 1978	1 919 240

130. The provisions of business law and tax legislation governing the registration of partnerships and their declaration requirements to the tax authority are the same as those for companies with share capital examined in section *A.1.1 Availability of legal and beneficial ownership information of companies.* These rules ensure that information on the legal owners of partnerships is made available to both the Commercial and Companies Register and the tax authority.

131. The Register contains current information about the members of partnerships, provided at the time the partnership is registered. Subsequently, the partnership is required to inform the Register about any changes affecting the documents filed during its registration such as, for example, any changes to the articles of association. Any changes to the members of a partnership (except for Limited partners of Limited liability partnerships) will result in a modification of the articles of association, which must be provided to the Register with the identity of the new member or members within one month.

132. Fulfilment of partnerships' declaration requirements provides the tax authority with information on their ownership. Just like for companies with share capital, partnerships are required to make a declaration of existence within one month of being formed, providing the tax authority with information on the full names and addresses of the managers or directors and each of the members. Any subsequent change in membership following the declaration of existence must also be declared to the tax authority. Furthermore, even though in principle partnerships are not liable for corporation tax (unless they opt to pay it), they are required to file an annual tax return accompanied by the supporting documentation mentioned earlier for companies with share capital, such as the structure of the capital and the identity of members. This tax return allows the tax authority to know the proportion of the income allocated to each partner. All of this information is held in the tax authority's databases.

133. Information on the beneficial owners of partnerships is mainly available in application of commercial law and tax law. Under these conditions, the people whose names are given as partners in the articles of association are very often also the beneficial owners of the entity. In the case where the members are not the persons who have the ultimate control over the entity,

the application of AML/CFT legislation as examined above would provide information about the beneficial owners, either from banks or from the new register of beneficial owners.

Enforcement measures and oversight

134. Sanctions, enforcement measures and oversight with regard to registration and tax declaration requirements of partnerships are generally the same as those for companies with share capital examined above.

Availability of information on partnerships in practice

135. During the review period, France received 2 381 requests for information, about 900 of which related to entities' ownership or accounting information. The requests tracking system did not provide a breakdown of the information requested per type of entity. However, France has always been able to provide this information to its information exchange partners in a generally satisfactory manner.

A.1.4. Fiducies (Trusts)

136. In France, the legal regime of *fiducies* is different from that of trusts, even though there are many similarities between the two categories. *Fiducies* are regulated as legal arrangements. In contrast, trusts are not recognised by French law which simply imposes rules to ensure the transparency of this legal arrangement when, having been created abroad, they have a link with France.

French fiducies

137. Act 2007-211 of 19 February 2007 introduced *fiducies* to France, and was subsequently modified by article 18 of the law to modernise the economy, Act 2008-776 of 4 August 2008 then by Ordinance 2009-112 of 30 January 2009.

138. A *Fiducie* is an arrangement whereby one or more settlors transfers assets, rights or sureties, present or future, to one or more trustees (*fiduciaries*) who, keeping them separate from their own assets, act for a specific purpose for the benefit of one or more beneficiaries. It is governed by article 2011 et seq. of the Civil Code. The *fiducie* is established by law or by contract and must be an express arrangement. Act 2007-211 of 19 February creating *fiducies* established:

- the management *fiducie*, a contract whereby the settlor transfers assets or rights to a trustee who is responsible for managing them in the interest of either the settlor or a third party.;

- the surety *fiducie*, a contract whereby a person transfers titles to assets or rights to a trustee to secure an obligation.

139. All natural or legal persons can be settlors. However, article 2015 of the Civil Code limits the types of persons who may act as trustees. The rules governing the creation of *fiducies* are the same for residents and non-residents and whether the assets are held in France or outside the French territory.

140. Article 2018 of the Civil Code sets out that, to be valid, the *fiducie* contract must include certain information. The trustee holds a copy of the *fiducie* contract and therefore should also be in possession of this information for the contract to be valid. The required information include the identity of settlors, trustees and beneficiaries (or the rules under which the will be designated).

141. In addition, the contract should also include:

- the assets, rights or sureties transferred. If they are future assets, they must be determinable
- the duration of the transfer, which may not be more than 99 years
- the purpose designated to the trustee(s) and the scope of their powers of administration and disposal.

142. The fiduciaries (*fiduciaires*) are required to keep all the information relating to the *fiducie* for 10 years after the termination of the *fiducie* contract. This information must be reported to the tax authority on request and professional secrecy may not be invoked (art. 15 of Act 2007-211 of 19 February 2007 establishing *fiducies*).

143. The obligations and penalties arising from AML/CFT measures apply to trustees (article L. 561-1 et seq. of the Monetary and Financial Code).

144. The *fiducie* contract and any amendments to it must be registered within one month at the tax office of the place where the trustee has his/her registered office (or at the tax office for non-residents if the trustee is not domiciled in France (article 635 of the Tax Code and article 2019 of the Civil Code). Where *fiducie* contracts relate to real property or real property rights, they must also be registered with the Mortgage Registry.

145. The tax authorities keep a National Register of *Fiducies* (RNF) under the provisions of art. 2020 of the Civil Code – Decree 2010-219 of 2 March 2010. The purpose of this register, which is updated by the *Base des données patrimoniales* (national assets database, BNDP), is to centralise all the information about *fiducie* contracts. The register contains the following information:

- the full name, address, date and place of birth of natural persons who are settlors, trustees or beneficiaries of the *fiducie*

- the company name and SIREN number and the address of the registered office or establishment of legal entities acting as settlors or trustees and the legal persons designated as beneficiaries in the *fiducie* contract
- the date and registration number of the *fiducie* contract and any amendments and identification of the tax office where the *fiducie* was registered
- date and number of the publication of the land registration and identification of the tax office where the formality was completed.

146. As of 5 January 2018, there were 106 *fiducies* in France.

147. All of the above allows the tax authorities to have current information on the ownership of *fiducies*.

148. Information about the beneficial owners of *fiducies* is also available in application of AML/CFT legislation, as only certain professionals can act as trustees. These include credit institutions (art. L. 511-1 of the Monetary and Financial Code), attorneys (article 2015 of the Civil Code), investment firms, insurance companies and certain public institutions and agencies set out in article L. 518-1 of the Monetary and Financial Code, namely the *Tresor Public, Banque de France, La Banque Postale, the Institut d'émission des départements d'outre-mer,* and the *Caisse des dépôts et consignations*. These professionals are all reporting persons, bound under AML/CFT legislation to know-your-customer obligations, including of beneficial owners.

Foreign trusts having a link with France

149. The trust is a legal arrangement that does not exist in the French legal system. France does not allow the creation of trusts and although it signed The Hague Convention of 1 July 1986 on the law applicable to trusts in 1991, it has not ratified it. There is, however, no obstacle in French domestic law that prevents a French resident from acting as a trustee, administrator or manager of a trust, or to be responsible for distributing the profits or administrating the trust when it was formed in a foreign country. Case law recognises that foreign trusts may produce effects in France providing they have been formed in accordance with the applicable law in the country of creation and that they do not contain measures in contravention of public policy (*Ordre Public*) in France.

150. The legislation governing trusts in France is mainly formed by article 14 of the Amending Finance Act 2011 setting out reform of the taxation of assets, which included the new article 1649 AB of the Tax Code setting out the requirement for trusts to make a declaration, modified and completed by article 11 of the Act of 6 December 2013 on the fight against tax fraud

and major economic and financial crime, which extended the scope of the obligation to declare.

151. Article 792-0 of the Tax Code, created by article 14 of Act 2011-900 of 29 July 2011, defines a trust as a set of legal relations created in a state other than France, by a person with the role of settlor, and by an agreement between living persons or as a result of death, with the aim of placing goods or assets under the control of an administrator in the interest of one or many beneficiaries or for a determined purpose. The settlor of the trust is either the natural person who created it or, where it has been created by a natural person acting in their professional capacity or by a legal person, the natural person who has transferred the assets and rights. The beneficiary of a trust means the person or persons designated as being the recipient of the income of the trust paid by the administrator of the trust and/or as the recipient in capital of the assets or rights of the trust, over the lifetime of the trust or when it has expired.

152. French law operates a specific reporting regime for trusts. Thus, in application of article 1649 AB of the Tax Code, the administrator of a trust is required to declare the trust when one of the four following conditions has been met:

- the settlor or the beneficiary considered as the settlor are tax resident in France;
- at least one of the beneficiaries is tax resident in France;
- at least one of the assets or right placed in the trust is located in France in the meaning of article 750 ter of the Tax Code;
- the administrator of the trust is tax resident in France.

153. The required content in the declaration is very precise and includes information on:

- the identity of the administrator, the settlors and the beneficiaries
- the assets or rights placed in the trust
- the terms of the trust (irrevocable or not, discretionary or not, the rules governing the attribution of the assets or rights placed in trust).

154. This information is held in a centralised register of trusts under the responsibility of the ministries in charge of the economy and the budget. This registry, created by article 10 of the Ordinance of 2016-1635 of 1 December 2016 modifying article 1649 AB of the CGI is freely accessible to the supervisory authorities. French legislation went further than the requirements of the 4th AML/CFT Directive which sets out the creation of the register of trusts. This is because the register will not only contain the identity of the members of the trust, but also the value of the assets, rights and proceeds placed in trusts located in France and outside of France, the content of the terms of the trust and

events related to the lifetime of the trust (constitution, modification and expiration). As of mid-2016, 12 948 foreign trusts were registered in France.

Enforcement measures and oversight

155. In application of article 2019 of the Civil Code, failure to register a French *fiducie* with the tax administration will be punished by the *fiducie* contract or its amendments being declared invalid. Failure to register and publish information with the Mortgage Registry means that the terms of the contracts that refer to property or immovable assets will not be binding on third parties.

156. For trusts that fail to respect the declaration requirements, a fine of EUR 20 000 can be handed out.

157. The tax authority has oversight powers to ensure the declaration requirements are being met, for both French *fiducies* and foreign trusts. They can therefore apply all the oversight and inquiry measures that are used in tax procedures.

Availability of information on fiducies in practice

158. During the review period, France received three requests for information about foreign trusts. The answers provided were provided without difficulty, to the satisfaction of France’s information exchange partners.

A.1.5. Foundations

159. The 2011 report on France concluded that foundations were not relevant with regard to the 2010 ToR for the EOIR standard.

160. The conclusions of the 2011 report remain valid.

Other entities and relevant arrangements

Economic interest groupings

161. Economic Interest Groups (EIG) is a legal entity defined by article L. 251-1 of the Commercial Code. They can be formed by two or more persons in order to facilitate or develop the economic activity of members, and to improve or increase the earnings of this activity. The grouping does not seek to make profits in its own right. Its activities must be related to the economic activity of its members and may be only ancillary thereto. The rights of the members of the EIG cannot be represented by negotiable securities.

162. Information on legal owners and beneficial owners of EIG is available in France from the Commercial and Companies Register, from the tax authorities or from banks. The EIG should be registered with the Commercial and Companies Register (art. L. 123-1 of the Commercial Code), under the same conditions as commercial entities (companies with share capital and partnerships). A copy of the agreement is filed with the Register during registration as are any subsequent modifications.

163. The EIG is not liable for corporation tax, but its members are liable for income tax or corporation tax on the income that correspond to their rights (art. 239c du CGI). This is the same regime as that of partnerships described in article 8 of the Tax Code and examined earlier in Section A. *1.3 Partnerships.*

164. The AML/CFT measures in force in France apply to EIG just like all other commercial entities. As a "trader", the EIG is required to open a bank account, which allows the bank as the AML/CFT reporting person to hold information on its beneficial owners. In addition, under the terms of the new article L. 561-46 of the Monetary and Financial Code, EIG are required to obtain and hold accurate and current information on the beneficial owners and this information is also provided to the Trade and Companies Register to be retained in the register of beneficial owners.

A.2. Accounting records

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

165. The 2011 Report concluded that all the relevant entities are required to keep the accounting documents that will make it possible to track all of their transactions, establish their financial position and prepare the financial statements; these documents must be retained for at least ten years. The requirement to keep accounting records comes from the Commercial Code and the Tax Code. The A.2 element was determined to be "in place" and rated "compliant" and no recommendations were made. The French legislation has not changed.

166. No difficulty was noted during the review period with regards to the availability of accounting information in practice. It was the same for the current review period (1 October 2013 to 30 September 2016). The auditors, as part of their certification mission, make sure that companies keep their accounts in compliance with the law. Additionally, accounting checks carried out by the tax authority as part of their verifications of commercial entities' tax obligations ensure that the accounting documents are effectively being kept by all taxpayers natural or legal persons.

167. During the current review period, France received approximately 900 requests for entities' accounting and/or ownership information. The competent authority did not experience any difficulty in obtaining these information in practice. France's exchange of information partners have also expressed their satisfaction with the responses to requests for accounting information addressed to France.

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

Legal and regulatory framework		
	Underlying factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework.		
Determination: the element is in place		
Practical implementation of the standard		
	Underlying factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

A.2.1. General requirements

169. The accounting requirements are based on the Commercial Code and those requirements are included in the National Accounting Code (*Plan Comptable Général*). The Tax Code and, to a lesser extent, economic regulations (as concerns invoices) also provide accounting obligations. Accounting records must (i) correctly record all transactions, (ii) be such that the financial situation of the entity or arrangement may be determined with reasonable precision at any time, and (iii) enable the preparation of financial statements. Accounting records must be supported by underlying documentation such as invoices, contracts, etc. These obligations have not changed since the 2011 report (see paragraphs 115 to 133).

New commercial and accounting law

170. The Ordinance of 23 July 2015 (No. 2015-900) on the accounting obligations of traders simplifies the accounting rules in the Commercial Code for the fiscal years begun since 1 January 2016, in order to comply with the European law. The simplifications provided concern traders, both natural persons and legal entities. The requirement to keep an inventory-journal is

done away with for fiscal years begun since 1 January 2016 (Commercial Code, art. R. 123-173 and art. R. 123-77 modified; decree No. 2015-903 of 23 July 2015, art. 1). This measure does not however change the obligation to carry out an inventory which must still be performed every 12 months as an annual check on the existence and the value of assets and liabilities at the end of a fiscal year.

171. For fiscal years begun since 1 January 2016, companies that meet the definition of small enterprises according to art. L. 123-16 of the Commercial Code (companies below two of these three thresholds: EUR 4 million for the balance sheet total, EUR 8 million for sales net of tax, and an average number of employees of 50; Commercial Code Art. L. 232-1, IV; Ordinance No. 2015-900 of 23 July 2015, art. 2) are not required to produce an annual report when constituted in the form of a SARL or an SAS whose sole shareholder, natural person, personally assumes the management functions or the presidency.

172. Small enterprises as defined in the previous paragraph, whatever their form is, can present a simplified version of their annual accounts (balance sheet and simplified income statement and annex). The same is true for micro enterprises (below two of these three thresholds: balance sheet total of EUR 350 000, EUR 700 000 total sales net of tax, 10 permanent employees) which can present a simplified balance sheet and income statement and are not required to keep annexes.

173. Any form of branches of foreign companies are not subject to the accounting requirements in Art. L. 123-12 of the Commercial Code. However, they must be able to present to the tax authorities any accounting document that supports the correctness of the information reported in their statements, consistent with the jurisprudence of the *Conseil d'État* (the highest administrative jurisdiction in France) (decision on 13 July 2011, No. 313440). The *Conseil d'État* specifies in this decision that "[…] French subsidiaries of foreign companies, while they are not obligated to keep their accounting according to the rules set out in the provisions of articles L. 123-12 and following in the new Commercial Code, they must present, upon request from the administration, the accounting documents mentioned in art. 54 of the Tax Code in order to be able to justify the correctness of the results indicated in the declarations that they have filed, in application of the provisions cited above from Art. 53 A". This requires them to keep accounting documents. Additionally, according to article R. 123-112 of the Commercial Code, any commercial entity with its registered office located in a foreign country that opens an establishment in France is required to file yearly with the commercial court registry with jurisdiction over that establishment, the accounting documents it has kept, verified and published in the country of its registered office.

174. Under trade law, accounting documents and supporting evidence must be kept for 10 years (Art. L. 123-22 of the Commercial Code) and for six years under tax law (Art. L. 102 B, LPF).

Fiducies and trusts

175. Under Art. 12 of law No. 2007-211 of 19 February 2007 establishing the *fiducie*, the assets and liabilities transferred within a *fiducie* are a special-purpose fund. Operations affecting it must be accounted for separately by the fiduciary. The latter must keep annual accounts for the *fiducie* in compliance with articles L. 123-12 to L. 123-15 of the Commercial Code. An independent audit of the trust is carried out by one or more auditors named by the founders themselves, being required to designate an auditor.[4]

176. As concerns trusts managed in France or with assets located in France, the tax requirements include account keeping. Under the Tax Code, income from trusts no matter the assets in the trusts is considered taxable income (Art. 120, Tax Code) which requires the trust managers acting professionally to fulfil tax obligations including keeping accounting documents concerning the management of the trust and its assets and filing an annual statement of earnings (Art. 54, Tax Code).

Tax legislation

177. The Tax Code, in particular Art. 54, requires companies to file accounting documents, inventories, copies of letters, income and expense documents with the tax authority in order to justify the earnings declared for tax purposes. The requirement to file accounting documents with the tax authorities creates the accounting requirement for tax purposes.

178. As a general rule, any physical or corporate person who derives profits from his activity is required to pay corporation tax or income tax. Accordingly, regardless of the nature of his activity (i.e. whether it is commercial or non-commercial) and irrespective of the accounting requirements described above, every year that person must deposit a declaration proving details of the calculation of his taxable income and must be capable of providing the tax authority with evidence of all the elements taken into account to calculate this outcome.

Record-keeping requirements for entities that cease to exist

179. The retention period for accounting documents (ten years in commercial matters and six years in tax matters) is the same when an event

4. SA, SCA, SE and certain SARL, SAS, SNC and SCS are obliged to appoint an auditor.

terminating a company or a partnership such as dissolution, liquidation or cessation of activity occurs.

180. In the event of the dissolution or the liquidation of the company or the partnership, the liquidator acts in the name of the entity he represents in the eyes of third parties. It is thus required to ensure compliance with the accounting obligations of the entity during and after the dissolution or the liquidation, including the retention of documents (article L. 641-9 of the Commercial code). By way of illustration, the liquidator who has not established, within three months of the end of each financial year, the annual statements as well as a written report on the liquidation operations carried out during the past financial year is punishable by 6 months imprisonment and a EUR 9 000 fine. The accounting documents required to be filed annually at the Commercial and Companies Register (articles L. 232-21 to L. 232-23 of the Commercial Code), such as the balance sheet, the income statement and the appendices, are kept without limitation of time, even if the company has ceased to exist.

181. In tax matters, the cessation of activity entails an early taxation of the profits of the entity. Taxpayers must notify the tax administration of the transfer or termination of their business and provide certain information within 45 days and a declaration of their profits and taxable capital gains within 60 days (article 201 Tax cod). The accounting documents of the entity must thus be kept to allow the tax administration to exercise its right of audit, including after the cessation of activity.

A.2.2. Underlying documentation

182. The 2011 Report indicated that in both commercial law and tax law, the underlying documentation must be kept, and conserved in France for the same amount of time as the accounting documents that go with it. This continues to be the case.

Oversight and enforcement of requirements to maintain accounting records

183. Failure to meet the accounting obligations required for companies is punished by serious sanctions in commercial law. Directors of a company (president, administrators, general directors, managers) that publishes or presents to shareholders, even when no dividends are distributed, annual accounts that do not accurately reflect the operations in each financial year, the financial situation and the assets of the company with the aim of hiding the company's true situation can be sentenced to five years in prison and a fine of EUR 375 000 (articles L. 242-1 et seq. of the commercial code for SA; L. 241-2 et seq. for SARL; L. 243-1 et seq. for SCS; L. 244-1 et seq. for SAS). Failure to file accounts with the commercial court registry as stipulated in

L. 232-21 to L. 232-23 in the commercial code is punishable by a fine of EUR 1 500, which can be raised to EUR 3 000 in case of repeat offense (art. R. 247-3 of the Commercial Code).

184. The Clerk of the Commercial and Companies Register monitors whether registered entities meet the requirement to file their annual statements. When a filing obligation is not met, the court may, at the request of any interested party or by the public prosecutor, order the legal representative of the entity to file the statement as well as any other document the filing of which is mandatory (article L. 123-5-1 c.

185. The Tax Code sanctions a failure to keep accounting documents indirectly. Art. 1734 states that “refusal to communicate the documents and information requested by the administration exercising its *droit de communication* or any behaviour that stands in the way of this right shall be fined EUR 5 000. This fine applies for every request, wherever all or part of the documents or information requested are not provided. A fine of the same amount applies when these documents are not kept or when they have been destroyed before the permitted time.

186. Failure to meet the obligations provided in articles L. 96 J and L. 102 D of the Tax Procedures Code results in a fine equal to EUR 1 500 per software or checkout system sold or per client for whom a service was provided during the year. Article L. 96 J obliges companies or operators which design or release accounting, management or cash register software or technically intervene in the functionalities of these products to submit to the tax authorities, upon request, any codes, data, processing or documentation related thereto. Article L. 102 D obliges the companies to keep these codes, data, processing or documentation until the expiry of the third year following the year in which the software or cash system ceased to be released.

187. Additionally, several types of commercial entities or other legal arrangements are required to name an auditor for the certification of their accounts. This is the case of SA, SCA and SE. SARL, SAS, SNC and SCS are also required to appoint an auditor when their activities reach a certain size measured by the turnover, the size of the balance sheet or the number of employees. At the end of the review period, 231 437 legal entities had appointed an auditor, of which 145 565 were SASs, 24 435 SAs, 21 811 SARLs, 2 985 *sociétés civiles*, 2 796 SNCs, 843 GIEs, 491 SCAs, 120 SCSs and 30 SEs. Thus, approximately 4.82% of the commercial entities registered in France as at 1 January 2017 have an auditor. However, they contribute more than 40% to the Gross Domestic Product of France. The auditor certifies that a company’s accounts are kept according to the applicable legal obligations and accurately reflect the situation of the legal person. Auditors are independent professionals carrying out a closely regulated legal mission which makes them legally responsible. As part of their mission, they are also

required to report the criminal acts of which they are aware, otherwise their own liability is engaged. They are placed under the supervision of the Haut Conseil du Commissariat aux Comptes, (see *Supervision of the DNFBP by professional orders and bodies* in the section *Availability of beneficial ownership information* under A.1.1).

188. Lastly, the tax authority monitors that accounting registers are kept (art. L. 13 of the Tax Procedures Code). The tax authority exercises essentially the *droit de communication* which allows it to review, and where necessary, copy the documents held by third parties (private companies, administrations, etc.) and examine the accounting in order to review a company's accounts on site and verify the accuracy and honesty of the statements made (Tax Procedures Code art. L. 13). There exist other, more specific information gathering procedures that can reveal a failure to preserve accounting documents, such as search and seizure (*droit de visite et de saisie).*

189. As shown in the table below, nearly 50 000 businesses undergo a general accounting audit every year, counting only those that are subject to corporation tax (companies in principle are subject to corporation tax, while partnerships may or may not be), between 2% and 3% of the number of commercial entities. These entities are chosen on the basis of a risk assessment that incorporates several criteria.

Number of accounting audits and searches carried out by the tax authority.

	2013	2014	2015
Number of companies that must pay corporation tax	1 879 808	1 955 392	2 020 532
Accounting audits	48 219	47 776	46 266
Searches	2 299	2 144	1 871
Unpaid taxes and penalties based on the audit (EUR mln)		21.194	19.467

190. Since 1 January 2014, commercial entities that keep their accounts in a digital format are required to provide to the tax authority their accounting records upon request. The administration may (since 1 January 2017) review the file from its offices to verify that the accounting documents match the tax statement filed, in order to save time and spend less time on-site at the enterprise's premises. This improves availability of accounting information.

Availability of accounting information in practice

191. In practice, during this review period France has not had difficulty obtaining accounting information for its exchange of information partners. Approximately 900 requests for entities' accounting and/or ownership information were sent by key partners. France's partners considered the responses to be satisfactory. Only 21 requests were still being processed as of 5 January 2018.

A.3. Banking information

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

192. The 2011 Report concluded that banking information is available in France under AML/CFT and tax legislation. In practice, during the review period, bank information accounted for 40% of requests for information from France's main EOI partners. France was able to supply the information in a generally satisfactory manner. The A.3 element was determined to be "in place" and rated "compliant".

193. The EOIR standard and in addition the 2016 ToR now require information on beneficial ownership (in addition to legal ownership) to be kept for account holders. Banks and other financial institutions are subject to AML/CFT legislation. To this end, they are required, among other, to identify their customers, and where appropriate, their beneficial owners, and to keep information on their identity. They are also required to preserve the documents showing all transactions made in the accounts for at least five years (article L561-1 et seq. of the Monetary and Financial Code). The *Autorité de contrôle prudentielle et de résolution* (ACPR) ensures that banks respect their AML/CFT obligations and applies sanctions where failures to do so are noted.

194. During the current review period, France received 135 requests for bank information. No requesting jurisdiction expressed dissatisfaction with the quality of the responses received. France was generally able to provide the bank information requested. The only difficulties noted concerned the response times which were sometimes long. However, this is not due to the availability of the banking information but rather is a question of organisation examined in section C.5 of this report.

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

Legal framework		
	Underlying factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework.		
Determination: the element is in place		

Practical implementation of the standard		
	Underlying factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

A.3.1. Record-keeping requirements

196. The 2011 report found the record-keeping requirements to meet the standard. The legal framework in France was strengthened with regard to these requirements since the last report, notably through the transposition of the 4th AML/CFT Directive.

197. Under the AML/CFT regulations (AML/CFT chapter in the Monetary and Financial Code), taxpayers including banks are required to collect, keep and update all information concerning the subject and the nature of a business relation for as long as it shall last. Without prejudice to stricter provisions, the documents and information concerning the identity of regular or occasional customers must be kept for five years from the time the account is closed or the customer relationship ceases, no matter what format. Documents and information on customer operations, as well as the documents recording characteristics of the operation must also be kept for five years from the time they are carried out, no matter what format (art. L561-12 Monetary and Financial Code). The AML/CFT legal provisions governing identification of clientele by persons subject to those requirements, including banks, were presented and analysed in section A.*1.1. Availability of legal and beneficial ownership information – Availability of beneficial ownership information – Requirements of AML/CFT law.*

198. Additionally, banks meet general obligations to maintain information under commercial law. The minimum for keeping documents issued or received by a commercial entity as part of its activities varies depending on the nature of the legal obligations covering it:

- civil or commercial banking documents are kept for 5 years, under art. L. 110-4 of the Commercial Code
- accounting documents and supporting documents are kept for 10 years.

199. The tax authority itself keeps a certain amount of banking information thanks to the automatic transfer of information from banks as “declaring third parties”. That occurs, for example, when a bank account is opened, modified or closed (article 1649A of the Tax Code). This information is

entered into the tax authority's Bank Accounts Database (*Fichier des Comptes Bancaires*, FICOBA), which gives the tax authority a list of all bank accounts held in France by individuals or legal persons, whatever their jurisdiction of residence. The French tax authority uses the database for research, control and collection purposes. It also enables the competent authority to respond promptly to a certain number of information requests.

Beneficial ownership information on account holders

200. The 2016 ToR specifically require that beneficial ownership information concerning all account holders be made available. The French law prohibits banks from keeping anonymous accounts (or books) (art. L. 561-14 of the Monetary and Financial Code). Every bank is required, before beginning a business relationship with a customer or helping them prepare or carry out a transaction, to identify the customer and, where necessary, the beneficial owner and check this identification against conclusive written identity documentation (art. L561-5 of the Monetary and Financial Code). The beneficial owner is the natural person(s) who (i) ultimately owns or controls the customer, directly or indirectly, or (ii) on whose behalf a transaction or operation is conducted (art. L561-2-2 of the Monetary and Financial Code). When persons subject to requirements are not able to identify their customer, and where appropriate their beneficial owner, or obtain the information required about the business relationship, they shall execute no transaction and neither establish nor maintain any business relationship with them (L. 561-8 of the Monetary and Financial Code). 561-8 du CMF).

201. The ACPR verifies that banks respect their obligation to identify beneficial owners (see A.1.1).

Rules concerning the introduction of a third party

202. Article L. 561-7 I of the Monetary and Financial Code allows banks and other financial institutions to entrust their initial know-your-customer requirements to third parties, also a financial institution or a legal or accounting professionals (also subject to AML/CFT requirements). In this case, the person subject to the requirement who relies on the due diligence carried out by a third party remains responsible with respect to his obligations. The third party, who implements the know-your-customer requirements provides the person subject to the requirement with the information regarding the identity of the customer, where necessary, the beneficial owner, and the subject and the nature of the business relationship without delay. The third party transfers, at the first request, a copy of the customer's and where necessary the beneficial owner's identity documents as well as any other relevant document to ensure due diligence is done. An agreement may be signed between the third party and the person subject to the requirement to specify

how the elements will be transferred and the diligence checks put in place (ArticleR561-13 Monetary and Financial Code).

203. Only persons subject to equivalent AML/CFT requirements may act as third parties. The third party must be an AML obliged person who exercises its profession or business or has its registered office in France, or be a person belonging to an equivalent category under foreign law and located in another European Union member state, in a state in the European Economic Area, or in another country with equivalent AML/CFT obligations included on a list determined by decree by the Minister of the Economy. The list of third-party countries is quite restrictive. As of 5 January 2018, it included Australia, Brazil, Canada, Hong Kong (China), India, Japan, Mexico, the Russian Federation, Singapore, South Africa, South Korea, Switzerland and the United States.

204. When the third party is a member of a group, the latter is supposed to apply the know-your-customer measures in accordance with article L. 561-33 of the Monetary and Financial Code when the parent company has its headquarters in France, or similar measures when this is not the case. Additionally, when a third-party member of a group is located in another country included on the European Commission's list of AML/CFT risk countries, according to article 9 of the 4th AML/CFT directive, the group must notify the ACPR that it is using a third party as well as the documents proving that the group ensures group procedures are implemented by the third party.

Enforcement measures to ensure availability of banking information

205. The sanctions and oversight of how AML/CFT legislation requirements are implemented by banks were addressed above in the section *Beneficial ownership Information – Enforcement measures and oversight* in A.1.1. The supervision and sanctions applied by the ACPR as part of its monitoring programme guarantee the availability of bank information in France, including beneficial ownership of accounts.

Availability of banking information in practice

206. During the review period, France received and responded to 135 requests for bank information. According to its information exchange partners, the information provided by France was generally satisfactory. Only eight bank information requests had not received a response by the end of the review period. The causes for the delay were not due to the availability of banking information and are examined below in C.5.

Part B: Access to information

207. Sections B.1 and B.2 review whether the competent authorities have the power to obtain and transfer the information included in a request in line with an exchange of information agreement regardless of who owns or controls this information within a jurisdiction, and if the rights and protections are compatible with effective exchange of information.

B.1. Competent authority's power to obtain and transfer 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).

208. The 2011 Report concluded that the French General Directorate of Public Finances, the tax authority, has broad powers to obtain and exchange information requested in accordance with an exchange of information agreement, in line with international standards. In practice, during the previous review period, France had used its powers without difficulty to obtain information every time that information was not directly included in the tax authority's data bases. The B.1 element was determined to be "in place" and rated "compliant".

209. Since the 2011 Report, changes have been made to the tax authority's access powers. Several laws have strengthened the administration's powers by significantly expanding the field of application for a *droit de communication* which is the French tax authority's most powerful tool for obtaining information. The *droit de communication* is now clearer for certain professions and in particular it has been expanded regarding the type of information that can be gathered, including information concerning unidentified persons (which makes it possible to respond to group requests as intended in the 2016 ToR) In addition, the tax administration now has the power to interview on record any person, other than the taxpayer concerned, who may have useful information in the fight against tax fraud and tax evasion.

210. The Tax Procedures Code provides for a number of sanctions for obstruction of the tax authority's access to tax information. These sanctions were effectively applied during the review period to information holders in the few cases where they did not respond to the administration's request for domestic purposes. No barriers to access to information occurred for EOI puposes.

211. During the current review period, France received 2381 requests for information and was able to enact its powers of access without difficulty to obtain the information requested when this information was not already in the tax authority's possession.

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

Legal framework		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework.		
Determination: the element is in place		
Practical implementation of the standard		
	Underlying factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

B.1.1. Ownership, identity and bank information

213. The 2011 Report reviewed the procedures used to obtain information in general and also the specific rules to obtain banking information. In general, these same rules continue to apply although with some strengthened measures with regards to new legal provisions that expand the scope of the *droit de communication*.

General access to information

214. Requests for information made to France are received by the tax authority's competent authority, which is the International Affairs Office (CF1) of the Department of Tax Examination under the DGFiP, reporting to the Ministry of Action and Public Accounts, a Tax Attaché in a foreign

country or a territorial Department of the tax administration (for neighbouring jurisdictions which have a cross-border agreement in force with France).

215. When this office receives requests from France's partners, the competent authority firstly looks for information in the databases to which it has direct access. These can be Government agencies databases or databases kept internally by the tax authority.

216. One of the outside data bases to which the competent authority has direct access is Infogreffe (www.infogreffe.fr) which lists all the information held by the Commercial and Companies Registers in France. This access allows the competent authority to obtain all information held by the register about the identity of owners of commercial entities and other entities registered with them (see the analysis under A.1 above) without having to exercise any particular power to access it. Decree No. 2017-1094 of 12 June 2017 on recording beneficial owners specifies that the beneficial ownership document can be communicated to DGFiP agents responsible for verifying and collecting payment of taxes, who are individually named and given special authorisations.

217. There are multiple internal databases to which the competent authorities have direct access for exchange of information purposes. The most relevant are:

- Bank Accounts Database (*Fichier des Comptes Bancaires*, FICOBA) This was created in 1971 and is managed by the DGFiP. It includes all types of accounts (bank, post office, savings accounts, etc.) and provides authorised persons information on accounts held by a person or a company. FICOBA is now digital. The information held by FICOBA concerns opening, modifications and the closure of accounts (the file does not include information about operations carried out on the account or the balance).
- MOOREA and Fidji provide information about the sale of shares and immovable property that is required to be registered with the tax authority (the registration department of the DGFiP) subject to the penalties set out in Article 1728 of the Tax Code. The information from the MOOREA database is then entered into two other databases:
- *Transparence Structure Écran* (shell structure transparency, TSE) or "Related Links" is a tool for identifying shareholders/partners, enabling the tax authority to retrace shareholder/manager links between natural or legal persons and entities. For a given entity, TSE provides identification data (full name, date of birth and address of an individual or name and address of a legal person) for the manager or managers and the shareholders/partners and the name of any other enterprise of which the entity is itself a shareholder/partner. For each

entry, hypertext links give access to the data of the designated legal or natural persons. In many cases, this tool provides the tax authority with information about the natural persons concealed behind shell companies (beneficial owners) and to track informal groups.

- The *Base Nationale des Données Patrimoniales* (national assets database, BNDP) contains information drawn from instruments and declarations relating to assets, such as articles of association, changes to share capital, windings-up, mergers, business transfers and business pledges. From the information, it is thus possible to find out a company's assets.

218. Additionally, certain third parties (known as "declaring third parties") have systematic obligations to declare to the tax authority. These are, in particular, financial establishments for bank accounts; paying agents for savings products, dividends, etc.; employers for salaries paid; paying agents for pensions and annuities; persons who, as part of their profession, pay commissions, fees or other remunerations. All of this information is included in the tax authority's databases which can be directly accessed for a number of pieces of information by the competent authority to respond to foreign partners' requests

219. When a request for information received cannot be answered satisfactorily using internal or external databases, the competent authority can use several means to collect that data. The most significant of those is the *droit de communication* which allows the tax authority to see and, where necessary, copy the documents held by third parties (private businesses, public administrations, etc.). There are other, more complex procedures which can provide access to the information requested:

- An accounting review is an on-site examination of a company's accounts to verify the accuracy and honesty of the declarations submitted (Tax Procedures Code, art. L. 13).
- *Droit d'enquête*, the right to inquiry, used to look for failures to follow billing rules and obligations for those subject to VAT. This procedure allows the administration to intervene unannounced on a site.
- *Droit de visite et de saisie,* the right to search and seizure, which under the provisions of art. L. 16 B of the Tax Procedures Code allows them to visit and search all sites, even private ones, and seize documents and proof. This procedure is dependent on judicial approval.
- *Droit d'auditionner les tiers*, the right to interview third parties, recently introduced in the Tax Procedures code in 2016 (Article L. 10-0 AB).

The *droit de communication*

220. The *droit de communication* is set out in articles L. 81 to L. 102 AC of the Tax Procedures Code. It allows officials to inspect various documents and information in any format, for purposes of establishing the tax base and controlling taxes. The persons covered by these articles are taxpayers "traders" (i.e. businesses), *sociétés civiles* and *fiducies*, as well as persons who pay fees, copyright royalties or salaries to taxpayers, other public administrations, establishments subject to supervision by the administrative authority (including banks and foundations), lawyers, notaries, etc. There is no legislative or regulatory provision restricting the period during which the *droit de communication* may be exercised.

221. Since the 2011 Report, significant legislative changes have strengthened the *droit de communication* by expanding the information that can be gathered using this tool.

222. Firstly, Art. 21, I-D and II of law No. 2014-1655 of 29 December 2014 adjusts the *droit de communication* to make it more effective. These provisions apply to *droits de communication* exercised from 1 January 2015. The adjustments affect:

- the scope of the *droit de communication* which was expanded in terms of:
  - the type of information that can be gathered – a non-restrictive definition of the *droit de communication* which foresees its ability to cover information concerning unidentified persons
  - documents that could be demanded of industrial or commercial enterprises. Now, those entities are required to communicate to the administration, upon request, books, registers and reports which they are required to keep under the Commercial Code as well as any document relating to their activity. This new definition of documents covered by the *droit de communication* significantly expands the administration's powers. The notion of "documents related to the enterprise's activity" is very broad and can include documents that up until now fell outside the scope of *droit de communication* (e.g. the register held by casinos or entities organising games of chance, lotteries, wagering on sports or bets on horse racing; the documents relating to the activity of the craftsmen who are registered only in the register of the craft industry and who do not have the legal capacity of "traders").
- ways in which it is exercised: in practice the *droit de communication* is exercised on site, or more commonly, by correspondence. Art. L. 81 of the Tax Procedures Code in place since 1 January 2015 now allows for email to be used and copies of the documents covered to be made.

- strengthening of sanctions for failure to comply. The EUR 1 500 fine set down in Art. 1734 of the Tax Code for failure to maintain documentation covered under the *droit de communication*, destroying it before the time allotted or refusal to produce it has been raised to EUR 5 000 per request whenever some or all of the documents or information requested are not produced.

223. Since 2015 the *droit de communication* may concern information on "unidentified persons", which strengthens France's capacity to respond to requests for information for a group of persons not individually identified, in accordance with the 2016 ToR.

The droit d'auditionner les tiers

224. The amending finance law for 2016 introduced a new power allowing the tax administration to access information that would be held by third parties (persons other than the taxpayer concerned). This is the right to hear on record any person likely to provide any useful information for the fulfilment of the tax administration's missions. The authorities can use this new procedure to look for failure to comply with rules governing:

- the tax residency of natural persons (article 4 B of the Tax Code)
- the deductibility of commissions paid to a foreign public servant in order to obtain or retain a contract (article 39-2 bis of the Tax Code)
- the price of intra-group international transactions ("transfer price", article 57 of the Tax Code)
- the shares held by natural or legal persons in foreign financial companies subject to a special tax regime (articles 123 bis and 209B of the Tax Code)
- remuneration for services performed in France and paid to foreign companies (article 155 A of the Tax Code)
- the rules of territoriality applicable to corporation tax (article 209 of the Tax Code)
- the deductibility of certain amounts paid to a beneficiary subject to a special tax regime (article 238 A of the Tax Code).

225. Like all access powers available to the French tax authorities, the right to hear third parties may be used for information exchange purposes where the information requested falls within one of the categories listed above. In these circumstances, this means of collecting information can be very useful when the requesting jurisdiction seeks the information in the form of a statement on the record.

226. Although this procedure is new, the tax authorities have indicated that they have already interviewed several people during the year 2017 for domestic purposes.

Access to banking information

227. The power to obtain banking information is part of the tax authority's regular administrative powers.

228. The tax authority holds a number of information from the FICOBA database described in section A.3 and from third-party declarations, as described above.

229. The French tax authority can also apply the *droit de communication* as stated in Articles 81 and following of the Tax Procedures Code which allows it to see accounting books, which must be kept as stipulated in the Commercial Code, as well as any additional documents or proofs of income and expenses for commercial entities. Under the provisions in Art. L. 85 of the Tax Procedures Code, DGFiP agents can obtain all accounting documents, in particular the account statements for individuals or legal persons and front-and-back copies of cheques, from taxpayers, including banks and credit establishments. This information concerns holders of bank accounts as well as their beneficial owners.

230. Pursuant to article L83 of the Tax Procedures Code, the administration can also require banks to disclose internal documents that go beyond accounting records, such as proxy forms and specimen signatures (persons with powers of attorney over an account) or contracts for opening an account, any guarantees that may have been constituted (bonds or cash) in the context of setting up a loan or overdraft privileges, or vault visit records.

231. Lastly, pursuant to article L96A of the Tax Procedures Code, the administration may require banks to disclose information on capital transfers by French residents to a foreign destination or to non-resident accounts for which they are the depositories. This information includes the date and amount of the sums transferred, the identity of the initiator of the transfer and of the beneficiary, as well as references for the accounts concerned in France and abroad.

232. In practice, when a request for banking information is received, the competent authority begins a search directly in the FICOBA database using several criteria: by natural or legal person, by account, by address, by SIREN (company identification number), by SPI (natural person identifier). Once the owner or the account is identified, the tax authority exercises the *droit de communication* on the banking establishment concerned to obtain detailed information for the account.

B.1.2. Accounting records

233. In addition to the information held in the tax authority's databases of taxpayers' and third parties' various obligations to declare, the powers described in section B.1.1 (see *General Access to Information* above), for information other than what is held by financial institutions, can be used to obtain accounting information. In particular, there is the *droit de communication*.

234. Since 1 January 2015 the new wording of Article L85 of the LPF requires taxpayers subject to the accounting requirements in the Commercial Code to communicate to the administration, upon request, not only the ledgers, registers and reports which they are required to keep, as was the case up until then, but also "all documents concerning their activity". It covers accounting documents as well as all documents of any nature relating to the company's activity, such as the management report, share and bond transfer registers, attendance sheets for annual general meetings, etc.

235. Additionally, the tax authority use the *droit de communication* to obtain accounting documents filed by commercial entities as required by articles L. 232-21 to L. 232-23 of the Commercial Code concerning the requirement to file accounts with the commercial court registry.

236. Lastly, when the accounting information is sufficiently complex to merit it, the tax authority may also use its right of inspection to obtain accounting information. There are several procedures, but the one that allows the most accounting information to be obtained in any circumstances is the general accounting review under Art. L. 13 of the LPF. It allows for the on-site examination of a company's accounting and to compare certain data in order to check the accuracy and honesty of declarations. The accounting review has been made easier by a new obligation since 1 January 2017 for companies that keep digital accounting records to provide electronic copies of their accounting records (*fichier des écritures comptables*, FEC) to the tax administration upon request.

237. During the review period France received more than 145 requests for accounting information to which it responded without difficulty by exercising its powers to access data.

B.1.3. Information gathering measures in the absence of domestic interest

238. There are no provisions in French law that restrict the tax authority's ability to apply the broadest possible exchange of tax information. There is no domestic tax interest in opposing the exchange of information requested where France cannot use it for its own tax purposes. Consequently, as a receiving State, France communicates all types of information to its treaty partners.

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

239. Sanctions for breaches with regard to the *droit de communication* concern the refusal to provide information (art. 1734 Tax Code) and opposing the actions of tax agents in their professional duties (art. 1746 Tax Code).

240. Refusal to communicate the documents and information requested by the administration exercising its droit de communication or any behaviour that stands in the way of this right shall be fined EUR 5 000. This fine applies for every request, wherever all or part of the documents or information requested are not provided. A fine of the same amount applies when these documents are not kept or when they have been destroyed before the permitted time. Obstructing agents who are authorised to note breaches of tax law in the fulfilment of their duty is punishable by a fine of EUR 25000, handed down by the criminal court. For repeat offenses, the court may, in addition to this fine, hand down a sentence of six months imprisonment.

241. During the review period the tax authority saw only a few cases of refusal or failure to produce documents requested under *droit de communication* and none of those cases was a request from one of France's foreign partners. These cases resulted in the application of the sanctions provided under the law (about 50 cases of fines for refusal to communicate and about 130 procedures for opposition to function).

B.1.5. Secrecy provisions

242. Art. 226-13 of the Criminal Code includes provisions stating that any person who, as a result of their status or their profession, either for their position or for a temporary mission, is privy to a secret who reveals that secret can be punished by imprisonment and a fine of EUR 15 000. There are two sorts of provisions concerning secrecy or confidentiality that are relevant to this section: banking secrecy and professional secrecy.

Banking secrecy

243. For banking, professional secrecy is governed by art. L. 511-33 of the Monetary and Financial Code which sets down the principle that any person who participates in the activity of a credit institution is bound by professional secrecy. However, banking secrecy may not be invoked against a certain number of authorities specified by the law, including the tax authority. The *droit de communication* provided in articles L 81 and following of the Tax Procedures Code does indeed apply to banks and credit institution, as well as to other financial institutions (see above *Access to banking information* under B.1.1).

244. Additionally, the bodies responsible for supervising the banking and financial sector which are the ACPR and the AMF are also subject to the obligation to provide the tax authority with any document or information in their possession as a result of their work, (art. L84 D and E Tax Procedures Code). No bank has ever claimed bank secrecy to the tax authorities.

Other professional secrecy requirements

245. Legal professionals and accountants enjoy the protection of confidentiality for information they are privy to as a result of their profession. This concerns in particular lawyers, notaries, auditors and accountants.

246. The 2011 Report noted that the professional secrecy mentioned above does not prevent the tax authority from accessing information held by members of those professions and does allow the application of tax laws. This continues to be the case.

247. In practice, France had no difficulty obtaining information held by lawyers, notaries, auditors or accountants during the period under review for domestic purposes. A request was sent to a notary who provided the requested information.

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

248. The 2011 Report indicated that there was no right or practice of notification in French law being it prior or post to the transmission of the requested information, and that there was no problem concerning the right of appeal and concluded that the rights and safeguards for persons in France was compatible with effective exchange of information. This continues to be the case.

249. In practice, during the previous period under review, France exercised its powers to access information without having to inform the persons concerned at any time. In addition, the appeal for "abuse of power" applicable to any administrative decision has no suspensive effect and has never been used in relation to EOI. The B.2 element was determined to be "in place" and rated "compliant". The situation remains unchanged.

250. 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.		
Determination: the element is in place		
Practical implementation of the standard		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

Part C: Exchanging information

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

C.1. Information exchange mechanisms

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

252. The 2011 Report concluded that the exchange of information mechanisms in France were "in place". At that time, France had a vast network of agreements allowing exchange of information for tax purposes with 141 jurisdictions, including all member States of the European Union, through Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation. With the exception of the relationship with the Plurinational State of Bolivia (hereafter "Bolivia"), all of France's EOI relationships were compliant with the international standard.

253. Since the 2011 Report, firstly, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters as amended by its Protocol (the Multilateral Convention) entered into force in respect of France on 1 April 2014. Secondly, France has signed 5 new tax treaties (and a previously signed treaty came into force), 8 new protocols to existing tax treaties (3 previously signed protocols came into effect) and a TIEA. France is also bound to other members of the European Union by Council Directive 2011/16/UE of 15 February 2011 concerning the administrative co-operation in the field of taxation. France's EOI network covers 165 partners.

254. The EOIR standard now includes a reference to the group requests in keeping with paragraph 5.2 of the Comments to the OECD Model Tax

Convention. Additionally, the foreseeable relevance of a group request must be satisfactorily proven, and the information requested must make it possible to determine the compliance of the taxpayers in the group. France's treaty network allows for exchange of information on a group of persons.

255. During the review period, France received 34 group requests that it processed without difficulty. In practice, managing a group request is not different from an individual request. The updated table of determinations and ratings is as follows:

Legal and regulatory framework		
	Underlying factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework.		
Determination: the element is in place		
Practical implementation of the standard		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

Other forms of exchange of information

256. In addition to exchange on request, France continues to exchange information spontaneously and to participate in cross-border co-operation agreements with Belgium and Spain, as well as multilateral audits. It also receives and executes service of documents requests.

257. France also automatically exchanges information on the basis of the European Savings Directive and Savings Tax Agreements 2003/48/EU of 3 June 2003 (interest received) and the 2011 Directive/16/EU (DAC1) where the following information are available within the tax administration: ownership and immovable property income, professional income, attendance fees, pensions and income from life insurance products (since 2014). Directive 2011/16/EU has been amended by Directive 2014/107/EU of 9 December 2014.

258. Outside the EU, France is also engaged in the automatic exchange of income information, firstly on the basis of tax treaties and the Multilateral Convention in stf (Standard transmission format) and smf (Standard magnetic format) and since 2017 with the United States on the basis of the Foreign Account Tax Compliance Act.

259. Finally, France has committed to the Common Reporting Standard for the automatic exchange of information on financial accounts and to exchange the first financial information from September 2017 on the basis of the Multilateral Convention. France has already activated 79 exchange relationships. France has also committed under the Base Erosion and Profit Shifting programme to exchange information on tax rulings and Advance Pricing Arrangements (in 2017), and country-by-country reports (2018).

C.1.1. Standard of Foreseeable relevance

260. The exchange of information mechanisms must make possible the exchange of information on request, where of the information is foreseeably relevant for the administration and the application of the tax legislation in the requesting jurisdiction. The 2011 Report concluded that France's network complied with the standard, even if only the most recent treaties and the Multilateral Convention included the words "foreseeable relevance".

261. Since the 2011 Report, France has renegotiated 11 of its tax agreements to now include "foreseeable relevance" of information and similar arrangements have been made for the 6 newly signed tax agreements. Its interpretation of the terms "necessary", "relevant" or "useful" used in certain treaties remains in line with the EOIR standard.

262. France does not require specific information to prove foreseeable relevance. However, the requesting jurisdiction must provide the elements necessary to identify the taxpayer or group of taxpayers. In general, the identity and date of birth are sufficient for natural persons. France does not require a specific form to be used for requests for exchange of information. When a request does not satisfy the criteria of foreseeable relevance, a request for clarification is sent to the requesting jurisdiction. Of the 2381 requests received during the review period, France sent only 55 requests for clarification (about 2% of cases). No request was rejected by France during the review period.

Group requests

263. The procedure for processing group requests in France is not different to that followed for processing an individual request, as detailed in the administrative manual for France's direct tax matters (see element C.5 for more details). The main difference is in the level of information that must be included in the request, in compliance with paragraph 5.2 of the Commentary for Article 26 of the OECD Model Tax Convention which indicates that the following information should be supplied by the requesting jurisdiction: (i) a detailed description of the group, (ii) the facts and circumstances that led to the request; (iii) an explanation of the applicable legislation and why there are

reasons to believe that the group of taxpayers on whom information is being requested have breached this legislation, with the support of clear facts; and (iv) a demonstration that the information requested will allow the requester to determine the tax compliance of the taxpayers in the group.

264. During the review period, France received 34 group requests. By way of illustration, one jurisdiction requested the names of persons recruited by a French entity and working in this jurisdiction under a specific employment contract. France found that the request was foreseeably relevant and provided the requested information. In some cases, prior contact had been established between the competent authorities to facilitate the processing of these requests. In other cases, there were no difficulties in processing the group requests due to their particular nature.

C.1.2. Exchange of information with respect to all persons

265. The 2011 Report explained that while some of France's tax agreements did not contain the phrasing from paragraph 1 of article 26 of the OECD Model Tax Convention which indicates that "the exchange of information is not restricted by article 1 and 2", article 1 defining the personal scope of application of the convention, the article on the exchange of information does cover residents and non-residents, in so far as it applies to the provisions of the convention "or to those of the domestic legislation of the contracting States" because the domestic tax legislation is applicable to all taxpayers, whether or not they are residents. France had also confirmed this interpretation and the 2011 Report concluded that only the tax convention between France and Bolivia restricted the application only to residents of the jurisdictions of the parties. The French authorities confirmed that they will contact Bolivia in order to align their EOIR relationship with the international standard.

266. The above interpretation, including that on the convention with Bolivia, continues to be applied by France. Additionally, new agreements reached or renegotiated by France since the 2011 Report contain the wording of paragraph 1 of Article 26 of the OECD Model Tax Convention. In practice, no restriction concerning residency was made by France for its processing of information requests received during the review period. In no case was France unable to exchange information on non-residents during this period.

C.1.3. Obligation to exchange all types of information

267. The previous review had not identified problems in respect of the scope of the EOI mechanisms which should cover all types of information. Even without paragraphs 4 and 5 of Article 26 of the OECD Model Tax Convention, the French competent authority can exchange all types of information as French domestic law includes no restrictions on exchange

of information with France's partners. In practice, France responded to 2 327 requests for information during the review period.

268. The 2011 Report identified certain jurisdictions which cannot exchange banking information with France because, in the absence of paragraphs 4 and 5 mentioned above these jurisdictions' domestic laws included provisions that prevented the exchange of this types of information. These were Austria, Belgium, Botswana and Lebanon. Austria, Belgium and Lebanon now participate in the Convention on Mutual Administrative Assistance in Tax Matters, which allows all types information to be exchanged. As for Botswana, its domestic legislation has undergone changes since France's. 2011 Report which now allow the exchange of banking information (see the phase 2 report on Botswana's review, published in September 2016).[5]

269. 255All the exchange of information instruments agreed or renegotiated by France since the 2011 Report include paragraph 5 of Article 26 of the OECD Model Tax Convention.

C.1.4. Absence of domestic tax interest

270. The 2011 Report did not identify any problems regarding domestic tax interest, including when the information exchange mechanism did not include paragraph 4 of Article 26 of the OECD Model Tax Convention or similar. This continues to be the case in France.

271. France's exchange of information partners reported no refusal to provide information on France's part owing to domestic tax interest. France provided banking information concerning residents of the requesting jurisdictions even though it had no domestic interest.

C.1.5. Absence of dual criminality

272. The 2011 Report identified no requirement for dual criminality in France's exchange of information mechanisms.

273. The exchange of information mechanisms agreed or renegotiated by France since the 2011 Report do not include provisions on dual criminality. Peers noted no difficulties in this sense in their practice of information exchange with France. France has, for example, provided information to confirm the absence of tax residence of a person under prosecution for an offense in the requesting jurisdiction even though the description of the facts giving rise to the request could not led to an offense in France.

5. OECD (2016), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Botswana 2016: Phase 2: Implementation of the Standard in Practice*, OECD Publishing. http://dx.doi.org/10.1787/9789264250734-en.

C.1.6. Exchange of information in civil and criminal tax matters

274. The 2011 Report concluded that the EOI mechanisms agreed by France provided for the exchange of information for both civil and criminal purposes.

275. The EOI mechanisms agreed or renegotiated by France since the 2011 Report provide for the exchange of information for both civil and criminal purposes.

C.1.7. Provide information in specific form requested

276. The 2011 Report indicated that there were no restrictions in the EOI mechanisms agreed by France that might prevent it from providing information in the form requested, as long as it was in line with the country's administrative practices. This continues to be the case for all newly agreed or renegotiated mechanisms since the 2011 Report.

277. In practice, the French authorities provide information in the form requested, except for example when they are requested to provide depositions of witnesses, as this possibility does not exist under French tax law. For example, France provides bank statements when they are requested in lieu of the list of transactions on a sheet.

C.1.8. Signed agreements should be in force

278. The 2011 Report indicated that most of the French treaties, protocols and agreements are in force. Only 15 were not in force as at 28 February 2011, including some other agreements that had been ratified by France but had not yet been ratified by the other party.

279. The entry into force of the Protocol to the Multilateral Convention on 1 April 2012 compensated for the lack of entry into force of certain agreements or protocols since 2011 (for example with Canada, Colombia, Portugal).

Bilateral EOI Mechanisms

		Total	Bilateral EOI Mechanisms not complemented by the MAC
A	Total Number of DTCs/TIEAS (A= B+C)	150	49
B	Number of DTCs/TIEAs signed (but pending ratification), i.e. not in force (B = D+E)	2	0
C	Number of DTCs/TIEAs signed and in force (C = F+G)	148	49
D	Number of DTCs/TIEAs signed (but pending ratification) and to the Standard	2	0
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	147	48
G	Number of DTCs/TIEAs in force and not to the Standard	1	1

280. As for the convention with Kenya which took three years, France explained that this was due to the situation in the foreign state following the signing of the convention.

281. However, two instruments signed by France have not yet entered into force. These are the agreement with Colombia and the TIEA signed with Brunei Darussalam on 30 December 2010. This TIEA was ratified by both parties (in France by law No. 2011-1285 of 13 October 2011). While Brunei Darussalam has sent France its instrument of notification, in 2011 France did not wish to send its own to Brunei Darussalam. France gave its reason for this decision the fact that Brunei Darussalam had not taken the appropriate measures to effectively meet its commitments to exchange information, based on the review carried out by the Global Forum in which Brunei Darussalam was not found to be qualified for a phase 2 review because of serious gaps in its legal framework. Since that time, Brunei Darussalam has made significant progress in its legal framework, noted in its "Largely compliant" rating in the phase 2 review in late 2016. France is currently reviewing the possibility of sending its instrument of ratification. Brunei Darussalam at the same time signed the Convention on Mutual Administrative Assistance in Tax Matters as amended, on 12 September 2017. The Multilateral Convention is however not yet in force in respect of Brunei Darussalam as it has not yet been ratified.

C.1.9. Be given effect through domestic law

282. France has in place the legal framework necessary to ensure the effectiveness of all its EOI mechanisms. Under article 55 of the Constitution, treaties override laws. No difficulty has ever arisen in the implementation of this provision in practice.

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

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

283. France has a broad network of tax treaties and TIEAs with all its significant partners. This broad network allowed France to exchange information with 141 jurisdictions at the time of the 2011 Review.

284. Since the 2011 Report, France has continued its efforts to conclude exchange of information mechanisms with the jurisdictions with which it did not yet have any and renegotiate the mechanisms that were in force but which did not, or no longer, complied with the standard. In addition to the Multilateral Convention as amended that entered into force in respect of France on 1 April 2014, new instruments and protocols were signed or entered into force with

18 jurisdictions First, double tax treaties have been signed with Andorra, China, Colombia, Panama and Singapore while the tax treaty with Chinese Taipei has entered into force. Secondly, protocols to existing tax treaties have been signed with Austria, Botswana, Mauritius, Oman, the Philippines, Portugal, Saudi Arabia and Switzerland, while the protocols with Belgium, Canada and Luxembourg entered into force. Finally, a TIEA was signed and entered into force with Aruba. France's exchange of information network covers 165 jurisdictions, which makes it one of the largest in the world.

285. France's current policy is to emphasise signing the Convention on Mutual Administrative Assistance in Tax Matters with its partners. France no longer requests renegotiations of its TIEAs but French authorities confirm that they will not refuse a partner's proposal to negotiate a TIEA, on the condition that this partner's domestic legislation does not include obstacles to effective exchange of information (during the review period France analysed this aspect making sure that the jurisdiction had at least been accepted to a phase 2 review in the first round of Global Forum peer reviews). France did not therefore deem it necessary to reopen negotiations for TIEAs with the Dominican Republic, Barbados, and the Marshall Islands, these jurisdictions now being signatories to the Multilateral Convention. As for tax conventions, their renegotiation systematically includes alignment of the article on exchange of information with the international standard.

286. No jurisdiction has reported any refusal by France to agree an exchange of information agreement during the review period. France should nonetheless continue to conclude EOI agreements with any new relevant partner who would so require.

287. 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.		
Determination: The element is in place		
Practical implementation of the standard		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

C.3. Confidentiality

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

288. The 2011 Report concluded that the treaty provisions in force in respect of confidentiality and the legal and regulatory provisions that apply to the tax administration agents with access to information exchanged under the treaties were compliant with the international standard regarding confidentiality. The element C.3 was thus found to be "in place" and was rated "compliant" with no recommendations issued.

289. Since the 2011 Report, France has not undergone any changes either in its legal framework nor in its practice as concerns the rules of confidentiality applicable to information received from partners.

290. The updated 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.		
Determination: the element is in place		
Practical implementation of the standard		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

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

Confidentiality in information exchange mechanisms

291. The 2011 Report concluded that France's information exchange mechanisms guaranteed the confidentiality of information exchanged, in compliance with the international standard.

292. The 2016 Terms of Reference clarified that while the rule remains that the information exchanged may not be used for other purposes (other than tax purposes), an exception exists if the requested jurisdiction authorises the use of the information for non-tax purposes, in accordance with the

amendment made to the OECD Model Tax Convention which introduces in Article 26 this element which previously appeared in the commentary thereto.

293. The multilateral convention, the Directive 2011/16/EU and most of France's tax conventions provide that the information obtained be kept secret in the same conditions as those provided for the information obtained in application of the domestic legislation and only be communicated to persons or authorities concerned with determining or collecting taxes. The drafting of the confidentiality provisions varies from one instrument to another depending on the year it was signed, but in general, the language is compliant with that of paragraph 1 of Article 26 of the OECD Model Tax Convention.

294. All the tax convention protocols negotiated by France and the new conventions signed since the 2011 Report systematically include the up-to-date wording of article 26 of the OECD Model Tax Convention.

Confidentiality in French law

295. Tax agents are therefore required to respect the general, absolute rule of professional secrecy stated in the criminal code for persons to whom confidential information is entrusted in the course of their duties. Article L. 103 of the Tax Procedure Cod states that the obligation to professional secrecy, as defined in articles 226-13 and 226-14 of the criminal code apply to all persons who, in the course of their duties, are involved in the assessment, supervision, collection or litigation of taxes, duties, levies or royalties. Secrecy extends to all information collected during such operations.

296. Additionally, article 26 of Act 83-634 of 13 July 1983 concerning rights and obligations of civil servants states that "civil servants are bound by professional secrecy by the rules of the criminal code". They are required to show professional discretion regarding acts, information or documents that they learn of in the course of or when performing their duties.

297. Article 226-13 of the criminal code states that "disclosure of secret information by a person who as a result of their status or their profession, either for their position or for a temporary mission, is privy to a secret who reveals that secret can be punished by imprisonment and a fine of EUR 15 000". Finally, the violation of professional secrecy can engage the responsible party's civil responsibility towards the individual who was unfairly prejudiced.

298. In addition to the criminal sanctions, the French tax authority can dictate a disciplinary sanction for an agent who has failed to respect the confidentiality of the information entrusted to him/her as part of his/her duties: warning, reprimand, loss of rank, removal from promotion consideration, temporary suspension from duties (15 days maximum) demotion, temporary suspension from duties (from 3 months to 2 years), forced retirement, removal.

299. Articles L. 114 and L. 114 A LPF include an exception to professional secrecy binding tax agents to allow them specifically to exchange information with other countries.

300. Exceptions to the obligation of professional secrecy also allow the tax administration to exchange information internally with other Government agencies such as the judicial authorities and the authorities in charge of Anti-Money laundering and counter financing of terrorism. Information received from a foreign competent authority may be used for purposes other than tax purposes, such as the punishment of financial crimes, provided that the requirements of the international instrument are met, including the authorisation of the foreign jurisdiction that provided the information. The authorisation of the foreign competent authority must be obtained before any information is transmitted to non-tax authorities, irrespective of the internal arrangements for the transmission of information held by the DGFiP to other authorities.

301. In practice, during the review period, France sought and obtained the authorisation from foreign jurisdictions to use the information for a purpose other than tax (AML or judicial purpose). At the same time, France received several requests and granted the same authorisation to foreign jurisdictions for AML purposes, judicial purposes or for transmission to a parliamentary investigation commission. Only one refusal was formulated because the agreement with the requesting jurisdiction provides that the information may be communicated only to persons or authorities responsible for the establishment or collection of taxes covered by the agreement.

C.3.2. Confidentiality of other information exchanged

302. The 2011 Report indicated the confidentiality provisions contained in the applicable agreements and in French legislation do not make any distinction as to whether the information is received in response to a request or is part of the request itself These provisions apply equally to requests, to the attached documents and to all communications between the jurisdictions involved in the exchange. This continues to be the case.

303. Lastly, article L. 76 B LPF requires the tax authority to inform a taxpayer of the content and the origin of information and documents obtained from third parties and which serve as their basis to establish the taxes levied, and to communicate, upon request, a copy of the above-mentioned and related documents. This requirement concerns among others the information obtained in the framework of the exchange of information with a foreign jurisdiction. However, application of this provision is dependent on the provisions in the applicable exchange of information mechanism.

- If the applicable mechanism includes provisions that keep the information protected by secrecy so that it would be communicated only

to persons charged with assessment and collection of taxes, the documents obtained through exchange of information may not be communicated to the taxpayer as he/she is not among the persons directly concerned by the disclosure.

- If the applicable mechanism includes provisions for the communication of information to "persons concerned" by the assessment and collection of taxes, based on art. 26 of the OECD Model Tax Convention the commentary on which shows that taxpayer may receive the information, the administration must communicate the information and the related documents to the taxpayer upon his/her explicit request. However, in practice the information disclosed to the taxpayer would not contain any contact details of the requested competent authority.

Confidentiality in practice

304. In practice, the organisation and functioning of the tax authority, including the office of the competent authority for exchange of information, guarantee the confidentiality of the information received from France's partners. The 2011 Report did not raise any question about the confidentiality in practice.

305. From an organisational point of view, access to buildings is only allowed for a person able to present a valid document granting access. Automatic access gates with badge readers have been installed in order to facilitate the movement of personnel while also guaranteeing the security of the sites. There is a reception and check desk at every central administration building. Visitors must come to the building reception with an ID which they exchange for a "visitor" access badge. They get their ID back at the end of their visit when they return their "visitor" access badge. All sites have a video-surveillance system. Sites are protected by guards at all times.

306. From a functional point of view, exchange of information is managed through a computer programme for International Administrative Assistance (AAI, *Assistance Administrative Internationale*), Access to applications is controlled through the directory and an authorisation application which manages access to all internet-linked DGFiP applications. Agents receive authorisation in relation to their department, rank and/or position. A user's identification allows access to the application with a predefined scope. According to their authorisation level, a user can access all of the information or only some of it. A user's authorisation level is determined automatically by the International Administrative Assistance programme based on the directory. This programme includes two modes of use:

- Users working in "consult" mode are agents from verification, research, programming and specialised inspection units.

- Users in “entry” mode are agents from the CF1C’s administrative assistance unit, tax attachés and their deputies, specialised or national tax investigation division agents, DIRCOFI, and verification and research brigades.

307. The French tax authority ensures that every use of the computer system can be tracked at two levels. The first level control is done by the manager of the department who checks how agents access and consult the system. The second is a cross-check done by management to verify the effectiveness of the first control. These aim to examine the traces and the actions taken by agents to ensure that information confidentiality is respected. The controls are performed regularly.

308. As for sanctions, every year a summary of sanctions taken for various breaches, including the requirement for tax agents to respect professional secrecy, is made available to all agents of the DGFiP. For every case, in addition to the rank of the sanctioned agent and the nature of the sanction, the facts and the ethical failures are stated, as well as any possible comments necessary for the case. This information is shared for preventative and instructional purposes to better explain the decisions taken by the administration following wrong behaviour. During the review period, six sanctions were taken against agents for breach of professional secrecy. The DGFiP has so far not found any violation with regard to the data received from abroad and the peers have not expressed any concerns in this respect.

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.

309. The 2011 Report (paragraphs 266 to 270) concluded that the rights and safeguards of taxpayers and third parties in France’s information exchange mechanisms were in line with the international standard. All French tax treaties ensure that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy (ordre public), in a manner consistent with Article 26(3)(c) of the Model Tax Convention. The TIEAs signed by France contain similar provisions.

310. Since the 2011 Report, the new EOI mechanisms agreed by France meet the standard and the French domestic law in this area has not changed. In practice, the French authorities confirmed that during the review period they experienced no difficulty in responding to requests for information due to the application of rights and safeguards of taxpayers.

311. The updated 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.		
Determination: the element is in place		
Practical implementation of the standard		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
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.

312. For an effective exchange of information, the jurisdiction should request and provide information under its network of agreements in a timely manner. In particular:

- *Responses to requests*: the jurisdiction should be able to respond to requests within 90 days of receipt by providing the information requested or giving an update on the status of the request.
- *Organisational process and resource*: the jurisdiction must have in place adequate resources and organisation to ensure the quality of requests and also the quality and timeliness of responses.
- *Restrictive conditions*: assistance for exchange of information must not be subject to disproportionate, unreasonable or unduly restrictive conditions.

313. The 2011 Report indicated that exchange of information was monitored on a daily basis by the DGFiP's CF3 office and its eight agents as well as a network of six Tax Attachés under the responsibility of the CF3 office. The Tax Attachés manage the requests from 14 jurisdictions under their authority. EOI requests were processed by a dedicated computerised tracking system (AAI) and the organisation was found to be sufficiently effective in

practice for France to be able to respond satisfactorily to about 1800 requests for information during the previous review period. The 2011 Report concluded that France had an effective exchange of information system, and element C.5 was rated "Compliant".

314. However, France's partners had criticised the timeliness of responses. The response times were found to be long (less than 50% of requests had received a response within 90 days) due in particular to the lack of a reminder system for the Services of the Tax administration responsible for collecting the information when the latter do not meet the internal deadlines they are given. Also, the French authorities rarely informed the requesting jurisdictions of any developments when their processing of the request exceeded 90 days. The 2011 Report recommended that France rapidly put in place both a system that would allow it to inform requesting jurisdictions of progress made in their requests should the competent authority not be able to respond within 90 days and also its plan for an automatic reminder for departments responsible for gathering information in order to optimise the response times.

315. In its efforts to respond to the recommendations in the 2011 Report, France strengthened its *droit de communication* which should make it possible to optimise the tax authority's collection of information. Similarly, an automated management model for reminders to departments collecting information for incoming requests was included in the tracking system (AAI). However, the authorities noted that because of the large number of requests received and the age of the application, it is not possible to have an automated status update process for requests received, despite the regular updates to the system. This problem was still noticeable in the current review period as the percentage of requests receiving a response within 90 days remained below 50%. Due to the persistence of the deficiencies of the French system for processing the requests received, the rating of element C5 is downgraded from "Compliant" to "Largely compliant"

316. Despite the shortcomings in response time, France received a total of 2381 requests, only 54 of which had not received a response by January 2018. France's exchange of information partners were generally satisfied with the quality of responses received and the quality of the requests sent by France during the current review period.

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

Legal and regulatory framework: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the implementation of EOIR in practice.		
	Underlying factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice	The internal processes within the tax administration do not always ensure the collection of the requested information in a timely manner and France rarely informs the requesting jurisdictions of the status of their EOI request when the competent authority is not in a position to respond within 90 days.	France is recommended to rapidly put in place a system to gather the requested information in a timely manner and inform the requesting jurisdictions of the status of their EOI request when the competent authority is not in a position to respond within 90 days.
Rating: Largely compliant		

C.5.1. Timeliness of responses to requests for information

318. During the period under review, (1 October 2013 to 30 September 2016), France received a total of 2381 requests for information. These requests[6] related to (i) ownership information and/or (ii) accounting information (about 900 (iii) banking information (135) and (iv) other types of information. France received requests[7] for information concerning (i) companies, (ii) individuals, (iii) bearer shares, (iv) trusts (*fiducies*). France's main partners for the review period (given the number of requests received and/or sent by France) were Germany, Belgium, Spain, Norway, Poland, Portugal and the United Kingdom (for the requests received) and Germany, Belgium, Spain, United States, Italy, Hong Kong (China), Monaco, Poland, Portugal, United Kingdom and Switzerland (for the requests sent).

319. The table below summarises the number of requests to which France replied in 90 days, 180 days, one year or more than one year.

6. Some requests correspond to more than one category.
7. Some requests correspond to more than one type of entity.

Statistics on response times

			2013/14		2014/15		2015/16		Total	
			Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received		[A+B+C+D+E]	756	100	823	100	802	100	2 381	100
Complete answer:	≤90 days		278	37	426	52	399	50	1 103	46
	≤180 days (cumulative)		422	56	564	69	606	76	1 592	67
	≤1 year (cumulative)	[A]	648	86	722	88	720	90	2 090	88
	>1 year	[B]	94	12	86	10	57	7	237	10
Refusal for various reasons			0	0	0	0	0	0	0	0
Status update provided within 90 days (for responses sent after 90 days)			29	6	23	6	129	32	181	14
Requests withdrawn by the requesting jurisdiction		[C]	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested		[D]	0	0	0	0	0	0	0	0
Requests still pending at date of review		[E]	14	2	15	2	25	3	54	2

Notes: a. France generally considers one case as a request. A case is broken down into one or more requests, depending on the number of recipients (investigating units) who will be involved for a request received, and/or depending on the number of persons to be investigated for the requests sent.

b. The times in this table start from receipt of the request until the date at which a complete and final answer is provided.

320. During the review period, France received a total of 2381 requests. Of the requests received, 46% were given a response within 90 days, 67% within 180 days, 88% within a year and 12% in more than a year. Compared to the previous review period, there was not a clear improvement in the response times despite the recommendations made to France in the 2011 Report. By way of illustration, the percentage of requests responded to within 90 days only went from 44.36% to 46%, remaining below 50%. Additionally, a number of requests concerned the identification of taxpayers, which does not represent any particular complexity.

321. France explained that requests which are not processed completely within 90 days are typically related to complex requests involving several types of information. For example, a request for information may require the use of several *droit de communication* (with a bank, a company, etc.) or several tax audits, notably by different territorial Services of the tax administration.

322. In the same period, France only sent clarification requests to its partners for 55 requests. This means that in general, France's relatively long processing times are mainly due to internal reasons rather than the quality of the request itself.

Internal procedures for informing the requesting jurisdiction of the status of its request

323. Out of the 1 278 requests that did not receive a response within 90 days, France only sent status updates for 181 requests, or 14%.France does not systematically update its partners on the status of their requests. This was noted by its peers during the review period. The French authorities justified this failure by the high number of requests and the age of the AAI system which does not include a space for updates. France made the effort to inform 19 partners on the progress on their requests in September 2016. While this effort should be recognised, its impact on the overall quality of the processing of information exchange by France is symbolic in as much as it came after the review period and did not concern all the requests awaiting responses in France.

324. France indicated that a new version of the AAI tracking system is being developed and will include a space for managing automatic status updates for requesting jurisdictions. The preliminary work was completed in the first half of 2017 and software development is underway (two steps out of four have already been completed). The new system is expected to be open for use in September 2018

C.5.2. Organisational process and resources

The competent authorities

325. The 2011 Report explained that "Nearly all tax treaties and TIEAs designate the Minister of Budget or his authorised representative as the competent authority. The "authorised representative" for incoming requests is the Office of International Affairs (CF3). As a general rule, CF3 receives requests for information whether they are based on a tax treaty, a TIEA, or a multilateral instrument. Some requests, however, are addressed to Tax Attachés posted abroad or in certain border regions of France, on the basis of delegation." Although this has remained generally the same, this organisation was slightly modified at the central level. The former CF3 office is now called "CF1C" but keeps the same competent authority functions.

326. France has several competent authorities with different capacities depending on whether the request is incoming or outgoing. All authorities listed below are competent to initiate outgoing requests. However, only the central competent authority (the CF1C office) and Tax Attachés are authorised to receive incoming requests (A territorial Department of the tax administration may nevertheless receive an incoming request when it comes from a neighbouring jurisdiction having a cross-border agreement in force with France). The CF1C office is the EOI Unit:

- at the central level: The Director General of Public Finance, the CF1C office in charge of the exchange of information unit

- within the central tax audit offices: The former *Direction des vérifications nationales et internationales* (DVNI) now the *Direction des Impôts des Non Résidents* (DINR) – Non-Resident Taxes Directorate, since September 2017, the *Direction nationale de vérification des situations fiscales* (DNVSF), the *Direction des résidents à l'étranger et des services généraux* (DRESG), the *Direction nationale des enquêtes fiscales*, DNEF), the *Direction des grandes entreprises* (DGE)
- within the other tax audit offices: the *Directions régionales du contrôle fiscal* (DIRCOFI)
- Tax Attachés in Madrid (with jurisdiction on Andorra, Spain and Portugal), London (with jurisdiction on the United Kingdom, Ireland, Isle of Man, Jersey and Guernsey), Rome (with jurisdiction on Italy), Washington (with jurisdiction on the United States, Canada and Mexico), Brussels (with jurisdiction on Belgium and The Netherlands) and Berlin (with jurisdiction on Germany) and Beijing (with jurisdiction on China, South Korea, Hong Kong (China) and Singapore).

327. The team in charge of exchange of tax information on direct taxes at the central level is made up of nine agents (one person more since the last peer review for an increase in the number of incoming requests of approximately one-third), comprising two senior Public Finance Inspectors in charge of managing the team, four Public Finance Inspectors responsible for administrative assistance for direct taxes and the use of automatic exchanges, two Public Finance Controllers in charge of administrative assistance for VAT, and one agent responsible for the secretariat. Each of the seven Tax Attaché posts includes one Tax Attaché and one assistant (Public Finance Controller), for a total of 14 people.

328. The staff from the information exchange unit and the Tax Attachés receive training in international administrative assistance and an on-line training course for the dedicated EOI tracking system (AAI). Similar training modules are also in place for agents working on tax audit. Lastly, all agents of the DGFiP have access to the dedicated EOI page on the internal documentation site of the DGFiP, known as "Nausicaa".

329. DGFiP agents who must implement international administrative assistance, either by seeking the information from a partner or gathering the information by requested by partner, have at their disposal a manual for international administrative assistance, which recalls the foundations, general principles and channels of exchange of information on direct taxes and VAT. One part of this manual is devoted to writing a request for information to a foreign jurisdiction. It explains in particular the requirements of foreseeable relevance and exhaustion of domestic means. Another part is devoted to the processing of requests and to the timeline in which France is required to

respond to these requests. Finally, the guide reminds officers of their obligations with respect to confidentiality and professional secrecy, particularly in the context of information exchange in international matters.

330. Regarding technical resources, the EOI unit and the Tax Attaché postings use the EOI tracking system (AAI) and other IT equipment to process and store requests (computers, photocopier-scanner).

Incoming requests

331. All exchange of information requests sent or received are recorded in AAI system. This allows the EOI unit to manage work by creating lists for follow-up and to record performance. All foreign requests are managed either by the central exchange of information unit (CF1C) or by the Tax Attachés.

332. In each unit, once an incoming request is received, it is assigned to an agent who creates a case corresponding to the request (only an authorised agent is able to create a case). There are two main steps in creating a case. Step 1 consists of selecting the type of tax concerned from a list of possible taxes in AAI: VAT or direct taxes for example. Step 2 consists of entering the mandatory information which are the date (day the case is received), the means of transmission (e.g. "post"), the "origin" (a drop-down list lets the user select the department concerned), the number of requests included in the case, the person in charge of processing the request.

333. After recording the incoming request in the AAI system, the EOI unit or the Tax Attaché checks that it is valid: establishing the foreseeable relevance, checking the identity of the competent authority in the Global Forum database. When the required information is already in the possession of the tax authorities, the request is processed by the exchange of information unit or the Tax Attaché within 30 days of receipt of the request.

Procedure for obtaining requested information which are in the hands of another person

334. When the information requested is in the possession of another national authority, in the possession or control of the taxpayer, or the person or entity that is the subject of the request, the request is sent to the territorial department that manages the taxpayer covered by the foreign request, within 45 days. The territorial department then implements the most appropriate procedures to gather the information (*droit de communication*, tax examination, etc.).

335. The same procedures apply when the requested information is in the possession of a third party. If it is banking information, the territorial department exercises the *droit de communication* upon the banks. In this

specific case, the *droit de communication* is practically conducted by the Departmental Inspection and Research Brigades or, in Ile-de-France (Paris region), by The *Brigade de recherche systématique (*"systematic research brigade") of the National Tax Investigation Division (DNEF).

336. It should be noted that in the framework of information gathering by the territorial units, while they have 45 days to communicate the requested information to the EOI unit, they are only sent a reminder after 90 days. This 90-day reminder limits territorial departments reactivity and lessens the possibility of the requesting jurisdiction receiving an answer within 90 days. For efficiency, the EOI unit should make sure that the information gathering departments receive reminders early enough to be able to respond to partners in a reasonable time, in line with the international standard. During the review period, France experienced no practical difficulties in obtaining information in response to requests from other jurisdictions.

Verification of the information gathered

337. The competent authority in charge of sending the response (EOI unit or Tax Attaché) always verifies the information obtained before sending it to the requesting jurisdiction. The competent authority always makes sure that the information supplied provides exact answers to the questions asked.

Outgoing requests

The decentralisation of outgoing requests and competent authorities

338. Request processing has been decentralised since September 2004 which means that multiple departments can send their tax information requests directly to the EOI partner without going through the EOI unit, the CF1C office (except for requests to certain jurisdictions). This concerns the nine regional tax audit departments (DIRCOFI), the national departments (DVNI, DNEF, DNVSF, DGE) and the DRESG/DINR.

339. Processing requests for assistance from local units is carried out depending on the foreign jurisdiction concerned. Most often they will be handled by DIRCOFI as follows: (1) local departments send their request for assistance electronically, after signing off of the local director, to the appropriate DIRCOFI email address; (2) DIRCOFI deals with the request directly by:

- recording it in the AAI system
- approval, particularly regarding the relevance of the request, then signing off by the competent authority within DIRCOFI
- sending it to the foreign competent authority (except when a Tax Attaché is the Competent authority).

340. When information requests fall under the jurisdiction of Tax Attachés, the departments (local departments, DIRCOFI, national departments and DRESG) must send their requests directly to the Attachés.

341. Requests for administrative assistance to some States and territories must be sent to the CF1C via the dedicated email. For these requests, the local departments send them to the CF1C rather than to the related DIRCOFI.

342. The processing of requests for assistance from national directorates is carried out by the designated competent authorities in each of these directorates, except for the compulsory referral to a Tax Attaché or to the CF1C office, as for local services.

343. If necessary, contact is established (email or telephone) between the competent authority and the department sending the request for clarification or additional information.

Formulation of outgoing requests for information

344. Tax authority agents must detect the situations in which administrative assistance is possible. During desk-based document reviews or on-site inspections, the use of exchange of information makes it possible, in particular where there are transactions linked to a foreign jurisdiction, to guarantee the factual-nature of the information sent by the taxpayer or to gather information that was not obtained during the audit. Before making use of exchange of information, all domestic information gathering means must have been exhausted. If, despite the domestic research, the information has still not been obtained or if the information obtained requires further clarification or confirmation, or if it has been shown that the search could significantly compromise the investigations underway, as in the most serious cases of fraud where the use of these means would entail a risk of loss of evidence, exchange of information can then be called upon. To do that, auditors have the EOI manual (AAI guide) and model requests on the DGFiP's EOI page on the internal documentation site Nausicaa. The requests sent to European Union member States must be sent using the European electronic forms. For countries where French is not the official language, the requests must be drafted at least in English, except in cases where the request is sent to a Tax Attaché who will be able to ensure translation. The use of forms makes it possible to guarantee that the requests sent are complete and meet the requirement of foreseeable relevance.

345. Information that must be included in the requests:

- General information (the legal basis on which the request is made, indication that (i) the available domestic means that have been exhausted to obtain the information, (ii) the same type of information could be obtained and exchanged under French legislation, (iii) the information requested will be used in accordance with the legal basis mentioned);

- Information on the subject of the request and the case concerned (years audited and the tax concerned, a description or outline of the fraud discovered or suspected, the justification for the request (clear summary of the circumstances of the case, how investigation has progressed and the importance of the request), indication of the breach of French tax legislation presumed, not limited simply to the reference to the relevant Tax Code article);
- Taxpayer's identity and tax situation: for a natural person, the following should be mentioned, where known, first name and surname (birth name for married persons), date and place of birth, nationality, complete address in France, complete address abroad, foreign tax identification number, activities engaged in by the taxpayer in France and abroad, revenue declared in France and abroad. For a legal person, where it is a French entity, the company name, tax identification number, principal purpose and name of the director(s), complete address in France (where there are multiple establishments, multiple addresses will be communicated), and for a foreign entity the company name, tax identification number, purpose and the known foreign addresses. Existing legal and business connections between different entities should also be specified.

346. During the review period, France sent 48 496 requests to its partners, including 40 379 requests as part of a bulk request to one partner. In other words, outside this bulk request, France sent a total of 8 117 individual requests between 1 September 2013 and 30 October 2016.

347. Among those requests, 359, or about 4.5%, were followed by a request for clarification. The requests for clarification sent to France were for many reasons, the most common being:

- justification of "foreseeable relevance" and of the ultimate tax purpose of the information requested such as the naming of all shareholders of a foreign entity or sharing of tax returns filed in other countries
- confirmation of use of domestic means to collect information prior to the request for assistance
- position on the possibility of having recourse to a notification procedure
- context of the case or the ultimate aim of the request, in order to respond to the requested jurisdiction's judicial authorities' requirements where an appeal procedure exists or when collecting the information requested requires prior authorisation by a judge
- Identification of the person concerned in their country.

348. Generally, France's EOI partners were satisfied with the quality of requests received from France during the review period

C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for exchange of information

349. Exchange of information must not be subject to unreasonable, disproportionate or unduly restrictive conditions.

350. The 2011 Report indicated that there were no provisions in French legislation or in the exchange of information instruments that provided conditions for the exchange of information that went beyond those envisaged in article 26 of the Model Tax Convention or the Model TIEA. This has not changed. In practice, no problems or factors were identified that would create any such restrictions on France's implementation of exchange of information.

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 – Availability of beneficial ownership information*: France is recommended to take the necessary measures to monitor implementation of the register of beneficial owners.
- *Element C.2 – Exchange of information mechanisms with all relevant partners*: France should nonetheless continue to conclude EOI agreements with any new relevant partner who would so require.

Annex 2: List of juridictions 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	24-12-2002	01-10-2005
2	Algeria	DTC	17-10-1999	20-12-2002
3	Andorra	DTC	02-04-2013	01-07-2015
		TIEA	22-09-2009	22-12-2010
4	Anguilla	TIEA	30-12-2010	15-12-2011
5	Antigua and Barbuda	TIEA	26-03-2010	28-12-2010
6	Argentina	DTC	15-08-2001	01-10-2007
7	Armenia	DTC	03-02-2004	07-12-2006
8	Aruba	TIEA	14-11-2011	01-04-2013
9	Australia	DTC	20-06-2006	01-06-2009
10	Austria	DTC	26-03-1993	06-12-1994
		Protocol	23-05-2011	01-05-2012
11	Azerbaijan	DTC	20-12-2001	01-10-2005
12	Bahamas	TIEA	07-12-2009	13-09-2010
13	Bahrain	DTC	07-05-2009	01-02-2011
14	Bangladesh	DTC	09-03-1987	01-09-1988
15	Belarus	DTC with ex-USSR	04-10-1985	28-03-1987
16	Belgium	DTC	08-02-1999	27-04-2000
		Protocol	07-07-2009	01-07-2013
17	Belize	TIEA	22-11-2010	19-12-2011
18	Benin	DTC	27-02-1975	08-11-1977
19	Bermuda	TIEA	12-10-2009	28-10-2010

No.	EOI partner	Type of agreement	Date signed	Date entered into force
20	Bolivia	DTC	15-12-1994	01-11-1996
21	Bosnia and Herzegovina	DTC	28-03-1974	01-08-1975
22	Botswana	DTC	15-04-1999	14-06-2003
		Protocol	27-07-2017	No
23	Brazil	DTC	10-09-1971	10-05-1972
24	British Virgin Islands	TIEA	17-06-2009	18-11-2010
25	Brunei Darussalam	TIEA	30-12-2010	No
26	Bulgaria	DTC	14-03-1987	01-05-1988
27	Burkina Faso	DTC	03-06-1971	01-10-1974
28	Cameroon	DTC	28-10-1999	01-01-2003
29	Canada	DTC	30-11-1995	01-09-1998
		Protocol	02-02-2010	27-12-2013
30	Cayman Islands	TIEA	05-10-2009	13-10-2010
31	Central African Republic	DTC	13-12-1969	01-03-1971
32	Chile	DTC	07-06-2004	10-07-2006
33	China (People's Republic of)	DTC	26-11-2013	28-12-2014
34	Colombia	DTC	25-06-2015	No
35	Congo	DTC	27-11-1987	01-09-1989
36	Cook Islands	TIEA	15-09-2010	16-11-2011
37	Costa Rica	TIEA	16-12-2010	14-12-2011
38	Côte d'Ivoire	DTC	19-10-1993	01-05-1995
39	Croatia	DTC	19-06-2003	01-09-2005
40	Curaçao [a]	TIEA	10-09-2010	01-08-2012
41	Cyprus [b]	DTC	18-12-1981	01-04-1983
42	Czech Republic	DTC	28-04-2003	01-07-2005
43	Dominica	TIEA	24-12-2010	14-12-2011
44	Ecuador	DTC	16-03-1989	25-03-1992
45	Egypt	DTC	01-05-1999	01-06-2004
46	Estonia	DTC	28-10-1997	01-05-2001
47	Ethiopia	DTC	15-06-2006	17-07-2008

No.	EOI partner	Type of agreement	Date signed	Date entered into force
48	Finland	DTC	11-09-1970	01-03-1972
49	Former Yugoslav Republic of Macedonia	DTC	10-02-1999	01-05-2004
50	Gabon	DTC	20-09-1995	01-03-2008
51	Georgia	DTC	07-03-2007	01-06-2010
52	Germany	DTC	20-12-2001	01-06-2003
53	Ghana	DTC	05-04-1993	01-04-1997
54	Gibraltar	TIEA	24-09-2009	09-12-2010
55	Greece	DTC	21-08-1963	31-12-1964
56	Grenada	TIEA	31-03-2010	09-01-2012
57	Guernsey	TIEA	24-03-2009	04-10-2010
58	Guinea	DTC	15-02-1999	01-10-2004
59	Hong Kong (China)	DTC	21-10-2010	01-12-2011
60	Hungary	DTC	28-04-1980	01-12-1981
61	Iceland	DTC	29-08-1990	01-06-1992
62	India	DTC	29-09-1992	01-08-1994
63	Indonesia	DTC	14-09-1979	13-03-1981
64	Iran	DTC	07-11-1973	10-04-1975
65	Ireland	DTC	21-03-1968	15-06-1971
66	Isle of Man	TIEA	26-03-2009	04-10-2010
67	Israel	DTC	31-07-1995	18-07-1996
68	Italy	DTC	05-10-1989	01-05-1992
69	Jamaica	DTC	09-08-1995	21-05-1998
70	Japan	DTC	11-01-2007	01-12-2007
71	Jersey	TIEA	23-03-2009	11-10-2010
72	Jordan	DTC	28-05-1984	01-04-1985
73	Kazakhstan	DTC	03-02-1998	01-07-2000
74	Kenya	DTC	04-12-2007	01-11-2010
75	Korea	DTC	19-06-1979	01-02-1981
76	Kosovo	DTC	28-03-1974	01-08-1975
77	Kuwait	DTC	27-01-1994	01-03-1995
78	Kyrgyzstan	DTC with ex-USSR	04-10-1985	28-03-1987

No.	EOI partner	Type of agreement	Date signed	Date entered into force
79	Latvia	DTC	14-04-1997	01-05-2001
80	Lebanon	DTC	24-07-1962	02-01-1964
81	Liberia	TIEA	06-01-2011	30-12-2011
82	Libya	DTC	22-12-2005	01-07-2008
83	Liechtenstein	TIEA	22-09-2009	19-08-2010
84	Lithuania	DTC	07-07-1997	01-05-2001
85	Luxembourg	DTC	24-11-2006	27-12-2007
		Protocol	03-06-2009	29-10-2010
86	Madagascar	DTC	22-07-1983	01-10-1984
87	Malawi	DTC	14-12-1950	31-07-1951
88	Malaysia	DTC	12-11-2009	01-12-2010
89	Mali	DTC	22-09-1972	01-01-1975
90	Malta	DTC	28-08-2008	01-06-2010
91	Mauritania	DTC	15-11-1967	01-03-1969
92	Mauritius	DTC	11-12-1980	17-09-1982
		Protocol	23-06-2011	01-05-2012
93	Mexico	DTC	07-11-1991	31-12-1992
94	Monaco	DTC	26-05-2003	01-08-2005
95	Mongolia	DTC	18-04-1996	01-12-1998
96	Montenegro	DTC	28-03-1974	01-08-1975
97	Morocco	DTC	18-08-1989	01-12-1990
98	Namibia	DTC	29-05-1996	01-05-1999
99	Netherlands	DTC	16-03-1973	27-02-1974
100	New Zealand	DTC	30-11-1979	19-03-1981
101	Niger	DTC	01-06-1965	01-07-1966
102	Nigeria	DTC	27-02-1990	02-05-1991
103	Norway	DTC	16-09-1999	01-12-2002
104	Oman	Protocol	08-04-2012	01-03-2013
105	Pakistan	DTC	15-06-1994	01-09-1996
106	Panama	DTC	30-06-2011	01-02-2012
107	Philippines	DTC	09-01-1976	24-08-1978
		Protocol	25-11-2011	01-02-2013
108	Poland	DTC	20-06-1975	12-09-1976

No.	EOI partner	Type of agreement	Date signed	Date entered into force
109	Portugal	DTC	14-01-1971	18-11-1972
		Protocol	25-08-2016	04-01-2018
110	Qatar	DTC	14-01-2008	23-04-2009
111	Quebec	DTC	03-09-2002	01-08-2005
112	Romania	DTC	27-09-1974	27-09-1975
113	Russia	DTC	26-11-1996	06-02-1999
114	Saint Kitts and Nevis	TIEA	01-04-2010	16-12-2010
115	Saint Lucia	TIEA	01-04-2010	20-01-2011
116	Sint Maarten	TIEA	10-09-2010	01-08-2012
117	Saint Vincent and the Grenadines	TIEA	13-04-2010	21-03-2011
118	San Marino	TIEA	22-09-2009	02-09-2010
119	Saudi Arabia	DTC	18-02-2011	01/03/1983
		Protocol	18-02-1982	01-06-2012
120	Senegal	DTC	10-01-1991	01-02-1993
121	Serbia	DTC	28-03-1974	01-08-1975
122	Singapore	DTC	15-01-2015	01-06-2016
123	Slovak Republic	DTC	01-06-1973	25-01-1975
124	Slovenia	DTC	07-04-2004	30-03-2007
125	South Africa	DTC	08-11-1993	01-11-1995
126	Spain	DTC	10-10-1995	01-07-1997
127	Sri Lanka	DTC	17-09-1981	18-11-1982
128	Sweden	DTC	27-11-1990	01-04-1992
129	Switzerland	DTC	22-07-1997	01-08-1998
		Protocol	27-08-2009	04-11-2010
		Protocol	25-06-2014	30-03-2016
130	Syrian Arab Republic	DTC	17-07-1998	01-05-2009
131	Chinese Taipei	French Law [c]		01-01-2011
132	Thailand	DTC	27-12-1974	29-08-1975
133	Togo	DTC	24-11-1971	01-04-1975
134	Trinidad and Tobago	DTC	05-08-1987	01-04-1989
135	Tunisia	DTC	28-05-1973	01-04-1975
136	Turkey	DTC	18-02-1987	01-07-1989

No.	EOI partner	Type of agreement	Date signed	Date entered into force
137	Turkmenistan	DTC	04-10-1985	28-03-1987
138	Turks and Caicos Islands	TIEA	12-10-2009	14-07-2011
139	Ukraine	DTC	31-01-1997	01-11-1999
140	United Arab Emirates	DTC	06-12-1993	01-06-1995
141	United Kingdom	DTC	19-06-2008	18-12-2009
142	United States	DTC	13-01-2009	23-12-2009
143	Uruguay	TIEA	28-01-2010	31-12-2010
144	Uzbekistan	DTC	22-04-1996	01-10-2003
145	Vanuatu	TIEA	31-12-2009	07-01-2011
146	Venezuela	DTC	07-05-1992	15-10-1993
147	Viet Nam	DTC	10-02-1993	01-07-1994
148	Zambia	DTC	14-12-1950	31-07-1951
149	Zimbabwe	DTC	15-12-1993	05-12-1996

Notes: a. The TIEA with Curacao and Sint-Maarten was agreed with the former Dutch West Indies. The Kingdom of the Netherlands, with whom France negotiated said TIEA, has taken the necessary domestic measures to ensure the legal application of the TIEA in the new dependencies of Curacao and Sint-Maarten. Consequently, no amendment to the agreement has been signed.

b. 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.

c. Art. 77 of Amending Finance Act 2010-1658 of 29 December 2010 sets out the rules for avoiding double taxation and preventing tax fraud and tax evasion with Chinese Taipei.

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

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the amended Convention) [8] The Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

France signed the Multilateral Convention of 1998 on 17 September 2003 and deposited its instrument of ratification on 25 May 2005. The Multilateral Convention of 1998 thus entered into force in respect of France on 1 September 2005. France signed the Amendment Protocol to the Convention on Mutual Administrative Assistance in Tax Matters on 27 May 2010. It deposited its instrument of ratification with the Depositary on 13 December 2011 and the Protocol entered into force for France on 1 April 2012.

As at 8 January 2018, the amended Convention is also in force in respect of the following jurisdictions, with which France 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, 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,

8. The amendments to the 1988 Convention have been set out in two separate instruments sharing a common objective: The Modified Convention which includes the amendments in a consolidated text and the Protocol modifying the 1988 Convention which lists the amendments separately.

Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Kingdom and Uruguay.

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

3. EU Directive on administrative cooperation in the field of taxation

France can exchange on request relevant information on taxation directly with the EU Member States in application of Directive 2011/16/EU of the Council of 15 February 2011 on administrative cooperation in the field of taxation (as amended). The Directive entered into force on 1 January 2013. France can exchange information under this Directive with Germany, Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Ireland, Latvia, Lithuania, Luxemburg, Malta, Holland, Poland, Portugal, Rumania, the Republic of Slovakia, 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 evaluation was based on information available to the assessment team, including the exchange of information arrangements signed, laws and regulations in force or effective as at 5 January 2018, France's EOIR practice in respect of EOI requests made and received during the three-year period from 1 October 2013 to 30 September 2016, information supplied by partner jurisdictions, as well as information provided by France during the on-site visit that took place from 11 to 13 April 2017 in France.

Laws, regulations and other material received

Constitution of 4 October 1958

Declaration of the Rights of Man and of the Citizen of 26August 1789

Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation

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 purpose of money laundering or terrorist financing

Insurance Code, extracts

Civil Code, extracts

Commercial Code, extracts

Criminal Code, extracts

General Tax Code, extracts

Monetary and financial code, extracts

Law of 16 and 24 August 1790 on the judicial organisation

Law No. 83-634 of 13 July 1983 on the Rights and Obligations of Civil Servants

Law No. 2003-7 of 3 January 2003 amending Book VIII of the French Commercial Code

Law No. 2007-211 of 19 February 2007 instituting the *fiducie* as amended by art. 18 of the law of modernisation of the economy No. 2008-776 of 4 August 2008 then by ordinance No. 2009-112 of 30 January 2009

Law No. 2010-1658 of 29 December 2010 amended finance for 2010 relating to Chinese Taipei

Law No. 2016-731 of 3 June 2016 reinforcing the fight against organised crime, terrorism and their financing, and improving the efficiency and guarantees of criminal proceedings

Law No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life

Law No. 2016-1918 of 29 December 2016 of rectifying finance for 2016

Ordinance No. 2015-900 of 23 July 2015 relating to the accounting obligations of traders

Ordinance No. 2016-1635 of 1 December 2016 reinforcing the French anti-money laundering and terrorist financing system

Decree No. 2010-219 of 2 March 2010 on the automated processing of personal data called the "National Trust Register"

Decree No. 2017-1094 of 12 June 2017 on the Register of beneficial owners

Decision of the Council of State of 13 July 2011 No. 313440

Instruction No. 2016-I-22 of 3 October 2016 amending Instruction No. 2012-I-04 of 28 June 2012 on information on the system for the prevention of money laundering and terrorist financing

BOI-ANNX-000306-20170803 APPENDIX – INT – List of tax treaties entered into by France (effective 1 January 2017)

Authorities interviewed during the on-site visit

Administration/Directorate/Department/Office	Acronyms
Ministry of the Economy and Finance – General Directorate of Public Finances	DGFiP
Direction de la Législation Fiscale	DLF
Bureau des règles de fiscalité internationale et de la négociation des conventions fiscales	E1
Bureau des affaires européennes et multilatérales	E2

Administration/Directorate/Department/Office	Acronyms
Service du Contrôle Fiscal	CF
Bureau du pilotage du contrôle fiscal	CF-1A
Bureau des procédures de contrôle, des études et de la veille juridique	CF-1B
Bureau de la programmation et des échanges internationaux	CF-1C
Service de la Gestion Fiscale	GF
Bureau de l'animation de la fiscalité des professionnels, des relations avec les centres de formalités des entreprises (CFE)	GF-2A
Bureau du droit et outils du recouvrement – Tutelle des experts-comptables	GF-2B
Bureau de la publicité foncière et de la fiscalité du patrimoine	GF-3B
Service des Systèmes d'information	SI
Département de la gouvernance et du support des systèmes d'information – Cellule Commission Nationale de l'Informatique et des Libertés (CNIL)	FSUP
Service des Ressources Humaines	RH
Bureau de la déontologie	RH-2B
Direction des résidents à l'étranger et des services généraux	DRESG
Service des impôts des entreprises étrangères	SIEE
Ministry of the Economy and Finance – General Directorate of the Treasury	DG Trésor
Service du financement de l'économie	
Bureau des affaires bancaires	Bancfin1
Service des affaires multilatérales et du développement	
Bureau de la politique commerciale, de l'investissement et de la lutte contre la criminalité financière	Multicom3
Bodies reporting to the Ministry of the Economy and Finance	
Autorité de Contrôle Prudentiel et de Résolution	ACPR
Institut National des Statistiques et des Études Économiques	INSEE
Traitement du Renseignement et Action contre les Circuits FINanciers clandestins	TRACFIN
Ministry of Justice – Civil Affairs and Seals Directorate	DACS
Sous-direction du droit économique	
Bureau du droit commercial général	BDCG
Bureau du droit des sociétés et de l'audit	BDSA
Sous-direction des professions judiciaires et juridiques	
Bureau de la réglementation des professions	BRP
Professional organisations	
Conseil national des barreaux	CNB
Conseil supérieur du notariat	CSN
Haut Conseil du Commissariat aux Comptes	H3C
Compagnie Nationale des Commissaires aux Comptes	CNCC
Conseil supérieur de l'ordre des experts-comptables	CSOEC
Fédération Bancaire Française	FBF

Current and previous reports

This report is the second review of France conducted by the Global Forum. France previously underwent an EOI peer review in 2011 (a combined review of the legal and regulatory framework and the EOIR implementation in practice). The combined review was conducted according to the ToR approved by the GF in February 2010 (2010 ToR) and the Methodology used in the first round of reviews.

Information on the previous reviews of France are listed in the table below.

Review	Assessment Team	Date of legal framework	Period under review	Date of adoption by the Global Forum
Combined Report	Ms Graciela V. Liquin, Head of Division, International Taxation Directorate, Tax Administration of the Argentine Republic; Mr Torsten Fensby, Project Manager, Denmark; and Ms Gwenaëlle Le Coustumer from the Global Forum Secretariat.	February 2011	1 January 2007 to 31 December 2009	June 2011 (November 2013 for the report with ratings)
Phase 2 report	Ms Nancy Tremblay, Manager, Information Exchange Department 2, Competent Authority Division Canada Revenue Agency; Ms Yamini Rangasamy, Head of the International Taxation Section, Large Taxpayer Department, *Mauritius Revenue Authority* (Mauritius) and Mr Ervice Tchouata (GF Secretariat).	8 January 2018	1 October 2013 to 30 September 2016	30 March 2018

Annex 4: Jurisdiction's response to the review report[9]

France wishes to thank the assessment team for the tremendous and high quality work they have done. France also thanks the members of the peer review group and its other exchange of information partners for their useful contributions to its evaluation.

France shares the conclusions of the review report, which are positive.

France also takes due note of the recommendations which need to be addressed, in particular the improvement of the timeliness in providing required information to its partners, and indicates that it has already taken the appropriate administrative measures to that end.

9. 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.

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

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

OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
(23 2018 10 1 P) ISBN 978-92-64-29104-1 – 2018

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request FRANCE 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 France.

Consult this publication on line at ***http://dx.doi.org/10.1787/9789264291058-en***.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases.
Visit ***www.oecd-ilibrary.org*** for more information.

OECD*publishing*
www.oecd.org/publishing

ISBN 978-92-64-29104-1
23 2018 10 1 P