



Global Forum on Transparency  
and Exchange of Information for Tax Purposes



# SUPPLEMENTARY PEER REVIEW REPORT

Phase 2

## Legal and Regulatory Framework

AUSTRIA



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## About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).



## Abbreviations

**ADG:** Administrative Assistance Implementation Act

**AG:** joint-stock company

**AML/CFT legislation:** Anti-money laundering/combating financing of terrorism Legislation

**BAO:** Federal Fiscal Code

**CDD:** Customer Due Diligence

**EStG:** Income Tax Act

**FBG:** Austrian Commercial Register Act

**Firmenbuch:** Business Register

**Finanzstrafgesetz:** Fiscal Offences Act

**FMA:** Financial Market Authority

**Genossenschaft:** Co-operatives

**GmbH:** Limited liability company

**KStG:** Corporation Tax Act

**Multilateral Convention:** Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol

**UStG:** Value-Added Tax Act

**SE:** European Company

**Strafgesetzbuch:** Criminal Code

**Treugeber:** the economic owner of assets held in a *Treuhand*

**Treuhand:** Austrian fiduciary relationship

**Treuhänder:** trustees



## Executive summary

1. In 2013, the Global Forum evaluated Austria for its implementation of the standard in practice. Austria was rated Partially Compliant overall. This supplementary report evaluates the progress made by Austria since then. This report concludes that Austria is now rated Largely Compliant overall.
2. The Phase 2 report concluded that Austria was Compliant for elements A.2 (Availability of Accounting Information), A.3 (Availability of Banking Information), C.4 (Rights and Safeguards) and C.5 (Exchanging Information), Largely Compliant for elements C.2 (Network of EOI Mechanisms) and C.3 (Confidentiality), Partially Compliant for elements B.1 (Access to Information), B.2 (Rights and Safeguards) and C.1 (EOI Mechanisms), and Non-Compliant for element A.1 (Availability of Ownership and Identity Information).
3. The legal and practical implementation of the standard for elements A.2, A.3, C.4 and C.5 have remained Compliant.
4. For element A.1, the Phase 2 report concluded that Austria's legal framework did not contain adequate incentives or specific sanctions to ensure that all bearer shares issued by unlisted companies would be converted into registered shares before 1 January 2014 (the timeline for conversion provided by law). Austria has introduced new legal measures to address the shortcomings identified in the Phase 2 report and have actively monitored the implementation of the rules in practice. The conversion of bearer shares has only been mandatory since 1 January 2014, and so experience with the new rules is limited. Therefore, it is recommended that Austria continues to ensure that the rules are effectively implemented. As a result of these changes the rating for element A1 has been upgraded to Largely Compliant.
5. The issue in element B.1 was that Austria could only use its access powers to obtain banking information for 40 out of 92 EOI partners. Austria addressed this issue by ratifying the Multilateral Convention and updating its treaty network on a bilateral basis, and can now use its access powers to obtain bank information for 97 out of 118 EOI partners. The restrictions that existed during the peer review period under some EOI relationships which since have been updated to the standard, did affect EOI in practice.



Nevertheless, given the progress made by Austria in updating its treaty network, the rating for element B.1 has been upgraded to Largely Compliant.

6. In respect of element B.2, Austria had a prior notification procedure for accessing bank information, without any exceptions. Austria addressed this issue by abolishing the prior notification procedure with effect from 16 June 2014. The rating for element B.2 has been upgraded to Compliant.

7. The issue in element C.1 was that Austria only had 40 out of 92 EOI agreements in line with the standards. As mentioned above, Austria answered the recommendation by the ratification of the Multilateral Convention and updating its treaty network on a bilateral basis. However, there are still 21 out of 118 EOI relationships which do not allow for the exchange of banking information. Element C.1 has been determined “in place but in needs of improvements” and rated Largely Compliant.

8. The issue identified in element C.2 was that Austria had not on all occasions successfully progressed negotiations to establish EOI arrangements when requested to do so and the fact that only 40 out of its 92 agreements met the international standard. Austria contacted the jurisdictions with which it previously did not enter into negotiations with to establish an EOI arrangement. In addition, Austria has expanded its network of EOI mechanisms by ratifying the Multilateral Convention and updating its treaty network on a bilateral basis, and so the rating for element C.2 has been upgraded to Compliant.

9. For element C.3, the Phase 2 report included a recommendation for Austria regarding confidentiality in the context of access to bank information and the prior notification procedure. Austria abolished the prior notification procedure with effect from June 16th, 2014. As a result, the recommendation introduced in the Phase 2 report is deleted. In addition, the procedures set out to gather information in practice ensures that confidentiality is preserved in every step of the process. Finally, peer inputs have not indicated any issue regarding confidentiality. The determination of element C.3 is “in place”, and the rating is “compliant”.

10. As a result of this supplementary assessment, Austria’s rating for each of the 10 essential elements and its overall rating have been revised. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Austria’s legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Austria has been assigned the following ratings: Compliant for elements A.2, A.3, B.2, C.2, C.3, C.4 and C.5, and Largely Compliant for elements A.1, B.1, and C.1. In view of the ratings for each of the essential elements taken

in their entirety, the overall rating for Austria has been upgraded to Largely Compliant.

11. A follow up report on the steps undertaken by Austria to answer the recommendations made in this report should be provided to the PRG within twelve months after the adoption of this report.



## Introduction

### Information and methodology used for the peer review of Austria

12. The assessment of the legal and regulatory framework of Austria and the practical implementation and effectiveness of this framework were based on the international standards for transparency and exchange of information as described in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, and was prepared using the Global Forum’s *Methodology for Peer Reviews and Non-Member Reviews*.

13. The assessment was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at 19 January 2015, Austria’s responses to the Phase 2 questionnaire and supplementary questions, information supplied by partner jurisdictions, other relevant sources as well as information collected during the on-site visit in Vienna in January 2015. During the on-site visit, the assessment team met with officials and representatives of the relevant Austrian government agencies, including the Ministry of Finance, tax authorities, and the registration and anti-money laundering authorities. The phase 2 Supplementary review of Austria covered a two and a half year review period from 1 January 2012 until 30 June 2014.

14. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Austria’s legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects.

15. In respect of each essential element a determination is made regarding Austria’s legal and regulatory framework that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in

place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Austria's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. An overall rating is also assigned to reflect Austria's overall level of compliance with the standards.

16. The assessments of Austria by the Global Forum are listed in the table below:

Assessment	Assessors	Peer review period	Date of adoption by the Global Forum
<b>Phase 1 report</b>	Advocate Hilary Pullum, Legislative Counsel of Guernsey; Mr Jesper Vestergaard Senior Legal Adviser in the Danish Ministry of Taxation Mr. Rémi Verneau from the Secretariat to the Global Forum	–	August 2011
<b>Phase 2 report</b>	Ms. Merete Helle Hansen, Senior Adviser in the Ministry of Taxation of Denmark; Ms. Lilian Birkemose, Senior EOI officer of the Danish Competent Authority Mr. Nigel Garland, Deputy Director (Compliance & International), Guernsey Mr. Rémi Verneau and Mr. Bhaskar Goswami from the Secretariat to the Global Forum.	1 January 2009 to 31 December 2011	Adopted in August 2013. Approval of the Phase 2 rating in November 2013
<b>Phase 2 supplementary report</b>	Ms. Maria Rosaria La Veglia, Senior Tax Official, Ministry of Economy and Finance, Italy Mr. Nigel Garland, Deputy Director (Compliance & International), Guernsey Ms. Séverine Baranger from the Secretariat to the Global Forum.	1 January 2012 to 30 June 2014	

17. The Phase 2 Supplementary assessment evaluated the updates to *(i)* the legal and regulatory framework until 1 May 2015 and *(ii)* the implementation and effectiveness of Austria's legal and regulatory framework for transparency and exchange of information and its relevant information exchange mechanisms during the peer review period (1 January 2012 to 30 June 2014).

## Overview of Austria

18. The overview of Austria is included in the paragraphs 16-36 of the Phase 2 report. The section below only includes modifications or updates made to the legal system and regulatory system of Austria.

### ***Overview of financial sector and relevant professions***

19. As at 30 June 2014, Austria had a developed and diversified financial sector contributing to 5.6% of national GDP. At that date, the Austrian financial sector comprised 843 banks,<sup>1</sup> 99 investment firms, 163 investment service providers, 29 investment funds management companies and 2 158 domestic investment funds, amongst other entities. In 2013, the total size of the balance sheets of banks in Austria was EUR 889 billion. In the same year, the net asset value of investment funds was EUR 145 billion and the total assets of pension funds was EUR 17 billion.

### ***Anti-money laundering/combating financing of terrorism legislation***

20. Austria has a strong AML/CFT legislation in place, primarily based on the relevant EU law.

21. An assessment of the Austrian AML/CFT legal and regulatory framework was conducted by the IMF (International Monetary Fund) and the FATF (Financial Action Task Force) in 2008, and the next review is due to be conducted at the end of 2015. The report published in 2009 shows that Austrian authorities have implemented a comprehensive AML/CFT system supported by well-developed federal administrative and supervisory bodies. Further, the report noted that the Austrian registration system is well developed though access to information on some entities is sometimes missing. According to the report, CDD is usually in line with the FATF Recommendations even if exceptions to these requirements are in some circumstances too broad, while record keeping requirements set out by the Austrian law meet the international standard.

22. The Austrian AML/CFT system was strengthened since the last evaluation performed by the FATF. In particular, the Banking Act was amended in July 2010 following the conclusions of the IMF/FATF report as regards savings deposit accounts with a balance lower than EUR 15 000. As regards the customer due diligence provisions of credit institutions or financial institutions in case the client is a saving association (*Sparverein*), these later changes ensure that members of savings associations may be identified according to Article 40 paragraph 2 Banking Act. In addition the Financial Market Authority (FMA) may impose by regulation that credit institutions and financial institutions may apply lesser measures than those established in Article 40 paragraph 2, if a risk analysis carried out by the FMA concludes that members of savings associations as clients of the credit institution or

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1. Of which, 539 were rural credit co-operatives providing limited services, while there were 47 joint-stock and private banks, 54 savings banks and 67 industrial credit banks.

financial institution represent a lower risk of money laundering and terrorist financing.

23. Another important change in AML/CFT legal and regulatory framework concerns the amendment to the legislation which had previously placed a prohibition of the use of data, received through the AML/CFT suspicious transaction reporting regime, for proceedings of tax offences other than those tax offences that were also predicate offences to money laundering (see B.1).

## **Recent developments**

24. Austria signed the Multilateral Convention on 29 May 2013, which entered into force in Austria on 1 December 2014. The Multilateral Convention enters into effect with respect to Austria from 1 January 2015; therefore, the practical application of EOIR under the Multilateral Convention was outside of the review period for this supplementary report.

25. Austria has also committed to the implementation of the Common Reporting Standard on Automatic Exchange of Information (AEOI). In this respect, Austria signed a multilateral competent authority agreement to automatically exchange information based on Article 6 of the Multilateral Convention at the Global Forum Meeting in Berlin on 29 October 2014, thereby committing itself for the adoption of automatic exchange of bank account information by 2018 at the latest.

26. The preparatory working draft for the implementation of the AEOI commitment into Austria's legal framework also provides for major changes to the domestic law on bank secrecy, which should enable the tax authorities to get access to bank information for domestic purposes in the course of all types of tax investigations. Moreover, it is also envisaged to establish a central bank account register and to introduce special reporting requirements for banks if individuals withdraw amounts of at least EUR 50 000 from their accounts. This draft legislation is expected to be approved by the Austrian Parliament by July 2015.

## Compliance with the Standards

### A. Availability of information

#### Overview

27. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as accounting information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of the Austria's legal and regulatory framework on availability of information. It also assesses the implementation and effectiveness of this framework in practice.

28. The Phase 2 report concluded that the determination of element A.1 was not in place and the rating was non-compliant, because of some deficiencies identified regarding bearer shares. It identified that bearer shares could still be issued until 1 January 2014 and that there was a lack of incentives and sanctions to ensure the conversion of all bearer shares into registered shares before the cut-off date set out in the 2011 Law (i.e. 1 January 2014). For the remaining aspects covered by element A.1, it was concluded that Austria has a sound legal and regulatory framework which ensures that information concerning the identity of owners and shareholders in companies and partnerships is usually available to the authorities. Austria introduced



provisions in 2014 to ensure the identification of holders of bearer shares in all instances; notably sanctions on non-compliant AGs and on the non-compliant shareholders.

29. While trusts, a common law concept, are not recognised in Austria, information on the settlors and beneficiaries is available due in particular to the implementation AML/CFT requirements. The situation is the same as regards *Treuhand*, an Austrian fiduciary relationship, and is supplemented, for those arrangements, by a partial registration system when lawyers and civil law notaries are acting as *Treuhänder* (trustees). Austria has a very strong system of supervision by notaries and other professions in the context of their general duties, and also in their role as supervisors of the AML/CFT regime.

30. All relevant companies, partnerships and foundations are required to keep comprehensive accounting records and supporting documents for a seven-year period, in particular as a result of obligations set out in the Fiscal Code and the obligation to back the annual tax return with supporting documentation. Professional trustees and *Treuhänder* are subject to the same requirements, except in some specific situations.

31. All of these obligations are supplemented by comprehensive tax requirements, including registration and provision of any facts and circumstances relevant for tax purposes, as well as the annual submission of a tax return. These obligations also ensure proper compliance of any accounting record keeping and filing obligations. In practice, the tax administration uses its wide powers to enforce these tax obligations and ensure that all type of relevant entities comply with them.

32. Banks and financial institutions are required to perform customer due diligence (CDD), to identify and verify the identity of their customers and to hold CDD and customers' transaction records for a period of at least five years pursuant to anti-money laundering legislation. In practice, the FMA ensures that records are kept by banks are in accordance with their AML Obligations. As a result of this supervision, banking records are maintained in a proper way and for at least 5 years, making this information available in Austria for EOI purposes.

## A.1. Ownership and identity information

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

### *Companies (ToR<sup>2</sup> A.1.1)*

33. The Phase 2 report found that the rules regarding the maintenance of ownership information in respect of companies in Austria (with the exception of the rules regarding bearer shares) was generally in accordance with the standard and was effective in practice. A recommendation regarding the availability of information in respect of foreign companies that are effectively managed in Austria was made in the Phase 2 report. Austria has made changes to its legal framework to address this recommendation.

34. A summary of the conclusions from the Phase 2 report are included here, as well as a report of any changes to the legal framework and an analysis of the experience in practice since the last review. For a more detailed analysis of the legal requirements for companies in Austria see Phase 2 report, paragraphs 46 to 82.

### *Types of companies and requirements to maintain information*

35. Austrian law provides for four types of companies: *Aktiengesellschaft (AG)* – joint stock company (Stock Corporation Act adopted in 1998); *the European Company (SE)*; *Gesellschaft mit beschränkter Haftung (GmbH)* – limited liability company (GmbH Act of 6 March 1906); and *Genossenschaft* – co-operatives – regulated by the Co-operative Act of 9 April 1873 as amended. These entities are required to maintain information of their owners under both commercial and tax law requirements. In addition, AML obligated service providers are required to be involved in the formation of companies in Austria, and these service providers also have an obligation to identify the owners of their clients. Each of these regimes is subject to appropriate oversight by the various authorities.

### Commercial law requirements and oversight

36. All companies must be registered in the Austrian Commercial Register (*Firmenbuch*). Identity and ownership information of GmbHs, as well as the identity of any subsequent shareholders pursuant to a transfer of shares must be registered with the *Firmenbuch*. For an AG and SE, the

2. Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.

requirement for the identity of shareholders to be provided in the *Firmenbuch* is limited to where there is only one shareholder. For a *Genossenschaft* there is no requirement to provide shareholder information to the *Firmenbuch*.

37. *AGs*, *SE* and *Genossenschaften* must keep an updated share register. As regards the share registers of the companies, it is the duty of the members of the executive board to keep them in line with the legal requirements. If a person (e.g. a shareholder) is of the opinion that the share register is kept inadequately, this person can inform the court, which then will review the situation and impose a fine if appropriate. All companies are obliged to keep records for seven years (s.212 of the Entrepreneurial Code). In practice, to check the accuracy of the data that is filed before the district court authorities, there are established procedures that are used and compulsory sanctions which are applied for not carrying out registration formalities or not providing updates.

38. As of 31 December 2014, the total numbers of legal entities registered in the Austrian Business Register (including branches of foreign companies, which are assimilated to Austrian companies with the same legal characteristics) were:

Legal entity	Total number
<i>Aktiengesellschaft</i> (AG) = Stock Corporation	1 591
<i>Europäische Gesellschaft</i> (SE) = European Company	31
<i>Gesellschaft mit beschränkter Haftung</i> (GmbH) = Limited Liability Company	137 840
<i>Genossenschaft</i> (Gen) = Cooperative	1 800

## Tax law requirements and oversight

39. Any new business is obliged to inform the Tax Administration about its establishment within one month. For the registration one of the following forms must be filed with the tax authority: Form *Verf 15* or *Verf 24*, including a list of documents (e.g. in the case of the business being carried on by a company, articles of association, the opening balance sheet, an identification card of a managing director) within one month. Before registration is completed, the tax authorities carry out on-site visits in the case of all newly founded companies, to check the correctness of the details filed by the company. Ownership information on the founders is disclosed at the registration with the tax administration. However, there is no requirement to list the shareholders in the tax returns; except for foreign companies (see section *Foreign Companies*). Ownership information on shareholders is however available

with the tax administration upon distribution of dividends to shareholders, as such distribution entails the filing of a dividend distribution form for withholding tax purposes. All companies are subject to tax returns and VAT returns filing requirements. The discovery of a taxpayer's failure to submit such returns would lead to the potential imposition of fines.

40. The audit of companies is usually done on the basis of a risk assessment, which depends on the type of business carried out and other factors. Audits could be desk audits or could call for on-site visits. On-site visits are carried out when there is a need to check the correctness of some claims made or contents of documents. During the course of an audit, the audit teams can ask for all relevant documents and auditors are empowered to take copies of these documents. This covers accounting records as well as documents dealing with ownership information such as deed of incorporations, articles of associations or share registers.

41. Taxpayers are obliged to provide documents to the tax authorities for the past seven years and for the past ten years in cases involving tax fraud. Failure to provide these relevant documents to the tax authorities can invite a penalty of up to EUR 5 000. The Austrian tax authorities have also advised that the level of payment compliance of taxpayers is very high, as in 2013 and 2014, as much as 96.10% and 97% of the tax collections were paid voluntarily, respectively.

42. In summary, strict registration processes ensures that information necessary to assess the tax situation of taxpayers will be available either directly with the tax authorities or in the books and documents that have to be maintained by taxpayers themselves.

### Anti-money laundering law requirements and oversight

43. The Phase 2 report noted that AML/CFT requirements are in place in Austria and applicable to all service providers (e.g. notaries, auditors, lawyers, accountants), and their application is monitored by the various bodies in charge of supervising the various service providers. One or more professionals subject to AML/CFT requirements are always involved in the creation of companies and foundations and may also be involved in drafting deeds relating to other entities or arrangements (see below regarding partnerships, *Treuhand* and trusts). When these persons are involved in these processes, it means that the parties to the deeds or contract are required to be identified and their identity further verified by the requirement for each person to provide corroboratory evidence of their identity. In practice, this means that when these deeds or contracts are submitted to government authorities, ownership information contained in these documents has already been verified, giving broad assurance that it is accurate.

44. Notaries, lawyers and Accountants are each supervised by their own supervisory body. The Phase 2 report noted that there was active and comprehensive supervision of these persons.

45. The activities carried out during the peer review period also demonstrate strong supervision. In the last five years, out of a total of 499 notaries, there were 618 inspections, including 64 surprise inspections. During the period from 2010 to 2014, the Austrian Chamber of Civil-Law Notaries initiated 88 proceedings due to breach of professional duty. As far as the outcome of the proceedings is concerned, during the period from 2009 to 2013, 28 proceedings ended in a guilty judgement by the Austrian Chamber of Civil-Law Notaries and two additional proceedings ended in a guilty judgement by the Disciplinary Court. In most cases monetary fines were imposed. During the period from 2009 to 2013, a total of 85 proceedings were initiated due to breach of professional duty. The differential amount between the proceedings initiated and the guilty judgements is due to the circumstance that a number of proceedings involving fines were discontinued or ended in a non-guilty judgement. Furthermore, a number of proceedings are still pending and their outcome is still open at the time. With respect to lawyers, in the last three years, a total number of 15 disciplinary proceedings against lawyers for suspicion of ML/FT were pending before the Disciplinary Councils of the bars. In eight cases the proceedings were closed, six cases are still pending, but currently cannot be completed because the criminal court proceedings are still pending. In one case the disciplinary proceedings have been stopped due to the waiver of the right to exercise the lawyer's profession. All Austrian lawyers have escrow accounts and these accounts are also reviewed in the context of inspections carried out by the regional bars. The register of escrows is maintained in electronic format. All clients must be informed of their registration in the register of escrows.

46. In its EOI experience, Austria has reported that it has asked lawyers and notaries to provide information and it has never faced a problem in this regard.

47. Regarding internal controls, the Chamber for Chartered Accountants does not have the powers to conduct any inspections on its members. For this task, there is another Quality Assurance Authority for auditors (Austrian Auditors Supervisory Authority, ASA, and Working Committee for External Quality Control). The Quality Assurance Authority for auditors inspects all auditors for public interest entities (PIEs) once in three years and other auditors are inspected once in six years. Any shortcoming needs to be attended to by the inspected auditor in up to nine months depending on the facts of the case. The Quality Assurance Authority can also report the matter to the Chamber who may take disciplinary action against the auditor. Practical experience has shown that CDD obligations are satisfactorily fulfilled by the

Chartered Accountants in Austria. Austria has reported that in the course of answering EOI requests it has asked Chartered Accountants to provide information and it has never faced any difficulty. The details of the inspections carried out by the Quality Assurance Authority are tabulated below.

Year of audit	2010	2011	2012	2013
Number of instances where quality inspection did not reveal any breaches	213	179	6	10
Denial of such confirmation	0	5	0	0
Number of entities receiving an order of measures for improvement after the quality inspection	190	132	10	42
Number of entities with extra inspection	13	42	5	5

### Foreign companies

48. In addition to domestic companies, certain foreign companies are relevant for the purpose of the ToR where they have a sufficient nexus with Austria.

49. The Phase 2 report noted that the information regarding the ownership of foreign companies incorporated abroad which maintain a branch in Austria is generally available through the combination of the registration in the *Firmenbuch* and the tax registration requirements, except for those foreign companies which have do not have their seat of effective management in an EU Member State or in a State party to the Agreement on the European Economic Area. In the latter case, the applicant must provide, for registration, a copy of the company's article of association (s. 107 Limited Liability Company Act). However, there were no requirements to provide any details of shareholders as there is for domestic companies. The Phase 2 report recommended that in such cases, Austria should ensure that ownership and identity information is available.

50. To address this recommendation, the Austrian Ministry of Finance amended on 24 April 2014 Form "Verf 15c", which is used for the tax registration of a corporation incorporated abroad. This form now also requires these companies to indicate the name, date of birth, address, competent tax office and TIN of all shareholders (except where the company is a publicly listed stock corporation). The changes to form "Verf 15c" did not require any legal change due to the existing general disclosure requirements of the *BAO*.

51. With reference to the taxpayer's reporting obligations laid down in sections 120 et seq. of the Fiscal Code (BAO), Form "Verf 15c" also requires the taxpayer to notify the tax office within one month all circumstances which give rise to or end his tax liability and all other circumstances which are of relevance for tax collection, including a change of shareholders.

52. The Austrian authorities have reported that in their audit practice the ownership information of foreign companies is very relevant for them, as this information is sought for withholding tax reasons (being interest payment on shareholder loans, dividend distributions or royalty payments) or in a transfer pricing audits (for more detail on audit practice see section A.2 *Accounting Records*). As ownership information is relevant for Austrian tax purposes, the monitoring of compliance is carried out during the audits. Failure to comply with this obligation is sanctioned by section 111 of the BAO by a fine not exceeding EUR 5 000 (see Section A.1.6.).

### Nominees

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

- Credit and financial institutions, prior to entering a business relationship, are required to ask the potential customer if he/she intends to conduct the business relationship or the transaction for his/her own account, or for the account of or on behalf of a third party.<sup>3</sup> The customer must comply with this request. If he intends to act for the account of or on behalf of a third party, the customer must provide the credit institution or financial institution with evidence of the *Treugeber's* identity, and credit institutions and financial institutions must ascertain and verify the identity of the *Treugeber*.
- Clients of credit institutions or financial institutions are obliged to disclose their beneficial owner.<sup>4</sup> Credit institutions and financial institutions must take risk-based and appropriate measures to verify the beneficial owner's identity. In the case of legal persons or trusts, this also includes taking risk-based and appropriate measures in order to understand the ownership and control structure of the customer.

54. In the course of its AML/CFT supervision (both on- and off-site), the FMA routinely checks credit and financial institutions' compliance with the above requirements. In May 2015, the FMA was in charge of the supervision of 764 credit institutions, 95 insurance companies (28 of which providing life insurance), 3 payment institutions, 14 Pension companies, 139 investment firms and service providers, 24 investment funds management companies, 5 real estate-investment funds management companies, 45 licensed/registered alternative investment funds managers and 10 severance funds. In cases

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3. Art. 40 paragraph 2 Banking Act (Art. 98b paragraph 2 Insurance Supervision Act).

4. Article 40 paragraph 2a Banking Act.



of a suspected violation, either by the company or the potential customer, administrative penal proceedings are initiated. Over the period under review (1 January 2012 – 30 June 2014), the FMA conducted a total of 21 on-site inspections and 30 company visits. Similar provisions to the ones mentioned above are to be found in other supervisory laws such as the Insurance Supervision Act and the Securities Supervision Act.

55. The Phase 2 report indicated that professionals confirmed the extremely narrow scope of nominee ownership. They reported that to the best of their knowledge, non-professional nominees are not likely to exist in Austria. During the period under review (1 January 2012 to 30 June 2014), no issues were reported with regard to nominee ownership information. Austria's tax authorities advised that they have received ten incoming request dealing with nominees and were able to provide the requested information in all ten cases.

### *Availability of information in practice*

56. Regarding the obligations on the companies to keep an updated shareholder register or to inform the *Firmenbuch* when required, the Austrian authorities have confirmed that the mechanism works well in practice and that companies maintain ownership and identity information in accordance with their obligations. In addition, with respect to AML-obligated service providers which must have ownership information on their clients (e.g. chartered accountants, lawyers); practical experience has shown that their CDD obligations are satisfactorily fulfilled in Austria. Austria has reported that in the course of answering EOI requests it has asked lawyers and chartered accountants to provide information and it has never faced any difficulty obtaining the requested information.

57. During the period under review, Austria did not have any difficulty answering requests regarding identity and ownership information, regardless of the type of entities concerned. It received ten requests regarding ownership information on companies, which involved also nominees.

58. Austria has also received 102 requests from peers regarding ownership information of foreign companies having a branch in Austria. Austria was able to answer all the requests. Peers have not reported any specific issue in relation to the provision of ownership information pertaining to foreign companies.

59. Out of those 102 requests, two requests dealt with ownership information of foreign companies incorporated outside of the EC. Due to the changes in the tax form and the availability of information in practice, the Phase 1 recommendation related to these foreign companies is removed. The Austrian tax authorities are recommended to continue to monitor the tax



registration of foreign corporations in Austria under the newly designed Form “Verf 15c”, and more specifically the compliance by these companies of their obligation to update their ownership information.

### ***Bearer shares (ToR A.1.2)***

60. The Phase 2 report found that the rules regarding the maintenance of ownership information in respect of bearer shares in Austria was not in line with the standard. A summary of the conclusions from the Phase 2 report are included here, as well as a report of any changes to the legal framework and an analysis of the experience in practice since the last review. For a more detailed analysis of the legal requirements for bearer shares in Austria see Phase 2 report, paragraphs 107 to 113.

### ***Rules applicable to bearer shares as set out in the Phase 2 report***

61. Prior to 1 January 2014, AGs and SEs were able to issue bearer shares in Austria. With respect to AG, the issuance of bearer share was only possible if they were not held by a single shareholder, in which case the issuance of bearer shares was prohibited. As at 31 January 2014, there were approximately 1 400 AGs in Austria, around 100 of which were listed companies. As of 1 June 2015, 18 Austrian SEs were registered in the *Firmenbuch*. While three SEs were listed on the stock exchange, 14 SEs either had issued registered share only or were single member companies. The remaining SE was dissolved and was in the process of liquidation.

62. The rules in force at the time of the Phase 2 report were those introduced in 2011 in its Company Law<sup>5</sup> to address the recommendations made in the Phase 1 report of Austria, according to which Austria had to introduce a mechanism to ensure that ownership information on holders of bearer shares was available in Austria. The new rules distinguish between listed AGs and unlisted AGs.

### **Rules applicable for listed AGs**

63. For listed AGs, the law provides that they can still issue bearer shares for the purpose of being listed. However from 1 January 2014, no individual bearer shares can be issued and all these shares must be certified by global certificate(s). The global certificate is a paper certificate. However, a transfer is only possible from one central securities depository (CSD) to another, as both company law and stock exchange regulations require that the global

5. *Gesellschaftsrechtsänderungsgesetz* adopted on 7 July and July 21st by the two chambers of the national assembly and entered into force on August 1st 2011.

certificates are continuously deposited with a CSD. A publicly listed stock corporation must deposit the global certificate(s) with a securities custodial bank. The global certificate will not contain the names of the shareholders but will contain details of the bank where the certificates are deposited. The bank where the share certificates are deposited will have to keep the ownership details in respect of the bearer shares as they are required to do so under the AML/CFT law (see section A.3 of this report). Thus, for listed AGs, identity details in relation to the owner of all shares are known since 1 January 2014.

64. As at 30 June 2014, the following numbers of global shares were deposited at the *Oesterreichische Kontrollbank*: for 103 listed companies, a total number of 151 global certificates representing bearer shares were deposited. Moreover, 46 listed companies have deposited a total number of 83 global certificates representing registered shares (without an obligation under company law to do so).

65. The numbers of global certificates deposited are higher than the numbers of companies because it is admissible that a company issues more than one global certificate (e.g. one during its formation, another one during a capital increase). Moreover, it is a listing requirement of the Vienna Stock Exchange for stock corporations to have their shares deposited at a central securities depository.

### Rules applicable to unlisted AGs

66. In contrast, for unlisted AGs, the issuance of bearer shares is prohibited from 1 January 2014. From this date, companies are allowed to issue only nominal shares (registered shares). All shares that qualify as registered shares must be entered in the company's share register. This share register must contain information that includes (i) the name, date of birth and the relevant address of the shareholder, (ii) number of shares or share numbers, (iii) for companies that are not publicly listed, a bank account into which payments of dividends must be made and (iv) if the shares belong to a person other than the one listed in the share register, then all the above information, in respect of that other person.

67. The law states that after 1 January 2014, bearer shares cannot be traded or sold without complying with the new registration requirements. If they do not, the shares shall be deemed to be registered shares. In the meantime, from the entry into force of the law (1 August 2011) until 31 December 2013, bearer shares were still able to be issued.

68. The law included two enforcement measures:

- If an AG did not change its articles of association by the end of 2013, all shares were converted into registered nominative shares by effect of the law as of 1st January 2014. The Austrian authorities reported that at the end of June 2014, 92.9% of those companies had changed their articles of associations (although the percentage is based on the review of random sample of 141, equating to 10% of the total AGs, carried out in June 2014); and
- The holders of bearer shares whose shares were not converted by 1st January 2014 lost their rights in the AG from that date. However, due to property rights protected by the Austrian Constitution, the non-compliant shareholders remain entitled to reclaim their share of the company's equity that corresponds to the shares that they previously owned. This right is indefinite.

*Recommendations from the Phase 2 report and amendments in Austrian law*

69. The phase 2 report noted two issues with the new mechanism. First, it did not provide any incentive for shareholders to convert their bearer shares into nominal shares, until such time as they have a need to obtain their rights in the company. In the meantime there was nothing to prevent them from transferring the shares to another person (until 31 December 2013) who could then claim them as their own without identifying the former owner.

70. Second, there were no requirements on the company to force the holders of bearer shares to comply with the new legal requirements and no effective sanctions for a shareholder not complying with these obligations.

71. Austria addressed these concerns by enacting new rules establishing sanctions on both the AGs and on the shareholders. At the level of the AGs, the 2014 amendment to the Stock Corporation Act introduced a pecuniary sanction applicable on board members failing to comply with their duties to have all the shareholders registered in the share register. If the share register is not kept in compliance with the legal provisions, the board members are subject to a fine of up to EUR 3 600. If necessary, this fine can be imposed repeatedly. However, as stated in the explanatory remarks to the 2014 Amendments, a fine is to be imposed only for substantial and systematic inaccuracies, rather than mere inadvertence with respect to individual entries. The board of directors should not be accountable for the failure of shareholders to comply with their notice obligations or have furnished incorrect details.

72. At the level of the non-compliant shareholder, a shareholder can only be recognised as such by the company after they have been registered in the

share register.<sup>6</sup> Shareholders that have failed to register on a nominative basis cannot exercise any shareholders' rights (e.g. participation and voting rights in the general meetings). According to the latest amendment to the Stock Corporation Act,<sup>7</sup> these shareholders also lose their right to receive dividends for all past fiscal years without any possibility of recovery. This is due to the new rule under which claims for dividends are to lapse at the end of the fiscal year in which the annual general meeting of shareholders adopts a resolution on appropriation of net results.

73. A claim for dividends that has lapsed will fall into the liquid funds of the company (as any other debts of the company that have become time-barred), thus increasing the profits of the company in the following year. These increased profits will then be distributed among the shareholders who are registered at the relevant point of time. Only in the situation that profits/dividends are not distributed to shareholders at all, but are fully retained in the company for several years, a person that became registered before the dividends are finally yet distributed would also "profit" from gains of the company in fiscal years in which he had not been registered. In other words, the loss of dividends for past fiscal years is final, but if no dividends are distributed (which depends upon a decision taken by the shareholders in their annual general meeting), there is no claim for dividends that could lapse. Hence, there may be a possibility that if no profit distributions take place for a number of years, a non-compliant shareholder could have his ownership rights reinstated just before a distribution or the liquidation of the company, in which case the non-compliant shareholder would not have suffered a pecuniary loss from not complying with his reporting obligations. It should however be noted that this situation is unlikely to take place unless such shareholder has the majority control, directly or indirectly, of the company.

### *Implementation in practice*

74. The Phase 2 report raised concerns regarding the incentives for AGs and bearer shareholders to comply with the law. These are analysed below.

### *Compliance by AGs*

75. In practice, only persons registered in the share register can be regarded as the shareholders. This means that if the AG does not keep a share register, the company is deemed not to have shareholders; with the consequence that the company cannot operate and no-one is entitled to participate and to vote in a general meeting or to receive dividends. This may most likely

6. Section 61 paragraph 2 of the Stock Corporation Act.

7. Section 61 paragraph 5 of the Stock Corporation Act.

lead to financial damages for the company and/or the persons holding shares, which can be claimed from the board members, who would be considered responsible for not keeping a share register. Moreover, such board members could be removed from office for breaching their duties. Bearing these legal consequences in mind, there is an incentive for board members to comply with their obligation to keep a share register.

76. Those companies that left their articles of association unchanged presumably did not arrange for an exchange of the share certificates. However, as bearer shares are no longer admissible in non-listed companies as of 1 January 2014, bearer share certificates have lost their legal quality as negotiable instruments and security papers at this date by law. This consequence was previously included in the explanatory remarks to the 2011 amendment of the Stock Corporation Act; however, to put the matter beyond doubt the 2014 amendment of the Stock Corporation Act included a specific provision confirming that all bearer share certificates were considered invalid as at 1 October 2014.

77. In addition, the compliance by the companies with the law is reinforced by two separate obligations. The first one results from the provision of the CC<sup>8</sup> under which, the annual accounts of all capital companies (including AGs) have to be approved by an auditor. Under AML legislation, certified accountants and accounting companies must have the identity of the beneficial owners of their clients (i.e. the AG). This means that in case a large bearer shareholder would not come forward, his identity may in principle, be known by the auditors of the AG pursuant to AML requirements.

78. Under the second obligation, a civil law notary has to be present in every general meeting of an AG, where he has to keep the minutes of the meeting.<sup>9</sup> The notaries also have to carry out Customer Due Diligence measures on their clients, thereby preventing that a large non-compliant shareholder would keep himself anonymous. Resolutions of the general meeting are only valid if they are notarised in the minutes. If a resolution is not notarised, it cannot serve as a basis for an entry in the public Business Register.

79. In practice, the role of the civil law notary often exceeds the function of just keeping the minutes, and he would ensure that the company complies with its legal obligations generally. As he is a legal expert, he is frequently confronted with legal (in particular company law) questions by the company organs or the shareholders. In most cases, they follow his advice. Thus, the Austrian authorities have stated that notaries have played an important role in the process of converting bearer shares into registered shares, as they often pointed out which steps the company could or should take in order to comply with the new rules.

8. Section 268 paragraph 1 of the Austrian Commercial Code (CC).

9. Section 120 paragraph 1 SCA.

## Compliance by shareholders

80. Every AG knows the number of shares it has issued. However, it may still occur that after the conversion, the company cannot ascertain who the owner of some shares is. Such “orphaned” shares will be registered as “pending holdings” until a person is able to prove his entitlement. In this respect, companies that decided to change their articles of association within the conversion period in most cases asked their shareholders to have their bearer share certificates exchanged for registered share certificates. The remaining bearer share certificates were then declared invalid by a court decision at the company’s request. However, the Austrian Constitution contains guarantees on property rights. Pursuant to these rights, even if the shares have been declared invalid, the bearer shareholder can get reinstatement of his shareholder’s rights to the extent he has provided sufficient evidence that he is the owner of the abolished bearer shares. If the company is sufficiently convinced by the evidence provided by the shareholder, his reinstatement (entry in the share register) will be carried out by the company itself, i.e. without a court order. However, if the company has doubts concerning the legal position of the alleged shareholder, it will refuse his reinstatement. The shareholder then would have to go to court to prove his entitlement. In any case, the company is not allowed to unilaterally cancel the capital that is linked to these orphan shares. There is no prescription for the ownership rights under the Constitution of Austria.

81. However, there are mechanisms in place to make it unattractive for the former bearer shareholders to not comply with the obligation to come forward and to report his ownership:

- First, as mentioned above, the undeclared shareholders would lose their shareholder’s rights (voting and economic rights); including the rights to dividends if they are in fact distributed each year. Although, as detailed above, it remains unclear what happens to the profits attributed to unregistered shareholders.
- Second, for a reinstatement of rights, the unreported shareholder will need to provide evidence that he/she is the rightful owner. The Austrian Authorities are of the view that in practice bearer share certificates may still be helpful in proving the ownership of the shares, but it is not a sufficient means to prove ownership. The shareholder will need other means to prove their rights, e.g. presenting the relevant contracts to show how they became owner of the shares. Accordingly, the Austrian authorities consider that more time passes between the conversion of the bearer shares by effect of the law and the attempts to get the shareholder’s rights reinstated the more difficult it will be to prove the entitlement.

- As mentioned above, non-compliant shareholders would lose their voting rights. It should be noted that in this respect, the general meeting of shareholders can adopt resolutions if at least one shareholder (or his proxy) participates in the meeting.<sup>10</sup> So as long as one share is represented, the general meeting has the quorum, and there is no need for at least 50% of the capital to be represented.<sup>11</sup> This means that the corporate life can continue without the votes of non-compliant shareholders, regardless of their equity participation.
- Finally, as the non-compliant shareholders are not entitled to the dividends distributed during the period of non-compliance, their equity may be eroded if the company regularly make dividend distributions.

82. When reconsidering this matter, in light of the positive action taken by the Austrian authorities combined with the fact that this issue is now limited to only circa 1 400 companies and during the period of the review no EOI requests have been received regarding an AG with bearer shares, it can be concluded that the mechanisms in place provide for proportionate incentives for non-compliant shareholders to come forward and to fulfil their identification requirements.

### Oversight

83. The Austrian Ministry of Justice carried out an audit in June 2014 regarding the compliance of non-listed AGs with the new law. The audit covered 10% of the existing 1 400 AGs, thus representing 141 AGs. The audit showed that among these 141 companies analysed:

- 131 (92.9% of the sample) had registered shares according to their articles of association;
- Five of the remaining 10 companies (3.6% of the sample) were single-member companies, which means that their shareholder was not only registered in the share register of the company, but also in the official Business Register.
- Among the five remaining companies, it could be seen from other documents filed with the Business Register (in particular from minutes of general meetings) that three of them (or about 2.1% of the sample) did keep a share register (either because they have always been operating with interim certificates or because they now attached a comprehensive list of all shareholders).

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10. Section 121 paragraph 1 of the Austrian Stock Corporation Act (SCA).

11. However, special legal provisions or the articles of association may prescribe other quorums.



84. The table below provides a summary of the audit results:

Compliance by AGs confirmed by	Number	Percentage
Articles of Association (providing only for issuance of nominative shares)	131	92.9%
Single member companies (always prohibited from issuing bearer shares)	5	3.6%
Information in the General Assembly minutes (conversion)	3	2.1%
Subtotal compliance confirmed	139	98.6%
No information found	2	1.4%
Total (10% of all Austrian AGs)	141	100%

85. The audit concluded that in 139 out of 141 cases (98.6% of the sample); the shareholders were known to the companies and could be identified by the public authorities. For the remaining two AGs (1.4% of the sample), it could not be deducted from the Business Register whether a share register was kept or not. Thus, according to that audit, almost 99% of the sample of Austrian non-listed stock corporations did fulfil their obligation to keep a share register. Therefore, the measures highlighted above appear to provide strong incentives for AGs and non-compliant shareholders to comply with the law. This audit did not determine whether a share register has actually been maintained; and how many AGs have “pending holdings” relating to unclaimed shares formerly held in bearer form.

## Conclusion

86. As set out above, Austria has taken significant steps to implement and monitor the 2011 law, and furthermore to frame new legal measures (the 2014 provisions) to address the shortcomings identified in the Phase 2 report. However, the changes introduced by the 2011 Law and the 2014 provisions have mandatory effects since 1<sup>st</sup> January 2014. In addition, the correct application of some of the features of the mechanism – like the reinstatement of shareholder’s rights by the company once the non-compliant shareholders comply with the law – and potential abuses by the non-compliant shareholders remain to be determined on a case-by case basis. Therefore, it is recommended that Austria continues to ensure that the provisions of the 2011 Law and the 2014 provisions are effectively implemented and monitored.

### *Partnerships (ToR A.I.3)*

87. The Phase 2 report found that the rules regarding the maintenance of ownership information in respect of partnerships in Austria were in accordance with the standard and were effective in practice.



88. A summary of the conclusions from the Phase 2 report are included here, as well as a report of any changes to the legal framework and an analysis of the experience in practice since the last review. For a more detailed analysis of the legal and tax requirements for partnerships in Austria see Phase 2 report, paragraphs 112- 129.

### *Types of partnerships and requirements to maintain information*

89. There are three main forms of partnerships that can be established in Austria: (i) *Offene Gesellschaft – OG* – general partnership (ss. 105 to 188 Entrepreneurial Code (*UGB*)); (ii) *Kommandit Gesellschaft – KG* – limited partnership (ss.105 to 188 *UGB*); and (iii) *Gesellschaft bürgerlichen Rechts – GesbR* (“Civil Law Partnership”). Austrian legislation also allows for the creation of a *stille Gesellschaft* (silent partnership). By the end of 2014, the number of general partnerships (“Offene Gesellschaft – OG”) was about 18 700. The number of limited partnerships (“Kommanditgesellschaft – KG”) was about 43 000. These entities are required to maintain information of their owners under both commercial and tax law requirements. In addition, AML obligated service providers are required to be involved in the formation of legal entities in Austria, and these service providers also have an obligation to identify the owners of their clients. Each of these regimes is subject to appropriate oversight by the various authorities.

### Commercial and tax law requirements and oversight

90. Information that *OG* and *KG* in Austria must provide upon registration includes the identity of their partners and this must be updated in the *Firmenbuch*.

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

92. As in the case of companies, the tax authorities can carry out on-site inspections of partnerships. While registering with the tax authorities, partnerships will have to provide details of the respective contributions of the partners. In practice, this is done very consistently. With regard to on-site inspections carried out by the tax authorities on partnerships, the statistics are as follows:

On-site inspections in connection with registration procedure *	2012	2013	01.01.2014- 30.6.2014
Total number of onsite visits	14 001	12 810	6 079
Onsite visits on Partnerships	211	281	112
Onsite visits on Limited partnerships	79	124	43

\* In this context it should be noted that in approximately 50% of all on-site inspections the legal form of the taxpayer is not taken into account. Therefore, the above figures are reliable only to a limited extent.

### *Availability of information in practice*

93. In practice, the identity and ownership information is available with the court authorities, the service providers and the tax authorities. During the three year period under review, Austria did not receive requests concerning ownership information on partnerships. Austria has received 8 requests during the peer review period concerning other aspects of partnerships like accounting information, to which Austria answered in a timely manner.

### ***Trusts (ToR A.1.4) and Treuhand***

94. The Phase 2 report found that Austria does not have the concept of trusts, but it is possible to set up a *Treuhand* (as defined below). The rules regarding the maintenance of ownership information in respect of *Treuhand* in Austria were in accordance with the standard and were effective in practice.

95. A summary of the conclusions from the Phase 2 report are included here, as well as a report of any changes to the legal framework and an analysis of the experience in practice since the last review. For a more detailed analysis of the legal, tax and AML/CFT requirements for foreign trusts and *Treuhand* in Austria see Phase 2 report, paragraphs 132- 145.

### *Types of trust and similar arrangements and requirements to maintain information*

96. Austria, as a civil law jurisdiction, does not have the concept of trusts. Its law does not recognise this concept and Austria has not signed the *Convention on the Law Applicable to Trusts and on their Recognition* (1 July 1985, The Hague).<sup>12</sup> There are, however, no obstacles to prevent an Austrian citizen or service provider from acting as a trustee of a foreign trust or preventing a foreign trust from owning assets in Austria.

12. [www.hcch.net/index\\_en.php?act=conventions.text&cid=59](http://www.hcch.net/index_en.php?act=conventions.text&cid=59), accessed 2 May 2011.

97. It is also possible in Austria to set up *Treuhand*. The *Treuhand* is a civil contract which is not regulated by law, but is based on the general principle of the autonomy of the contracting parties (i.e. the ability of any person to enter into any contract with whomsoever they chose) and delimited by jurisprudence and doctrine. A *Treuhand* does not have any legal status. It is created when a person, the *Treuhänder*, is authorised to exercise rights over property in his or her own name, on the basis of and in accordance with a binding agreement with another person, the *Treugeber*.

98. There are two main types of *Treuhand*; the *Fiducia* and the *Ermächtigungstreuhand*. With the *Fiducia* most of the rights connected to the assets are transferred to the *Treuhänder*, whereas the *Ermächtigungstreuhand* only entails a transfer of certain rights connected to the assets such as the right to manage them. The *Treuhand* can exist without any written record. It can be concluded between any two persons who have the necessary legal capacity to conclude to a contract. The *Treugeber* and the *Treuhänder* may choose to inform third parties of the legal arrangement between them (*offene Treuhand* or open *Treuhand*) or not (*verdeckte Treuhand* or hidden *Treuhand*).

### Commercial and tax law requirements and oversight

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

100. Under the *AML/CFT* requirements, trust service providers are obliged to maintain ownership and identity information regarding their clients and those beneficial owners who have at least a 25% interest in a trust or *Treuhand*.<sup>13</sup> The Oversight programme by the various AML supervisory bodies

13. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the use of the Financial System for the Purpose of Money Laundering and Terrorist Financing. With respect to legal entities such as foundations or legal arrangements such as trusts, that Directive, as implemented in Austria defines “beneficial owner” to mean “(i) where the future beneficiaries have already been determined, the natural person(s) who

is described in Section A.1.1 under *Anti-money Laundering Law Requirements and Oversight*.

### *Availability of information in practice*

101. The practical application of the above legal requirements has not occurred frequently in Austria as trust arrangements are not common. Austria has not received any EOI requests concerning trusts or trust-like arrangements during the period under review.

### ***Foundations (ToR A.1.5)***

102. The Phase 2 report found that the rules regarding the maintenance of ownership and identity information in respect of foundations in Austria was in accordance with the standard and was effective in practice.

103. A summary of the conclusions from the Phase 2 report are included here, as well as a report of any changes to the legal framework and an analysis of the experience in practice since the last review. For a more detailed analysis of the legal, tax and AML/CFT requirements for foundations in Austria see Phase 2 report, paragraphs 146-174.

### *Types of foundations and requirements to maintain information*

104. Austrian law recognises the concept of foundations. A foundation (*Stiftung*) is an organisation intended to promote on a long-term (indefinite) basis a particular purpose (designated by the founder) through assets dedicated to that purpose. Austrian law allows for the creation of:

- public benefit foundations under the Federal Foundations and Funds Act (*BStFG*). These foundations can only be set up for charitable purposes. They may carry on a minor commercial activity to the extent that this activity supports the main purpose of the foundation; and
- private foundations under the Private Foundations Act (*PSG*). In such foundations, the founder dedicates property for private purposes devoid of any self-interest. There is a legal prohibition which prevents foundations from carrying on any commercial activity. As at 30 June 2014, 3205 private foundations were registered for tax purposes.

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are beneficiary of 25% or more of the property of a legal entity; (ii) where the individual that benefit from the legal entity have yet to be determined, the class of persons in whose main interest the entity is set up or operates; (iii) the natural person or persons who exercise control over 25 % or more of the property of a legal entity.”.

*Commercial and tax law requirements and oversight*

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

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

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

107. As set out in the Phase 2 report, the system of maintenance of ownership and identity information is much stronger in the case of private foundations than for public foundations. Private foundations are also subject to internal (desk based) and external (on-site) audits by the tax authorities. The primary purpose of on-site visits is to gather information from and about the new taxpayer for the purpose of discovering and combatting potential cases of tax evasion. A complete risk assessment takes place with regard to the personal and economic circumstances of the taxpayer (e.g. identity check, check of business premises and if any employees, is the taxpayer operating in an industry in which a large number of tax evasion cases have been detected, etc.). In 2013, there were 721 internal audits on private foundations (879 in the first half of 2014). The tax assessed in 2013 on this account was EUR 16 575 484. As for external audits, there were 108 such audits in 2013 and 59 during the first half of 2014. The amount assessed in 2013 was EUR 32 793 903 and EUR 25 482 011 in the first half of 2014.

*Availability of information in practice*

108. In practice, the combination of the requirements of the district tax authorities and the tax administration, ownership and identity information ensured that the ownership information in respect of private foundations was available. Austria has received four EOI request concerning ownership information of private foundations, but none regarding public foundations,

during the three year period under review. Austria provided the requested information in all four cases.

***Enforcement provisions to ensure availability of information***  
(ToR A.1.6)

109. The Phase 2 report found that the enforcement provisions to ensure availability of information on companies, bearer shares, partnerships, trusts and *Treuhand*, and foundations in Austria was in accordance with the standard and was effective in practice.

*Commercial and tax enforcement provisions*

110. According to the Phase 2 report, the Austrian legislation usually provides for sanctions in situations where the information required by law is not kept under tax law, commercial law and AML/CTF laws. For a more detailed analysis of the enforcement provisions in Austria see Phase 2 report, paragraphs 177 – 191.

111. The enforcement provisions regarding non-compliance with the 2011 and 2014 provisions on bearer shares are described in section A.1.2 Bearer shares.

*Enforcement provisions in practice*

112. Regarding the practical application of enforcement measures during the peer review period, the tax administration carried out the following tax audits during the peer review period, the statistics are as follows:

Tax audits year	2013	01.01.2014-30.6.2014
Number of tax audits	17 563	8 399
Amount of tax assessed	1 193 808 871	532 053 137

113. Regarding the AML/CFT framework, the Financial Market Authority (FMA) initiated a total of 18 (all in 2013) administrative proceedings (34 in 2012 and 35 in 2011). Penalties were levied in 12 cases (9 in 2013 and 3 in Q2 of 2014, compared to 14 in 2012 and 7 in 2011). The volume of pecuniary sanctions in the reviewed period was EUR 259 200 (245 200 in 2013 and 14 000 in Q2 2014, compared to EUR 57 700 in 2012 and EUR 21 000 in 2011).

114. To conclude, Austrian legislation provides for sanctions in situations where the information required by law is not kept. In addition, these sanctions are applied in practice.

### ***Conclusions regarding Element A.1***

115. The Phase 2 report included two Phase 1 recommendations; one on bearer shares and one on foreign companies. There was no phase 2 recommendation. Element A.1 was determined not to be in place, and was rated “non-compliant”.

116. Regarding bearer shares, the Phase 2 report recognised that Austria has put in place new provisions to prohibit the issue of bearer shares by unlisted joint-stock companies, but found that the mechanisms to identify the owners of bearer shares previously issued by these companies may not be sufficient. The Phase 2 report also noted that until full effect is given to these provisions (1 January 2014), bearer shares could still be issued or transferred without identification of their holders. It was recommended that Austria introduce mechanisms ensuring the identification of the holders of bearer shares in all instances.

117. Since the Phase 2 report, Austria has taken significant steps to implement and monitor the 2011 law, and furthermore to frame new legal measures to address the shortcomings identified in the Phase 2 report. As the changes introduced by the 2011 Law have mandatory effects since 1st January 2014, it is recommended that Austria continues to ensure that the provisions of the 2011 Law and the new provisions effective 1 January 2014 are effectively implemented and monitored.

118. Regarding information regarding the ownership of foreign companies incorporated outside the EU and that are resident for tax purposes in Austria, the Phase 2 report determined that such information may under certain circumstances, not be available. The Phase 2 report introduced a recommendation under which Austria should ensure that ownership and identity information is available in these cases. Austria addressed this recommendation by amending the tax form which must be filled in upon registration, and providing for an obligation to update this form.

119. In practice, ownership information on domestic and foreign companies, nominees, partnerships, trusts, and private foundations was available in all cases during the peer review period. Austria has put in place effective enforcement and monitoring mechanisms that ensure availability of identity and ownership information.

120. Considering the above, the two Phase 1 recommendations have been deleted, but a monitoring recommendation regarding bearer shares has been added. The determination of Element A.1 has been upgraded to “in place” and Element A.1 is rated “largely compliant”.

**Determination and factors underlying recommendations**

Phase 1 determination	
The element is in place.	
Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
Austria has put in place in 2011 new provisions to prohibit the issue of bearer shares by unlisted joint-stock companies and further introduced in 2014 incentives and sanctions to ensure that the identity of all holders of shares in unlisted joint-stock companies will be known in all instances. However, full effect was given to these provisions only from 1 <sup>st</sup> January 2014.	It is recommended that Austria continues to ensure that the 2011 and the 2014 provisions are effectively implemented and monitored.

**A.2. Accounting records**

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

***General requirements (ToR A.2.1)***

121. The Phase 2 report found that the rules regarding the maintenance of accounting information in respect of all entities in Austria, except *Treuhand* were in accordance with the standard and were effective in practice.

122. A summary of the conclusions from the Phase 2 report are included here and an analysis of the experience in practice since the last review. For a more detailed analysis of the legal and tax requirements for accounting records in Austria see Phase 2 report, paragraphs 190-209.

***Requirements to maintain accounting information and oversight***

123. The Phase 2 report determined that except in some specific situations relating to trusts and *Treuhänder*, the obligations in the accounting and tax legislation, ensures the availability of accounting records from which it is possible to accurately review all transactions, to assess the financial position of all entities (including entities in liquidation), and to prepare financial statements.



124. The Phase 2 report stated that in the case of fiduciary relationship, there were some uncertainties as regards the detailed obligations to keep accounting records where the *Treugeber* or settlor is not resident in Austria and assets held through the fiduciary relationship are located abroad. It was therefore recommended that Austria should make it clear that reliable accounting records are kept in the case of fiduciary relationships in any situation. Since the Phase 2 report, Austria did not address this recommendation, such that this recommendation remains unchanged. The Austrian authorities have clarified that due to the fact that cases where settlors or *Treugeber* are not residents of Austria and assets held through the fiduciary relationship are located outside Austria are rather rare, more specific legal provisions, which would clear up any uncertainties in the application of the obligations to keep accounting records, did not seem to be feasible.

125. Austria has reported taxpayer's compliance regarding their accounting record-keeping obligations is generally good. In 2013, the number of desk audits performed amounted to 464 620 and generated a total of EUR 297 627 729 in additional revenue. During the first half of 2014, 199 395 desk audits generating additional revenue of EUR 67 941 428 were conducted. The reduction in the total number of audits in comparison to preceding years (e.g. 527 185 desk audits in 2012) is the result of a modernisation of audit selection processes resulting in better risk-assessment and the use of more sophisticated and tailored risk indicators.

### ***Underlying documentation (ToR A.2.2)***

#### ***Requirements to maintain accounting underlying documentation information and oversight***

126. The Phase 2 report determined that the obligations in the accounting and tax legislation, ensures the availability of underlying documentation by all business; including books, inventories, financial statements with the consolidated management reports, copies of received and sent business correspondence and all evidence underlying ledger entries in the books.

127. The oversight activities carried out by the tax administration during the peer review period are described in Section A.2.1 *General Requirements*.

128. On the practical implementation of this aspect, the tax authorities have ample powers to seek the production of underlying documentation of up to a period of seven years. The system as it exists in Austria is such that the tax authorities can seek "any relevant document".

***5-year retention standard (ToR A.2.3)***

129. All businesses covered by the record keeping requirements must keep their accounting records, including underlying documentation, for a seven year period, this period starting from the end of the calendar year for which the last entry in the books was made.

130. In addition, the tax authorities can seek documents for up to a seven year period. In cases of tax fraud this period is extended to 10 years. The Austrian tax authorities have demonstrated that they are in a position to effectively supervise the obligation to maintain accounting records and underlying documentation for the five year period, prescribed by the standard.

***Exchange of information on accounting information in practice***

131. The peer input received indicates that Austria has been able to answer requests in this regard, without difficulty. However, one peer indicated that Austria did not provide all the requested accounting information in one case. For this particular case, the CLO confirmed that it sent a request for clarification regarding the request. As the CLO did not receive a response within a three-month period, they closed the case. The CLO has confirmed that they will re-open the case as soon as they receive a reply from their request for clarification. Two other peers indicated that they did not receive some of the requested accounting information, but this was due to the limitations set out in the respective treaties and not because the requested accounting information was not available (see section C.1.3 *Exchange of all types of information*)

132. During the period under review ending 30 June 2014, Austria received a total of 354 requests that concerned accounting information. Of these, 206 requests related to companies, four related to foundations, 8 related to partnerships and 136 related to other entities/individuals. Austria could answer all these requests, except in the above-mentioned cases.

133. Austrian authorities also answered more than 3 742 incoming VAT requests during the peer review period (1 528 in 2012, 1 540 in 2013 and 674 between 1 January and 30 June 2014) and in these requests, Austria's VAT partners mainly ask for underlying documents justifying delivery of goods or provision of services, such as invoices, contracts and other supporting documents. The large number of requests received as well as the capacity of Austria's authorities to provide answers gives broad assurance that underlying documentation is kept in compliance with the standard in Austria.

### ***Conclusions on Element A.2***

134. Austria's commercial and fiscal legislations, enforcement and monitoring mechanisms ensure the availability of accounting records underlying documentation on all domestic and foreign companies, partnerships, and foundations; except in some specific situations relating to trusts and *Treuhänder*; where some uncertainties arise in some cases. Since the Phase 2 report, Austria did not address the recommendation regarding this specific case, such that this recommendation remains unchanged. In practice, accounting information was available in all cases where it was requested.

135. As a result of the above, Element A.2 is determined to be in place and is rated "compliant".

#### **Determination and factors underlying recommendations**

Phase 1 determination	
The element is in place	
Factors underlying recommendations	Recommendations
In the case of fiduciary relationship, there are some uncertainties as regards the detailed obligations to keep accounting records where the <i>Treugeber</i> or settlor is not resident in Austria and assets held through the fiduciary relationship are located abroad.	Austria should make it clear that reliable accounting records are kept in the case of fiduciary relationships in any situation.
Phase 2 rating	
Compliant	

### **A.3. Banking information**

Banking information should be available for all account-holders.

136. The Phase 2 report found that the rules regarding the maintenance of banking information in Austria was in accordance with the standard and was effective in practice.

*Record-keeping requirements (ToR A.3.1)*

137. A summary of the conclusions from the Phase 2 report is included here and an analysis of the experience in practice since the last review. For a more detailed analysis of the legal and AML/CFT requirements for banking information in Austria see Phase 2 report, paragraphs 220-228.

*Requirements to maintain banking information and oversight*

138. The phase 2 report determined that Austria has put in place a system whereby the availability of information is ensured from a legal and a practical perspective. All credit institutions and financial institutions are subject to Customer Due Diligence requirements (CDD) and to heavy penalties for failure to compliance with their CDD obligations. In addition, the Phase 2 report determined that the supervision of the financial institutions by the Financial Market Authority (FMA) was adequate by means of on-site visits and other off-site supervision.

139. The sanctions that the FMA can apply vary in degree based on the failing which has been uncovered but range from administrative penalties (up to EUR 150 000) to the revocation of the license of the institution. The FMA reported that they have found breaches relating to failure to adhere to the CDD principle, information regarding the client and/or the beneficial owner not being properly documented etc.

140. Over the period under review a total of 18 (all in 2013) administrative proceedings were initiated (34 in 2012 and 35 in 2011). In 12 cases, penalties were levied (nine in 2013 and three in the second quarter of 2014, compared to 14 in 2012 and seven in 2011). The pecuniary sanctions in the period under review amount to EUR 259 200 (EUR 245 200 in 2013 and EUR 14 000 in the second quarter of 2014, compared to EUR 57 700 in 2012 and EUR 21 000 in 2011).

*Availability of banking information in practice*

141. The number of requests received and answered regarding banking information is set out in Section B.1.5 *Secrecy Provisions*. Austria allows for exchange of banking information only if there is an applicable EOI agreement in place, which allows for such exchange. The tax authorities have confirmed that in the 18 cases where an EOI agreement allowed for the exchange, the information was available with the banks in a timely manner.

***Conclusions on Element A.3***

142. Austria has strong regulatory and monitoring mechanisms in place to ensure the availability of banking information. Element A.3 is determined “in place” and is rated “compliant”.

**Determination and factors underlying recommendations**

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

## B. Access to information

### Overview

143. A variety of information may be needed in respect of the administration and enforcement of relevant tax laws and jurisdictions should have the authority to access all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities. This section of the report assesses Austria's legal and regulatory framework gives to the authorities access powers that cover the right types of persons and information, the effectiveness of its practices and whether the rights and safeguards that are in place would be compatible with effective exchange of information.

144. Access to ownership and accounting information, as well as any other type of information, is ensured on the basis of the domestic information gathering powers of the revenue authorities. These powers ensure access to information either held by the person concerned by the request or any third party and through multiple avenues, such as questionnaires, provisions of any books, records and documents of relevance, or testimonies. All of this information can be exchanged with treaty partners. To ensure the provision of the requested information, Austrian authorities can rely on sanctions taking the form of fines, the use of search and seizure powers being restricted to criminal cases.

145. The Phase 2 report noted that Austria's access powers were limited in respect to banking information, as only 40 out of 90 EOI relationships at the time allowed for such exchange. As a result, the Phase 2 report recommended that Austria ensured that access to bank information is available to all its treaty and relevant partners. It was determined that Element B.1 was "in place but in needs of improvements" and it was rated "partially compliant".

146. Since the Phase 2 review, Austria signed and ratified the Multilateral Convention, which is effective on the Austrian side from 1 January 2015, and took steps to amend TIEAs and DTCs on a bilateral basis. Consequently, the

number of EOI relationship that allow for exchange of bank information has increased to 97 out of a total of 118 EOI relationships. Element B.1 remains “in place but in needs of improvements” and is rated “largely compliant”.

147. The Phase 2 report also reported that the prior notification of the taxpayer concerned when a request was received for bank information was not in line with the standard, because it did not allow for any exceptions. The Phase 2 report recommended Austria to introduce exceptions to this prior notification procedure. Element B.2 was determined to be “in place but” and was rated “partially compliant”. Since the Phase 2 review, Austria has abolished the prior notification procedure with effect from 16 June 2014. Accordingly, element B.2 is determined to be “in place” and is rated “compliant”.

148. Austria is in a position to provide all types of information requested and its powers to compel the provision of information are adequate and ensure that the necessary information will be gathered in most instances.

## **B.1. Competent Authority’s ability to obtain and provide information**

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

149. The Phase 2 report found that the rules regarding the competent authority’s ability to obtain and provide information were not in accordance with the standard with respect to banking information, but were otherwise in accordance with the standard with respect to ownership and accounting information. A summary of the conclusions from the Phase 2 report are included here, as well as a report of any changes to the legal framework and an analysis of the experience in practice since the last review.

150. The competent authority in Austria is the Central Liaison Office (CLO). The CLO is part of the Tax Investigation Service of the tax administration of Austria. The office of the CLO does not only deal with issues of information on request. It also handles spontaneous exchange and mutual assistance within the European Union (EU). It operates as the single interaction point for tax-related information exchange between other jurisdictions and the local tax offices of Austria. The Head of the CLO is also head of the legal team within the Tax Investigation Service.

151. To facilitate easy and efficient EOI, within the EU, Austria uses standardised forms and electronic exchange of information. The manners in which the requests are dealt with in practice are discussed in greater detail under the element C.5.

***Ownership and identity information (ToR B.1.1) and accounting records (ToR B.1.2)***

152. The Phase 2 report determined that access to ownership and accounting information is ensured on the basis of the domestic information gathering powers of the revenue authorities. These powers ensure access to information either held by the person concerned by the request or any third party and through multiple avenues, such as questionnaires, provisions of any books, records and documents of relevance, or testimonies. All of this information can be exchanged with treaty partners.

153. Since the Phase 2 review, Austria took steps to improve its access powers, notably in respect of group requests and for AML/CTF purposes.

***Changes regarding group requests***

154. First, Austria enacted provisions implementing the 2012 update to Article 26 of the OECD Model Convention regarding group requests and the use of information for other purposes.

155. On 28 May 2014, the Budget Accompanying Law 2014 introduced the possibility of “group requests”; as follows:

- According to § 2 of the ADG the provision of bank information shall also be applicable in cases in which administrative offence or criminal court proceedings are pending in the requesting state.
- The amended § 4 of the ADG expressly provides that the group request tool, which forms a part of the OECD administrative assistance standard, is permitted, and likewise expressly permits the procedure to request information in respect of persons who are identified by features other than their names.

156. Austria confirmed that this new legislation is merely confirmation of the interpretation and they would accept group requests retroactively. Group requests can be accepted also for cases which refer to periods prior to the entry into force of the revised domestic legislation provided that the international instrument for EOI provides for the OECD standard. Austria did not receive group requests during the peer review period.

***Changes regarding AML/CTF***

157. Another important development regarding access relates to the AML/CTF legal and regulatory framework. On March 1, 2014, the prohibition of the use of data emanating for proceedings of tax offences other than those tax offences that are also predicate offences to money laundering, which was set out in former Article 41 paragraph 6 of the Banking Act) was abolished.



Hence, the tax authorities may now use, and have access, to a much wider range of information in tax offence proceedings.

158. According to the Austrian authorities, this measure was taken to enhance the authorities' capabilities in the fight against tax evasion and tax fraud. The corresponding provisions in the Insurance Supervision Act and the Stock Exchange Act were similarly amended. However, only those cases of suspicion of money laundering are reported to the Austrian tax authorities where the FIU believes that tax fraud (not only in relation to predicate offences to money laundering) may be committed.

159. Under Section 78 of the Criminal Procedure Code, tax officials have the obligation to provide information to the authority in charge of AML/CFT regarding suspicion of money laundering. During the peer review period, the tax authorities have made disclosures of information to the FIU only in domestic cases; eight in 2011 and 2012, 22 in 2013 and 15 in 2014.

160. The Austrian authorities have confirmed that the prior consent principle is always respected in line with Austria's obligation with Council Directive 2011/16/EU, the OECD Model Agreement on Exchange of Information on Tax Matters (Art. 8) and the OECD Model Tax Convention on Income and on Capital (Art. 26). If there is the possibility in the domestic law of the other Contracting State to exchange for AML purposes, then Austria exchanges the information. If the Austrian FIU receives information related to tax matters, the FIU first asks the foreign FIU to contact the foreign tax authorities, which will then exchange the information with the Austrian tax authorities.

161. The same principle applies if the Austrian tax authorities receives information that would be relevant for the Austrian FIU, the Austrian tax authorities would first ask the foreign tax authorities whether they consent that the information be passed on to the Austrian FIU. Should no consent be granted by the foreign authorities, the Austrian tax authorities would not provide the information to the Austrian FIU. The Austrian tax administration would rely on the fact that the confidentiality provisions under DTCs, the Multilateral Convention and TIEAs prevail over the domestic rules set out in Section 78 of the Criminal Procedure Code.

### *Access on ownership and accounting information in practice*

162. During the peer review period, the CLO replied to about 28% of requests directly, without involving the local tax office. This is due to a large series of requests concerning data of cross-border workers which could be accessed directly by the CLO. In about 44% of cases, the information was in possession of the tax administration, in 16% it was held by the taxpayer. In 8% of cases, it was in possession of a third party, in 3% of cases in possession of a bank and in about 1% of cases in the possession of another governmental authority.

### ***Bank information (ToR B.1.1)***

163. The Phase 2 report found that the rules regarding the banking information were not in accordance with the standard. A summary of the conclusions from the Phase 2 report are included here, as well as a report of any changes to the legal framework and an analysis of the experience in practice since the last review. For a more detailed analysis of the procedure to access banking information in Austria see Phase 2 report, paragraphs 253-259.

### ***Provisions to access banking information***

164. The Phase 2 report determined that the *ADG* allows for the access by revenue authorities to bank information, but only when the request is made under a treaty which includes provisions allowing for the exchange of bank information, whether these provisions are contained in Double Taxation Conventions or Tax Information Exchange Agreements. At the time, Austria had only 40 out of 92 EOI relationships, which allowed for exchange of bank information. Accordingly, a recommendation was made under which Austria must ensure that access to bank information is available to all its treaty and relevant partners.

165. Austria signed the Multilateral Convention on 29 May 2013, which entered into force in Austria on 1 December 2014. The Multilateral Convention entered into effect with respect to Austria from 1 January 2015. In addition, for the purpose of bringing existing agreements in line with the international standard on bank secrecy, the Protocol to amend the agreement with Tajikistan was signed on 13 March 2013. In addition, the Protocol to amend the agreement with Belarus was signed on 24 November 2014. These two agreements are not yet in force.

166. Furthermore, Austria has initiated the process of signature and subsequent ratification for purposes of amending the agreements between Austria and seven jurisdictions<sup>14</sup>. Moreover, Austria has taken further action to amend existing agreements in relation to a number of other jurisdictions with a view to bringing them in line with the international standard on bank secrecy<sup>15</sup>.

14. Belize (Protocol), India (Protocol), Israel (new agreement), Luxembourg (Exchange of Notes), Mexico (Protocol), Pakistan (Protocol) and South Africa (Protocol).

15. Such jurisdictions include, for instance, Australia, Barbados, People's Republic of China, Japan, New Zealand, Philippines, Poland, Russian Federation (Russia), Saudi Arabia, Turkmenistan, and Ukraine. However, since the amending process is still under way, no signing process for the amending protocols/new conventions has been initiated so far.

167. Because of the above-mentioned activities, the number of EOI relationships which allows for exchange of bank information has now increased from 40 to 97 (see section C.1. for details). Only 21<sup>16</sup> out of 118 EOI relationships do not allow for the exchange of banking information, Austria has confirmed it is actively working on updating these 21 EOI relationships, with those EOI Partners who have agreed to renegotiate the relevant instrument with Austria. Further developments are set out in Section C.1 *Exchange of Information Mechanisms. Procedure to Access Banking Information*

168. During the peer review period, the procedure to obtain banking information differs depending on whether the EOI agreement is in line with the international standard or not and the entry into force provisions of the relevant EOI agreement.

#### Access to banking information under an EOI agreement in line with the standard

169. Where the request involves banking information under an agreement that is in line with the international standard, the matter is dealt directly by the CLO who applies the provisions of the ADG.

170. This section analyses (i) the procedure which was applicable during the peer review period and until 16 June 2014 and (ii) the procedure applicable after 16 June 2014.

#### (i) Procedure applicable until 16 June 2014

171. For requests received during the peer review period and until 16 June 2014, the old provision of the ADG applied under which the prior notification procedure applied. During the peer review period, Austria received 18 of such requests.

172. Under this procedure, the CLO first checked whether the requirements set by the relevant legal basis for providing the bank information were fulfilled.<sup>17</sup> Then it simultaneously notified the bank or credit institution and the individual(s) who have rights of disposition arising out of the business

16. Algeria, Armenia, Barbados, Cuba, Egypt, Former Yugoslav Republic of Macedonia, Iran, Israel, Kyrgyzstan, Kuwait, Libya, Malaysia, Mongolia, Nepal, Pakistan, Serbia, Syria, Thailand, United Arab Emirates, Venezuela and Vietnam.

17. This being that there is an applicable (EU) Community Law, a double taxation treaty or other international agreement or other applicable legal basis under Austrian domestic law which contains a provision on administrative assistance stating that in no circumstances may Austria decline to provide information merely because the information is held by a credit institution (section 2(3) of the ADG).

relationship with the credit institution (former s 4(1) ADG). The template used to notify the banks regarding the foreign request, and to request the information from the bank included several elements: (i) the name of the requesting jurisdiction, (ii) the legal basis (EU legal basis, double taxation treaty or TIEA), (iii) a statement that the requirements for the request to be valid were met and (iv) the account identification numbers, (v) the name of the taxpayer/company and (vi) the requested information. No other information regarding the background of the request, or the foreseeable relevance of the request was communicated to the bank. The initial notification to all account holders, informing them of the foreign request, also included several elements: (i) the name of the requesting jurisdiction, (ii) the legal basis (EU legal basis, double taxation treaty or TIEA) and (iii) a statement that the requirements for the request to be valid were met. The person to whom the notification was sent was then provided with a period of 14 days to “... submit a request, including the reasons for the request, to the following address for an official declaratory statement on satisfaction of the prerequisites for an exemption from banking secrecy...”

173. The template notification issued to the bank stated that the tax authorities would assume that (name of the taxpayer/company) was the sole party with drawing authority on the account, and requested the banks to provide the name of the other account holders with drawing authorities. Hence, it was possible under the old procedure that one of the bank account holders notified may not be the taxpayer mentioned in the EOI request, for example in case of joint accounts. In this respect, this could have caused an issue regarding the confidentiality of the notification and the EOI request (see Section C.3. *Confidentiality*). The Austrian authorities confirmed that Austria is in a position to identify an account even without the name of the taxpayer if Austria receives an identification criterion other than the name of the taxpayer. Since in practice in most cases the name of the taxpayer is indicated the Austrian authorities considered it appropriate to include the name of the taxpayer in the template. However, the indication of the name of the taxpayer is by no means mandatory. In practice, the Austrian tax authorities received seven requests for banking information during the period under review, which did not include the name of the bank account holders. In these cases, the Austrian tax authorities amended the template sent to the information holder (i.e. the bank) by deleting the line regarding the name of the bank account holder. In all of these cases, the Austrian tax authorities were able to obtain the requested banking information and exchange it with the requesting party.

174. The individual had 14 days to ask for a formal notification about the fulfilment of the legal requirement. This happened in only two cases during the peer review period.

175. Due to the limited number of cases (two in total), no template has been created to formally notify the bank account holders. In these two cases, the competent authority had to issue a decision, which could then be appealed at the Constitutional or Administrative Court. In one of these two cases, the decision from the competent authority has been appealed. This case was opened in August 2013. The Austrian Federal Finance Court (*Bundesfinanzgericht*) rendered a decision supporting the position of the tax administration on 24 April 2015, under which the requested banking information can be submitted without limitation. The taxpayer can still appeal this decision at the Supreme Court within 6 weeks.

#### (ii) Procedure applicable from 16 June 2014

176. For requests received from 16 June 2014, the above-mentioned prior notification procedure is abolished. Accordingly, the procedure for access to banking information is the same as that applicable to any other information obtained by means of international administrative assistance proceedings (see B.1.1 and B.1.2 above).

177. Under this procedure, the CLO first checks whether the requirements set out by the relevant legal basis for providing the bank information are fulfilled. Then, the CLO notifies the bank and requests the information. The template used to request the information from the bank includes several elements: (i) the name of the requesting jurisdiction, (ii) the legal basis (EU legal basis, double taxation treaty or TIEA), (iii) a statement that the requirements for the request to be valid were met and (iv) the requested information.

178. No other information regarding the background of the request or the foreseeable relevance of the request is communicated to the bank or to the bank account holder. In addition, the template reproduces the legal obligation set out in § 4(1) ADG under which the request for information and all related circumstances and events must be kept secret from clients and from third parties (see section B.2. *Rights and Safeguards*).

#### Access to banking information under an EOI agreement not in line with the standard

179. Where the request for banking information is made under an EOI arrangement that is not in accordance with the international standard,<sup>18</sup> the ability to obtain banking information is seriously restricted by a requirement for the requesting party to obtain the taxpayer's consent. Austria received 58

18. Namely, the mechanism for EOI does not include a provision on administrative assistance stating that in no circumstances may Austria decline to provide information merely because the information is held by a credit institution.

of such requests during the peer review period. Only when such consent is provided will the request be sent to the local tax office.

180. The local tax office then contacts the bank/credit institution requiring the production of the requested information. The local tax office has a time limit of three months to collect this information, as set by the CLO. In criminal cases, the procedure of referral to the local tax office is the same, except that here the CLO needs a formal statement from the requesting jurisdiction indicating that it is a criminal matter. These cases are usually processed by the criminal division of the competent local tax office which contacts the relevant bank. The deadline for obtaining this information is once again, three months.

### *Access of banking information in practice*

181. In practice during the peer review period, the Austrian competent authorities have not encountered access problems with any of the banks, which once asked to provide the information, did it within a short timeframe. Originally, the Austrian competent authorities applied a 30 days deadline for the banks to provide the requested banking information. However, due to the quick replies of banks, the competent authorities have shortened this deadline to 14 days.

182. During the peer review period, Austria received a total of 58 requests for banking information under EOI agreements not in line with the international standard in respect of banking information, and 18 requests under EOI agreements in line with the international standard in respect of banking information.

183. Out of 58 cases received under EOI agreements not in line with the standard, Austria managed to provide banking information in 12 cases either because criminal proceedings were involved or the person concerned gave his/her consent to provide the information. In 2012, out of 15 requests received, Austria managed to reply positively in four cases, as there were criminal proceedings involved. In all other cases, Austria did not have a legal basis to provide the information. In 2013, out of 39 requests received, Austria provided the requested banking information in six cases, and two cases in which Austria aims to provide information are still pending. In those cases, either criminal proceedings were involved or the person concerned gave his/her consent to provide the information. In 2014, out of four requests received, two could be replied to, both because of consent of the person concerned.

184. Hence, during the peer review period, Austria was unable to answer 44 requests for banking information due to the restrictions under domestic law and the applicable EOI agreements. However, most of the EOI relationships affected have since been updated to conform to the standard (see section C.1

Exchange of Information Mechanisms). Austria has no practical experience of exchanging banking information in respect of these new/renegotiated treaties.

185. In respect of the 18 requests received under EOI agreements in line with the standard (under the old provisions of the ADG), 17 requests were answered by Austria and one case is pending before the Court of Appeals. This appeal was still open on June 30th, 2014. The case has been resolved by the Court of Appeal on 24 April 2015, albeit that the taxpayer continues to have the possibility to appeal to the Supreme Court for 6 weeks.

## Conclusion

186. The new procedure to access bank information is the same as that applicable for any other types of information, and access to bank information can be accessed under 92 EOI relationships. However, restrictions on access to bank information provided for by Austria's domestic legislation are still applicable in respect of 21 EOI out of Austria's 118 EOI relationships. There is still one case pending under the old notification procedure. It is recommended that Austria monitors this procedure and ensures that the information requested is sent to the requested jurisdiction in a prompt manner.

### ***Use of information gathering measures absent domestic tax interest (ToR B.1.3)***

187. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes.

188. The Phase 2 report determined that there are no restrictions in the nature of domestic tax interest, on the powers of the authorities to use their gathering measures to answer EOI requests and no incoming requests have been declined by Austria for the period under review on the basis of a domestic tax interest.

### ***Enforcement provisions to compel production and access to information (ToR B.1.4)***

189. The Phase 2 report determined that enforcement provisions to compel production and access to information are in place in Austria.

190. In practice, the Austrian authorities report that they have been able to respond to all incoming requests without the need to resort to the imposition of penalties and all information requested from third parties has been provided, with the exception of banking information which was subject of requests made prior to the introduction of the ADG.



## ***Secrecy provisions (ToR B.1.5)***

### ***Bank secrecy***

191. The legal basis for bank secrecy in Austria is provided for by section 38 of the Austrian Federal Banking Act (*BWG*). Bank secrecy is lifted where information is required for the purposes of an EOI request made under agreements specifically incorporating the international standard on transparency and exchange of information. This follows from the fact that:

- these agreements expressly include a provision that the contracting parties may not decline to exchange bank information solely because the information is held by a bank or other financial institution notwithstanding any contrary domestic legislation; and
- the Administrative Assistance Implementation Act was specifically enacted by Austria in 2009 and allows revenue authorities to access bank information for EOI purposes when the request is made under a treaty which includes provisions allowing for the exchange of bank information.

192. Therefore, where information is sought under an EOI mechanism allowing for the exchange of bank information, the Austrian authorities may issue a request directly to the bank that holds the information. For access to information for the purposes of EOI under Austria's other agreements, which up to now do not follow the OECD standard, bank secrecy cannot be lifted – except in criminal cases subject to special requirements as those agreements do not include an express provision equivalent to Article 26(5) of the OECD *Model Tax Convention*. The Phase 2 report indicated that this issue concerned 63 of Austria's partners.

### ***Professional secrecy rules***

193. The Phase 2 report indicated that secrecy provisions applicable to various professions do not prevent the effective exchange of information by the Austrian competent authority. In practice, no person has ever invoked legal privilege, or made a secrecy claim, to refuse the production of information for EOI purposes. Also, no issues were raised by peers in this regard.

## ***Conclusions regarding Element B.1***

194. Because the restrictions on access to bank information provided for by Austria's domestic legislation were overridden in respect of only 40 of Austria's EOI partners (out of 92 at the time), the Phase 2 report included a Phase 1 recommendation pursuant to which Austria had to ensure that its competent authority had access to bank information in respect of EOI requests



made pursuant to all of it EOI agreements. In addition, at the time, Austria did not have experience with respect to accessing banking information. Pursuant to the ratification of the Multilateral Convention and amendments to TIEAs and DTCs, Austria is now able to exchange banking information with 97 jurisdictions. Accordingly, the Phase 1 recommendation has been amended to reflect the progress made by Austria to update its EOI network. In addition, it is reflected that due to the restrictions under Austria's domestic law and certain EOI agreements at the time, 44 requests for banking information could not be answered. However, most of the EOI relationships affected, but for 21, have since been updated to conform to the standard. In light of the above, the determination of the element remains "in place, but certain aspects of the legal implementation of the element need improvement".

195. The Phase 2 report also introduced a monitoring recommendation regarding access to banking information, considering that the access measures provided by the ADG had not yet been tested in practice. This recommendation has been replaced by a monitoring recommendation regarding exchanging banking information under the new/renegotiated agreements. The new procedure that applies is substantially the same as before except that there is no longer a notification of the account holder, such that the competent authorities gather the banking information directly from the banks. Considering the above-mentioned elements, the rating for Element B.1 is determined to be "largely compliant".

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement</b>	
<b>Factors underlying recommendation</b>	<b>Recommendation</b>
Since the last review in August 2013, Austria has substantially updated its EOI network on a bilateral basis and ratified the Multilateral Convention, but Restrictions on access to bank information provided for by Austria's domestic legislation are still applicable in respect of 21 out of Austria's 118 EOI relationships.	Austria should continue to update its EOI network to ensure that its competent authority has access to bank information in respect of EOI requests made pursuant to all of its EOI agreements.

Phase 2 rating	
<b>Largely Compliant</b>	
Factors underlying recommendation	Recommendation
Austria was unable to answer 44 requests for banking information due to the restrictions under domestic law and the applicable EOI agreements. However, most of the EOI relationships affected have since been updated to conform to the standard. While Austria had experience on exchanging banking information during the peer review period, Austria had little practical experience on exchanging banking information in respect of these new/renegotiated treaties.	Austria should monitor that it exchanges bank information in accordance with the standard under these new/renegotiated agreements.

## B.2. Notification requirements and rights and safeguards

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

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

196. The Phase 2 report found that the rules regarding prior notification procedure for banking information were not in accordance with the standard, as it did not allow for any exception. A summary of the conclusions from the Phase 2 report are included here, as well as a report of any changes to the legal framework and an analysis of the experience in practice since the last review.

197. The Phase 2 report explained the procedures applicable in case of requests for banking information, which was applicable until 16 June 2014. From this date, the procedure to obtain banking information has changed as the prior notification procedure has been abolished.

### *Prior notification procedure applicable prior to 16 June 2014*

198. The Phase 2 report considered the absence of exception to prior notification contrary to the Global Forum's Terms of Reference. In addition, the Phase 2 report determined that Austria had no actual experience at the time with the new procedure as no request for banking information within scope had been received, and rated this element "partially compliant".

### *Abolition of the prior notification from 16 June 2014*

199. Since the last review, the Austrian Parliament adopted on 28 May 2014 the *Budgetbegleitgesetz* 2014 (Budget Accompanying Law 2014)<sup>19</sup> to address the recommendation concerning exceptions from prior notification, which entered into force on 14 June 2014. The new Law foresees two major changes. The first modification provides for the complete abolition of the procedure of prior notification with a view to the current developments in the field of automatic exchange of information.

200. The amended provisions entered into force on 16 June 2014. The newly added paragraph 3 of § 8 of the ADG provides for a transitional rule regarding the tax administrative court proceedings applicable as from 1 January 2014. In addition, the new Law introduced an anti-tipping off provision under which it is also explicitly stated that banks are not permitted to inform the taxpayer about foreign requests for information.

### *Notification in practice prior to 16 June, 2014*

201. In practice, there were 18 cases in which the prior notification procedure applied. In these cases, the CLO first checked whether the requirements set by the relevant legal basis for providing the bank information were fulfilled. Then it simultaneously notified the bank or credit institution and the individual concerned.

202. The template used to notify the banks regarding the foreign request, and to request the information from the bank included several elements: (i) the name of the requesting jurisdiction, (ii) the legal basis (EU legal basis, double taxation treaty or TIEA), (iii) a statement that the requirements for the request to be valid were met and (iv) the account identification numbers, (v) the name of the taxpayer/company and (vi) the requested information. No other information regarding the background of the request, or the foreseeable relevance of the request was communicated to the bank. The initial notification to all account holders, informing them of the foreign request, also included several elements: (i) the name of the requesting jurisdiction, (ii) the legal basis (EU legal basis, double taxation treaty or TIEA) and (iii) a statement that the requirements for the request to be valid were met. The person to whom the notification was sent was then provided with a period of 14 days to "...submit a request, including the reasons for the request, to the following address for an official declaratory statement on satisfaction of the prerequisites for an exemption from banking secrecy..."

19. Federal Law Gazette I No. 40/2014, amending the *ADG – Amtshilfe-Durchführungsgesetz* (Administrative Assistance Implementation Act).

203. In two cases, the account holder asked for the formal notice issued by the CLO. Due to the limited number of cases, no template has been used in this context. The CLO confirmed that the letter included a description of the foreseeable relevance of the request for the requesting jurisdiction. In these two cases, the competent authority had to issue a decision of first and last instance which could then be appealed at the Constitutional or Administrative Court. In one of these two cases, the decision from the competent authority has been appealed. The bank account holder appealed the formal notice to the tax court on the basis that the request of the foreign jurisdiction was not foreseeably relevant. This case was opened in August 2013. The Austrian Federal Finance Court (Bundesfinanzgericht) rendered a decision supporting the position of the tax administration on 24 April 2015, under which the requested banking information can be submitted without limitation. The taxpayer can still appeal this decision at the Supreme Court within 6 weeks.

### ***Conclusions regarding Element B.2***

204. The Phase 2 report considered the absence of exception to prior notification to access banking information contrary to the Global Forum's Terms of Reference in a Phase 1 recommendation, and determined that "the element was in place, but certain aspects of the legal implementation of the element needed improvement". In view of the abolition of the notification procedure, the recommendation included in the Phase 2 report regarding the absence of exceptions to prior notification has been removed and element the Phase 1 determination has been upgraded to "the element is in place".

205. The Phase 2 report also included a Phase 2 monitoring recommendation regarding the practical application of the prior notification procedure to be applied in accordance with the international standard. The Phase 2 report determined the rating of Element B.2 to be partially compliant. During the peer review period, the prior notification resulted in delays in only two cases, which were substantial with respect to only one case the jurisdiction procedure of which lasted approximately 18 months. As the prior notification is abolished, the monitoring recommendation has been deleted. Considering the abolition of the prior notification procedure, and that apart from one case where the prior notification procedure has delayed exchange of information, the rating of Element B.2 is upgraded to "compliant".

### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant</b>



## C. Exchange of information

### Overview

206. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Austria, the legal authority to exchange information is derived from double tax conventions (DTCs) and tax information exchange agreements (TIEAs) once they become part of Austria's domestic law. This section of the report examines whether Austria has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

207. The Phase 2 report found that 40 out of 92 EOI relationships were in line with the international standard. This resulted in a recommendation to update its EOI network to conform to the international standard. Since the Phase 2 report, Austria ratified the Multilateral Convention, which is in effect since 1 January 2015 in Austria, thereby increasing its EOI relationships to 118 jurisdictions. Austria took steps to amend its EOI network on a bilateral basis. Austria's international exchange of information (EOI) mechanisms now cover 118 partner jurisdictions, 89 of them being covered by double taxation conventions (DTCs), seven by taxation information exchange agreements (TIEAs), and 22 solely by the Multilateral Convention. Overall since the Phase 2 report, the number of EOI relationships to the standard has risen from 40 to 93 out of a total of 118 total EOI relationships.

208. The Phase 2 report found that Austria had successfully progressed negotiations to establish EOI arrangements when requested to do so, however only 40 out of its 92 agreements met the international standard. As a result, element C.2 was rated Largely Compliant. Since the last review, Austria has expanded its network of EOI mechanisms by ratifying the Multilateral Convention and updating its treaty network on a bilateral basis, and so the rating for element C.2 has been upgraded to Compliant.

209. For element C.3, the Phase 2 report included a recommendation for Austria to ensure that the information provided in the course of obtaining information needed to answer requests did not violate the confidentiality provisions of its agreement and domestic law. This has been implemented in

practice due to the abolition of the prior notification procedure in respect of banking information. Accordingly, element C.3 is now also rated Compliant.

210. Regarding element C.5, the Phase 2 report found that Austria had in place an efficient system of responses to incoming requests. The EOI procedure in place respects confidentiality. In addition, Austria ensured timely responses within 90 days in 70% of the cases as well. Since the last review period, Austria's performance in terms of timeliness has remained steady. In addition, the CLO has improved the EOI process by introducing, amongst other improvements, an automatic system of status update reminder. Accordingly, element C.5 is rated "compliant".

## C.1. Exchange of information mechanisms

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

211. Austria currently has an extensive network of EOI arrangements covering 118 jurisdictions. Since the Phase 2 report, the number of EOI relationships to the standard has risen from 40 to 93.

212. The following items indicates under which of its EOI agreements, Austria is able to exchange all types of information, including banking information. This table is included in Annex 2 to this report:

Categories of EOI agreements	#
Number of DTCs/TIEAs that provide exchange of all types of information including banking information	43
Number of DTCs/TIEAs to the standard	34
Number of DTCs/TIEAs to the standard that are in force	29
Number of EOI relationships (DTCs, TIEAs and the EU Directive 2011/16/EU) to the standard)	94*
Number of EOI relationships to the standard that are in force	74
Total number of EOI relationships	118

\*On 29 May 2013 Austria signed the Multilateral Convention, which was ratified by Austrian Parliament on 28 August 2014 and which entered into force on 1 December 2014. As a result, Multilateral Convention was included for the purpose of calculating the number of EOI relationships, in addition to DTCs, TIEAs and the EU Directive 2011/16/EU.

213. There are 21 EOI partners with which Austria does not have an EOI agreement explicitly allowing for exchange of banking information<sup>20</sup>.

20. Algeria, Armenia, Barbados, Cuba, Egypt, Former Yugoslav Republic of Macedonia, Iran, Israel, Kyrgyzstan, Kuwait, Libya, Malaysia, Mongolia, Nepal, Pakistan, Serbia, Syria, Thailand, United Arab Emirates, Venezuela and Vietnam.

214. When more than one legal instrument may serve as the basis for exchange of information – for example where there is a bilateral agreement with an EU member which also applies the EU Council Directive 2011/16/EU, the problem of overlap is generally addressed within the instruments themselves. There are no domestic rules in Austria requiring it to choose between mechanisms where it has more than one agreement involving a particular partner and thus the competent authority is free for any exchange to invoke all of the available mechanisms or to choose the most appropriate.

215. Beyond EOI upon request in the field of direct taxation, Austria, as an EU member, is party to the EU VAT common system and, as a consequence, exchanges information upon request in the field of VAT taking place under the Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative co-operation and combating fraud in the field of value added tax.

### *Foreseeably relevant standard (ToR C.I.1)*

216. The Phase 2 report indicated that the following nine agreements were not in line with the standard in respect of foreseeable relevance: Belgium; Bosnia and Herzegovina; Bulgaria; Luxembourg; Mexico; Qatar; Serbia; South Africa and Tajikistan. Under these agreements, the provision required that the name and address of the person in possession of the requested information in Austria had to be provided in the incoming request.

217. With the coming into effect of the EU Directive 2011/16/EU from 1 January 2013, Austria is now able to exchange information in line with the international standard with Belgium, Bulgaria and Luxembourg<sup>21</sup>. In addition, the Protocol to amend the agreement with Tajikistan was signed on 13 March 2013, and EOI arrangements with Mexico (Protocol) and South Africa (Protocol) are under negotiation. In this context it should also be mentioned that in relation to Belgium, Luxembourg, Mexico and South Africa, Austria is also able to exchange information in line with the international standard on the basis of the Multilateral Convention, which with regard to Austria entered into force on 1 December 2014.

218. The Austrian authorities have indicated that no specific action has been taken so far to amend the agreements in relation to Bosnia and Herzegovina, Qatar and Serbia. As a result of the above, only the EOI relationships with Bosnia and Herzegovina, Qatar and Serbia are not in conformity with the standard on foreseeable relevance. Austria should ensure that all its EOI agreements are in conformity with the international standard.

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21. Irrespective of the EU Directive 2011/16/EU, which is applicable from 1 January 2013, the signing of an Exchange of Notes with Luxembourg to bring in line with the standard is under way.



*In practice*

219. When the CLO receives a request, the request generally includes all the EOI agreements in force (listing of several EOI agreements for the request). If this is not the case, the CLO advises the requesting jurisdictions to change the legal basis if possible; for example to invoke the EU directive 2011/16/EU or the Multilateral Convention. In practice, the Austrian authorities have confirmed that they have never received a request from Bosnia and Herzegovina, Qatar and Serbia, such that the material gap regarding foreseeable relevance is limited in practice.

220. The Phase 2 report indicated that the interpretation of Austria regarding foreseeable relevance is in conformity with the standard. The peers have not raised any concerns regarding Austria's interpretation of foreseeable relevance during the peer review period. In practice, Austria has asked for clarification in respect of 81 cases over the period under review, amongst which 16 cases dealt with missing explanation concerning foreseeable relevance (14 times in 2012, none in 2014 and 2 in the first half of 2014.)

*In respect of all persons (ToR C.1.2)*

221. For exchange of information to be effective, it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standards for exchange of information for tax purposes envisages that exchange of information (EOI) mechanisms will provide for exchange of information in respect of all persons.

222. None of the treaties signed by Austria since its commitment to the international standards are restricted, for EOI purposes, by the persons covered by the agreement. In practice, no difficulties have arisen with respect to this issue, relating to agreements which meet the international standards.

*Exchange of all types of information (ToR C.1.3)*

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

persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

224. The Phase 2 report indicated that Austria could however exchange bank information under the 55 DTCs that had not been updated since 2009. For the purpose of exchanging bank information in line with the international standard on bank secrecy with all its EOI partners, Austria signed and ratified the Multilateral Convention. In addition, Austria took action to amend its EOI network with the remaining jurisdictions.

225. Out of 118 EOI relationships, 21 EOI agreements<sup>22</sup> do not allow for the exchange of banking information. Austria should ensure that all its EOI relationships allow for exchange of banking information.

226. Some of the peer inputs received during the phase 2 Supplementary review have highlighted that a number of Austria's treaty partners could not request bank information during the period under review, related to taxable periods before 2011 (for example in respect of some EU jurisdictions as the EU Directive 2011/16/EU was not applicable), see section B.1.1 *Access to Bank Information*. However in these cases, most of these EOI relationships were amended or new EOI agreements entered into force which allow for exchange of banking information after 2011. During the peer review period, Austria could not provide a reply in 44 cases pertaining to banking information due to deficiencies in the EOI agreements for such exchange. Peers mentioned that in other cases where such impediment did not exist, the bank information was provided in all cases and in a timely manner.

### *Limitation of the scope of the EOI agreement*

227. Article 26 of the DTCs with Russia and Ukraine only covers the exchange of information that is necessary for carrying out the provisions of the DTC, and cannot be invoked to apply domestic law of the contracting States. This limited wording led to 20 requests being denied.

228. Austria has initiated negotiations to update both DTCs to bring them in line with the standard, but the negotiations are still ongoing. It should be noted that Austria can exchange information in accordance with the standard under the Multilateral Convention since 1 January 2015. In respect of Russia, Austria will be able to exchange information in accordance to the standard under the Multilateral Convention, from 1 January 2016.

22. Algeria, Armenia, Barbados, Cuba, Egypt, Former Yugoslav Republic of Macedonia, Iran, Israel, Kyrgyzstan, Kuwait, Libya, Malaysia, Mongolia, Nepal, Pakistan, Serbia, Syria, Thailand, United Arab Emirates, Venezuela and Vietnam.

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

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

230. The Phase 2 report indicated that 58 DTCs did not contain any reference to the “domestic tax interest” concept. However, it was noted that there is no domestic tax interest requirement in Austria and the Austrian authorities can access all types of information, whether this information is needed for domestic or exchange of information purposes. Hence, Austria is able to exchange information, including in cases where the information is not publicly available or where it is not already in possession of the government authorities.

231. A domestic tax interest requirement may exist in some of Austria’s partner jurisdictions. In such cases, the absence of a specific provision requiring exchange of information unlimited by domestic tax interest will serve as a limitation on the exchange of information which can occur under the relevant agreement. It is recommended that Austria continues its program of renegotiation of DTCs including to incorporate wording in line with Article 26(4) of the *OECD Model Tax Convention*.

232. As already explained in the preceding portions of this report, the Austrian tax authorities can use all their powers of discovery and inspection for obtaining information for EOI purposes. Even in actual practice, it does not make any difference whether the information that needs to be gathered for answering the request is required for domestic tax purposes or not.

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

233. The Phase 2 report indicated that none of Austria DTCs or TIEAs specifically includes a dual criminality principle to restrict exchange of information. Austria does not have any domestic legislation resulting in application of such a principle.

234. During the peer review period, none of the peers made any adverse comment in this regard.

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

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

236. All agreements signed by Austria, whether signed before its commitment to the international standards or not, allow for exchange of information in both civil and criminal tax matters with the exception of banking information in old agreements where exchanges can only take place in some criminal tax matters. Austria reports that it has received seven requests relating to criminal tax matters during the peer review period. They were all answered positively.

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

237. According to the Phase 2 report, there are no impediments under Austrian domestic law and tax treaties that would prevent Austria to provide information in the specific form requested. According to the comments received from Austria’s treaty partners, there were no instances where Austria was not in a position to provide the information in the specific form requested or under an acceptable format. Austria reports that during the peer review period it received two requests in 2012 where it was asked for an authentication certificate for “certificates of residence”, but did not receive any of these requests in 2013 and in 2014.

***In force (ToR C.1.8)***

238. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. The international standard requires that jurisdictions take all steps necessary to bring information arrangements that have been signed into force expeditiously.

239. In Austria, all EOI mechanisms, are, according to article 50 of the Constitution, part of the international law and must be incorporated into Austrian domestic law. To become effective, all EOI mechanisms, either DTCs or TIEAs, must be ratified by both Chambers of the Parliament (art. 50 (1) (1) Constitutional Law with respect to approval by the Chamber of Representatives; art. 50 (2) (2) for approval by the Chamber of States). The ratification procedure lasts in average 6 months.

240. The number of DTCs/TIEAs that are in force stands at 92.

***Be given effect through domestic law (ToR C.1.9)***

241. For information exchange to be effective, the parties to an EOI arrangement need to enact legislation necessary to comply with the terms of the arrangement.

242. Austrian authorities now have broad powers to access any type information, including (from 16 June 2014) banking information. To give effect to the agreements signed since March 2009 and its commitment to the international standard of transparency, Austria enacted in September 2009 the Administrative Assistance Implementation Act, granting access to bank information for international EOI matters to the Federal Ministry of Finance, this legislation was amended in June 2014 to address the concern detailed in the Phase 2 report. Where the agreement contains wording akin to Article 26(5) of the *OECD Model Tax Convention* (as detailed in part B.1 of this report) Austria's Federal Ministry of Finance can access bank information to respond to requests for information made under such arrangements.

***Conclusion regarding Element C.1***

243. In the Phase 2 report, it was noted that only 40 of Austria's 92 EOI relationships for effective exchange of information were to the standard and nine EOI agreements established identification requirements for the holder of information in Austria which are inconsistent with the international standard. In this respect Austria received two Phase 1 recommendations to ensure that all its EOI agreement provided for EOI to the standard, and determined the element to be "in place, but certain aspects of the legal implementation of the element need improvement".

244. Considering that Austria has ratified the Multilateral Convention and also took steps to update its EOI network on a bilateral basis, to the effect that now 94 EOI relationships are to the standard, one of the two recommendations has been removed. However, since 21 out of 118 EOI relationships still do not allow for the exchange of banking information, the determination of element C.1 remains unchanged.

245. Due to the deficiencies in the EOI network, the Phase 2 report rated Element C.1 "Partially Compliant". However, Austria has updated its EOI network to a great extent by ratifying the Multilateral Convention and by amending some EOI agreements on a bilateral basis, to the effect that only 21 EOI relationships out of 118 EOI agreements do not provide for exchange of banking information. Considering these developments, element C.1 is rated Largely Compliant.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Since the last review in August 2013, Austria has substantially updated its EOI network on a bilateral basis and ratified the Multilateral Convention, but restrictions on access to bank information provided for by Austria's domestic legislation are still applicable in respect of 21 out of Austria's 118 EOI relationships.	Austria should continue to update its EOI network to ensure that all its agreements provide for exchange of information to the standard.
<b>Phase 2 rating</b>	
<b>Largely Compliant</b>	

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

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

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

247. Since its commitment to the international standards, Austria has only concluded DTCs that contain text akin to a full version of Article 26 of the *OECD Model Tax Convention* (including paragraphs 4 and 5). Austria has also signed five TIEAs which are in line with the *OECD Model TIEA*.

248. Austria's tax treaty negotiations unit consists of six persons, who also handle matters related to Advance Pricing Agreements (APA) and Mutual Agreement Procedures (MAP). This unit is also taking care of the Foreign Account Tax Compliance Act (FATCA) negotiations. The priority for the EOI unit is the general update of the existing treaties and the negotiation of new treaties.

249. Austria has an extensive network of EOI mechanisms covering 118 jurisdictions, 97 of them allowing for the exchange of banking information. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information agreement.

250. The Phase 2 report noted that India had approached Austria in 2009 indicating its interest in entering into negotiations to update the existing DTC. While a meeting took place in April 2010, the matter has not been completely resolved as yet. The Austrian authorities have confirmed that the amending protocol with India was initialled in Vienna on 13 September 2013. Preparations for signature are still pending and the protocol is ready to be signed. It shall also be noted that since both jurisdictions can exchange to the standard through the Multilateral Convention, since it is in effect in Austria since 1 January 2015.

### ***Conclusions regarding Element C.2***

251. The Phase 2 report noted that only 40 EOI arrangements met the standards and that Austria did not successfully progress negotiations to amend these arrangements when requested to do so. Considering the considerable updating activities undertaken by Austria as described in Section C.1., this recommendation has been removed. The determination of Element C.2 is found to be “in place”, and Element C.2 is rated “compliant”.

### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Since the last review in August 2013, Austria has substantially updated its EOI network on a bilateral basis and ratified the Multilateral Convention, but restrictions on access to bank information provided for by Austria's domestic legislation are still applicable in respect of 21 out of Austria's 118 EOI relationships.	Austria should continue to develop its EOI network to the standard with all relevant partners.
<b>Phase 2 rating</b>	
<b>Compliant</b>	

### C.3. Confidentiality

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

#### *Information received: disclosure, use, and safeguards (ToR C.3.1)*

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

#### *Confidentiality in EOI agreements*

253. The Phase 2 report indicated that all treaties recently signed by Austria contain a confidentiality provision in line with Article 26(2) of the *OECD Model Tax Convention*. However, it was noted that Austria's 1981 DTC with the (former) Union of Soviet Socialist Republics, which still applies with respect to Tajikistan and Turkmenistan, contained no provisions to ensure the confidentiality of information received and it was recommended that Austria continues ensuring that appropriate confidentiality of information is maintained in exchanges of information with Tajikistan and Turkmenistan. Austria and Russia are parties to the Multilateral Convention. In addition, a Protocol with Tajikistan was signed on 13 March 2013. Austria has confirmed that no EOI requests were received from Turkmenistan during the peer review period. In addition, the new DTC with Turkmenistan allowing for EOI to the standard was signed in Vienna on 12 May 2015. Confidentiality in practice

254. The Phase 2 report concluded that (i) Austrian domestic tax law contains provisions to ensure the confidentiality of information exchanged and (ii) in practice, Austria authorities have strong rules to ensure that all information received is kept confidential.

255. The Phase 2 report also introduced a recommendation following the statement made by Austria that the underlying principle is that the taxpayer should have as much information as is required to defend his tax interests in the context of access to bank information and the prior notification procedure. The Phase 2 report noted that it was not clear as to how much information the taxpayer would be allowed to "see" in this process and it recommended that Austria made sure that only the elements that are



necessary to collect information from taxpayers or third parties would be disclosed during the process of answering an information request.

256. As noted under element B.I.1, access to bank information, under the old notification procedure, required that the CLO first checked whether the requirements set by the relevant legal basis for providing the bank information were fulfilled.<sup>23</sup> Having been satisfied that the requirements had been met, the CLO then simultaneously notified the bank or credit institution and the individual(s) who had rights of disposition arising out of the business relationship with the credit institution (former s 4(1) ADG).

257. The template used to notify the banks regarding the foreign request, and to request the information from the bank included several elements: (i) the name of the requesting jurisdiction, (ii) the legal basis (EU legal basis, double taxation treaty or TIEA), (iii) a statement that the requirements for the request to be valid were met and (iv) the account identification numbers, (v) the name of the taxpayer/company and (vi) the requested information. The initial notification to all account holders, informing them of the foreign request, also included several elements: (i) the name of the requesting jurisdiction, (ii) the legal basis (EU legal basis, double taxation treaty or TIEA) and (iii) a statement that the requirements for the request to be valid were met. The person to whom the notification was sent was then provided with a period of 14 days to “...submit a request, including the reasons for the request, to the following address for an official declaratory statement on satisfaction of the prerequisites for an exemption from banking secrecy...”

258. The template stated that the tax authorities would assume that (name of the taxpayer/company) was the sole party with drawing authority on the account, and requested the banks to provide the name of the other account holders with drawing authorities. Hence, it was possible under the old procedure that one or more of the bank account holders notified may not be the taxpayer mentioned in the letter of EOI request, in the case of joint accounts. In this respect, this could have caused an issue regarding the confidentiality of the notification and the EOI request. The impact of this issue was however limited in practice, as Austria received only 18 requests for banking information during the peer review period, two of which concerned a joint account. In one case the person concerned by the request and the bank account holder were identical. In the other case, the person concerned by the request was a company and the bank account holder was the owner and managing director of the company.

23. This being that there is an applicable (EU) Community Law, a double taxation treaty or other international agreement or other applicable legal basis under Austrian domestic law which contains a provision on administrative assistance stating that in no circumstances may Austria decline to provide information merely because the information is held by a credit institution (section 2(3) of the ADG).

259. Considering that the prior notification procedure is abolished with effect from 16 June 2014, taxpayers are no longer directly involved in the EOI procedure. If the requested information is not available in the tax files, special investigations will be undertaken by the local tax office in order to obtain that information, if necessary. The Austrian authorities confirmed that also in this case the taxpayer would not have access to the original request of the foreign tax administration but would only be confronted with those questions which are indispensable for answering the request. In light of the above considerations, the recommendation introduced in the Phase 2 report is deleted.

260. The Austrian authorities provided clarifications regarding the procedure to gather information for EOI purposes. Confidentiality in the procedure to gather information is ensured as follows:

- When the tax office receives a request from the CLO electronically, the complete request is transmitted with a confidentiality stamp. There is one point of contact within the tax office.
- The tax office sends the request to the tax auditors when they are auditing the taxpayer or when the tax office cannot obtain the information from its own database.
- To answer the requests, the tax auditors go to the company, ask questions and requests for the relevant documents. The tax auditors have to explain why they need the documents, but most of the time, they need to audit also the international relationships, in which case it goes under the domestic audit and they do not mention the foreign requests.
- In some cases, the tax auditor is requested to audit the company just for the purposes of the foreign requests. In this case, the tax auditor follows a guideline under a specific order. In this order, there is a special form, which the tax auditor has to fill-in to specify to what the tax auditor wants.

261. There is no specific guideline to follow for the foreign request, but they need to follow the provision of the tax procedural laws. The tax auditor follows the prescription from the other jurisdiction not to disclose the name of the foreign requesting jurisdiction. The tax auditors need to record everything electronically. If it is printed, it has to be shredded.

262. The following legal sanctions are applicable to tax officials who breach tax secrecy:

- Section 302 of the Criminal Code (*Strafgesetzbuch*) provides that a deliberate breach of the tax secrecy shall be punished with a sentence of 6 months to 5 years of imprisonment.

- Section 251 of the Fiscal Offences Act (*Finanzstrafgesetz*) provides that civil servant who breaches the duty of confidentiality under tax law (§ 48a (2) of the Federal Fiscal Code [BAO]) shall be punishable pursuant to § 310 of the Austrian Criminal Code, unless the offence is subject to more severe penalties pursuant to any other provision.
- Section 310 of the Criminal Code provides for a custodial sentence of up to three years, unless the offence is subject to a more severe penalty under another provision.
- Section 252 of the Fiscal Offences Act provides for legal sanctions for persons other than officials.

263. With respect to the specific case of banking information, the CLO contacts the bank directly without the intervention of tax office. In the letter to the bank, the CLO includes the name of the taxpayer and the account number if they have it, as well as the name of the requesting jurisdiction. However, the CLO has confirmed that if they would receive a request not to disclose the name of the requesting jurisdiction, it would comply with such a request. In the letter to the bank, the CLO does not have to substantiate the reasons for the request (foreseeable relevance), such that no confidential information need to be disclosed. Finally, while abolishing the prior notification procedure with effect from 16 June 2014, the law also introduce a provision under which banks are no longer permitted to inform the taxpayer about foreign requests for information.

264. Austria has an organisational handbook on office procedures. In addition, these measures are given wide publicity through training exercise and the staff is regularly sensitised to the issue of confidentiality. Article 20 of the Constitution Act and Paragraph 48 of the Legal procedure Act states that tax officials need to keep everything secret. There are legal sanctions applied for failure to comply with this legal provision. This includes officers working in the office of the CLO and the EOI unit and also those in the local tax office, who must take an oath. The IT systems are also so developed that officers can access their computers only with a personal customised key or token. Unauthorised persons cannot access tax files. If a tax official violates the tax secrecy and it is reported, there is a criminal prosecution.

265. To conclude, the procedures set out to gather information in practice ensures that confidentiality is preserved in every step of the process. In addition, the CLO is currently updating its manual to include a specific question on confidentiality requirements under the international standards.

***All other information exchanged (ToR C.3.2)***

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

***Conclusions regarding Element C.3***

267. The Phase 2 report also introduced a recommendation regarding confidentiality in the context of access to bank information and the prior notification procedure. Austria abolished the prior notification procedure is abolished with effect from June 16th, 2014. As a result, the recommendation introduced in the Phase 2 report is deleted.

268. In addition, the procedures set out to gather information in practice ensures that confidentiality is preserved in every step of the process. Finally, peer inputs have not indicated any issue regarding confidentiality. The determination of element C.3 is “in place”, and the rating is “compliant”.

**Determination and factors underlying recommendations**

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

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

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

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

269. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by

attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

270. All of the agreements concluded by Austria since 2009 incorporate wording modelled on Article 26(2) of the *OECD Model Tax Convention* or Article 8 of the *OECD Model TIEA* providing that requested jurisdictions are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney-client privilege/legal privilege or information the disclosure of which would be contrary to public policy. There have been no issues with respect to attorney-client privilege in practice.

271. The practical application of the procedures that protect the rights of taxpayers that was reviewed indicates that Austria acts in a manner that ensures this.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant</b>

### **C.5. Timeliness of responses to requests for information**

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

#### ***Responses within 90 days (ToR C.5.1)***

272. In order for exchange of information to be effective, the information needs to be provided in a timeframe which allows tax authorities to apply it to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

#### ***Timeliness during the peer review period***

273. Over the two and a half years under review (1 January 2012-30 June 2014), Austria received a total of 980 requests for information (calculation based on the number of letters received); 439 requests received in 2012,

266 in 2013 and 275 for the first half of 2014. Austria could not provide a reply in 73 cases: 44 of these cases pertained to banking information and in 29 cases the information could not be exchanged as the applicable Double Taxation Convention only allowed for limited exchange of information (see Section B.1.1 *Bank Information* and Section C.1.3 *Exchange of all types of Information*). According to the available figures during the peer review period, Austria exchanged information with 35 partners of which the most significant, in terms of the number of requests received are Germany, Italy and Slovenia.

274. For these years, the number of requests where Austria answered within 90 days, 180 days, one year or more than one year, are tabulated below.

	2012		2013		2014 (until 30 June)		Total	
	num.	%	num.	%	num.	%	Num.	%
Total number of requests received	439	100	266	100	275	100	980	100
Full response: ≤90 days	335	78	109	44	227	81	671	70
≤180 days (cumulative)	49	11	46	18	22	8	117	12
≤1 year (cumulative)	17	4	47	18	2	2	66	7
>1 year	11	2	9	3	1	1	21	2
Declined for valid reasons	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested	25	4	41	12	7	3	73	6
Requests still pending at date of review	2	1	14	5	16	6	32	3

*Notes:* Austria counts each written request from an EOI partner as one EOI request even where more than one person is the subject of an inquiry and/or more than one piece of information is requested.

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

275. The Austrian authorities clarified that if there is an issue with a request, they send a request for clarification to the requesting partner. Most of the time, the request is either withdrawn or sufficiently clarified. Hence, Austria did not have to decline request “for valid reasons” during the peer review period.

276. There was a decrease in timeliness in 2013, compared to 2012. The Austrian authorities explained this decrease by the entry into force of the new double tax treaty with Germany. Under the old treaty with Germany, the requests received were relatively simple, although numerous (160 requests were received in 2012, of which 151 were answered within 90 days), but the entry into force of the new treaty (i.e. from 1 January 2013), the new requests from Germany were more complicated to deal with. Furthermore, the total amount of requests in 2013 from Germany decreased in 2013 to a total of 35 requests.

277. Austria has asked for clarification in respect of 81 cases over the period under review. The various situations where clarifications were requested included situations where: (i) the requests did not include any explanation concerning foreseeable relevance; (ii) the requests were missing the tax period; (iii) the requests were not drafted in accepted language of EU (EN, DE, FR); (iv) the requests were missing clear details relating the taxpayer concerned to ensure identification; or (v) the requests were missing underlying documentation.

278. In 2013, Austria failed to obtain and provide information for 12% of the requests, which was a high number compared to 2012. The Austrian Authorities confirmed that they received many requests related to banking information due to the fact that jurisdictions understood Austria had changed its approach to bank secrecy and was now exchanging banking information. Unfortunately, a lot of those requests were made under old EOI agreements which did not allow for exchange of bank information (see section B.1.1 *Access to Banking information* and section C.1 *Exchange of Information Mechanisms*). In general, peer inputs received regarding timeliness and quality of responses were positive, and no peer complained about excessive clarification requests from Austria.

### *Status updates*

279. Over the period under review, answers were not provided within 90 days in 30% of cases. The Phase 2 report identified that Austria had not set up, as a practice a 90-day timeline to answer incoming requests, which was confirmed by the peer input received at the time.

280. To address this concern, the CLO introduced in February 2013 a new monitoring system, under which the internal standard deadline for replies were reduced to 90 days instead of the previous 180 days. In addition, from January 1st, 2014, Austria introduced standardised status updates to all partner jurisdictions. The CLO sends a confirmation that they have received a request immediately after reception. Subsequently, the CLO sends information concerning every open case after 3 months, providing information about the status of the case and, if possible, an expected date of a final reply. In addition, the compliance with this new 90-day deadline is taken into account in the staff performance review system.

281. The co-operation with the tax offices is also better structured, with a monitoring of their performance checked by the CLO. Finally, there is a global overview of all the tax offices with statistical data regarding their performance on timeliness of responses. Austria is recommended to continue to enhance its practices in this area in order to provide status updates when it is not in a position to answer an incoming request within 90 days.

***Organisational process and resources (ToR C.5.2)***

282. The Phase 2 report concluded that except for the lack of status updates, the CLO had good organisational process and resources in place. Since the Phase 2 report, the organisation between the CLO and the local tax office has been improved with the appointment of dedicated EOI contact persons in each local tax office. The auditors within the CLO are also responsible for chasing the contact person within each tax office before the deadline has elapsed. The CLO has confirmed that an EOI manual is currently being prepared to disseminate best practices in addition to regular staff training on EOI matters.

283. The CLO has confirmed that sufficient resources are dedicated to EOI on request. In addition, Austria is currently implementing FATCA and under the Common Reporting Standards (CRS). As a result, the CLO has increased its forecast for the next years and expects to receive more requests as a result of automatic exchange of information mechanisms; being FATCA, the CRS and the EU Mutual Assistance Directive, which entered into force on 1 January 2015. The Austrian authorities have confirmed that they stand ready to allocate more resources to deal with increasing amounts of EOI requests.

***Unreasonable, disproportionate or unduly restrictive conditions for EOI (ToR C.5.3)***

284. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. Apart from the issues identified earlier in the report there are no other factors that could hinder effective EOI.

***Conclusions regarding Element C.5***

285. The Phase 2 report had concluded that Austria had sound organisational process and resources in place ensuring timely responses within 90 days in more than 70% of the cases. However, the Phase 2 report had noted that in a number of cases, Austria has not provided status updates within the 90 day period and recommended Austria to take measures to ensure the provision of status updates in accordance with the standard.

286. During the period under review, Austria ensured timely responses within 90 days in 70% of the cases as well. To address the recommendation included in the Phase 2 report, the CLO introduced, amongst other improvements, an automatic system of status update reminder. Thus, the recommendation in the box has been removed. In light of good timeliness statistics, sound organisational process and resources and positive peer inputs, Element C.5 is rated “compliant”.



**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.</b>
<b>Phase 2 rating</b>
<b>Compliant</b>

## Summary of determinations and factors underlying recommendations

Overall rating		
<b>LARGELY COMPLIANT</b>		
Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
<b>The element is in place</b>		
<b>Phase 2 rating: Largely Compliant</b>	Austria has put in place in 2011 new provisions to prohibit the issue of bearer shares by unlisted joint-stock companies and further introduced in 2014 incentives and sanctions to ensure that the identity of all holders of shares in unlisted joint-stock companies will be known in all instances. However, full effect was given to these provisions only from 1 <sup>st</sup> January 2014.	It is recommended that Austria continues to ensure that the 2011 and the 2014 provisions are effectively implemented and monitored.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
<b>Phase 1 determination:</b> <b>The element is in place.</b>	In the case of fiduciary relationship, there are some uncertainties as regards the detailed obligations to keep accounting records where the <i>Treugeber</i> or settlor is not resident in Austria and assets held through the fiduciary are located abroad.	Austria should make it clear that reliable accounting records are kept in the case of fiduciary relationships in any situation.
<b>Phase 2 rating:</b> <b>Compliant</b>		
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
<b>Phase 1 determination:</b> <b>The element is in place.</b>		
<b>Phase 2 rating:</b> <b>Compliant</b>		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i>		
<b>Phase 1 determination:</b> <b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Since the last review in August 2013, Austria has substantially updated its EOI network on a bilateral basis and ratified the Multilateral Convention, but Restrictions on access to bank information provided for by Austria's domestic legislation are still applicable in respect of 21 out of Austria's 118 EOI relationships. While these restrictions prevented the exchange of banking information during the peer review period, most of the EOI relationships affected have since been updated to conform to the standard.	Austria should continue to update its EOI network to ensure that its competent authority has access to bank information in respect of EOI requests made pursuant to all of its EOI agreements.

Determination	Factors underlying recommendations	Recommendations
<b>Phase 2 rating: Largely Compliant</b>	Austria was unable to answer 44 requests for banking information due to the restrictions under domestic law and the applicable EOI agreements. However, most of the EOI relationships affected have since been updated to conform to the standard. While Austria had experience on exchanging banking information during the peer review period, Austria had little practical experience on exchanging banking information in respect of these new/renegotiated treaties.	Austria should monitor that it exchanges bank information in accordance with the standard under these new/renegotiated agreements.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. ( <i>ToR B.2</i> )		
<b>Phase 1 determination: The element is in place</b>		
<b>Phase 2 rating: Compliant</b>		
Exchange of information mechanisms should allow for effective exchange of information. ( <i>ToR C.1</i> )		
<b>Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Since the last review in August 2013, Austria has substantially updated its EOI network on a bilateral basis and ratified the Multilateral Convention, but restrictions on access to bank information provided for by Austria's domestic legislation are still applicable in respect of 21 out of Austria's 118 EOI relationships.	Austria should continue to update its EOI network to ensure that all its agreements provide for exchange of information to the standard.
<b>Phase 2 rating: Largely Compliant</b>		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. ( <i>ToR C.2</i> )		
<b>Phase 1 determination:</b> <b>The element is in place.</b>		
<b>Phase 2 rating:</b> <b>Compliant</b>		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. ( <i>ToR C.3</i> )		
<b>Phase 1 determination:</b> <b>The element is in place.</b>		
<b>Phase 2 rating:</b> <b>Compliant</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. ( <i>ToR C.4</i> )		
<b>Phase 1 determination:</b> <b>The element is in place.</b>		
<b>Phase 2 rating:</b> <b>Compliant</b>		
The jurisdiction should provide information under its network of agreements in a timely manner. ( <i>ToR C.5</i> )		
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>		
<b>Phase 2 rating:</b> <b>Compliant</b>		

## **Annex 1: Jurisdiction’s response to the review report<sup>24</sup>**

Austria thanks the Assessment Team for the carefully drafted report and for all the efforts taken in preparing this excellent update of the Austrian legislation and the administrative practice. We also highly appreciate the early acceptance of the Austrian request for a supplementary report and would thus like to thank also the PRG and the Secretariat for having managed this issue in such timely and efficient manner. We fully accept the rating proposals as well as the recommendations for each element where this has been found necessary.

As far as element A.1 is concerned, Austria will certainly continue its efforts in effectively implementing and monitoring the new provisions on bearer shares. On the basis of the high compliance rate which could be detected already now we strongly believe that bearer shares should no longer be a significant problem for access to ownership information of companies in future.

Concerning elements B.1 and C.1, Austria would like to confirm that we are certainly prepared to continue to update the remaining EOI agreements to provide for exchange of bank information with all of our EOI partners on the basis of the OECD standard and we hope that the Multilateral Agreement on Administrative Assistance will also help to rapidly increase the number of committed jurisdictions with which Austria will have full EOI relationships in future. We also highly appreciate the support which we were given for our efforts in improving our domestic law concerning access to bank information by removing all formerly existing barriers towards that access, including notification and appeal rights. We will continue to monitor also the effective EOI practice for bank information on the basis of the new legal provisions following the recommendations from earlier phases.

Together with our major efforts which we currently undertake in the field of preparing the appropriate legal environment for an efficient automatic exchange of financial account information and in improving the internal

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

procedures for access to bank information for tax authorities, including the installation of a central bank account register and automatic reporting requirements for banks for certain banking transactions we believe that Austria will not only continue to be a reliable partner in administrative co-operation but also improve its reputation as a jurisdiction which is strictly committed to transparency and eliminating all incentives for tax avoidance and tax evasion, both at the level of domestic and international law.

## Annex 2: List of all exchange-of-information mechanisms in force

	Jurisdiction	Type of Eol arrangement	Date signed	Date in force
1	Albania	DTC	14 Dec 2007	1 Sep 2008
		Multilateral Convention	1 Mar 2013	1 January 2015
2	Algeria	DTC	17 Jun 2003	1 Dec 2006
3	Andorra	TIEA	17 Sep 2009	10 Dec 2010
		Multilateral Convention	5 Nov 2013	Not in force
4	Anguilla <sup>a</sup>	Multilateral Convention	Extended	
5	Argentina	Multilateral Convention	3 Nov 2011	1 January 2015
6	Armenia	DTC	27 Feb 2002	1 Mar 2004
7	Aruba <sup>b</sup>	Multilateral Convention	Extended	
8	Australia	DTC	8 Jul 1986	1 Sept 1988
		Multilateral Convention	30 Aug 2012	1 January 2015
9	Azerbaijan	DTC	4 Jul 2000	23 Feb 2001
		Multilateral Convention	23 May 2014	Not in force
10	Bahrain	DTC	2 Jul 2009	1 Feb 2011
11	Barbados	DTC	27 Feb 2006	1 Apr 2007
12	Belarus	DTC	16 May 2001	9 March 2002
		Protocol	24 Nov 2014	Pending
13	Belgium	DTC	29 Dec 1971	28 June 1973
		Protocol	10 Sep 2009	Not in force
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	4 Apr 2011	1 April 2015



	<b>Jurisdiction</b>	<b>Type of Eol arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
14	Belize <sup>a</sup>	DTC	8 May 2002	1 Dec 2003
		Multilateral Convention	29 May 2013	1 Jan 2015
15	Bermuda <sup>a</sup>	Multilateral Convention	Extended	1 Jan 2015
16	Bosnia and Herzegovina	DTC	16 Dec 2010	1 Jan 2012
17	Brazil	DTC	24 May 1975	1 Jul 1976
		Multilateral Convention	3 Nov 2011	Not in force
18	Bulgaria	DTC	20 July 2010	3 Feb 2011
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
19	British Virgin Islands <sup>a</sup>	Multilateral Convention	Extended	
20	Cameroon	Multilateral Convention	25 Jun 2014	Not in force
21	Canada	DTC	9 Dec 1976	17 Feb 1981
		Protocol	9 Mar 2012	1 Oct 2013
		Multilateral Convention	3 Nov 2011	1 Jan 2015
22	Cayman Islands <sup>a</sup>	Multilateral Convention	Extended	
23	Chile	DTC	6 Dec 2012	Not in force
		Multilateral Convention	24 Oct 2013	Not in force
24	China, People's Republic of	DTC	10 April 1991	1 Nov 1992
		Multilateral Convention	27 Aug 2013	Not in force
25	Colombia	Multilateral Convention	23 May 2012	1 Jan 2015
26	Costa Rica	Multilateral Convention	1 Mar 2012	1 Jan 2015
27	Croatia	DTC	21 Sep 2000	27 Jun 2001
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	11 Oct 2013	1 Jan 2015
28	Curaçao <sup>b</sup>	Multilateral Convention	Extended	
29	Cuba	DTC	26 Jun 2003	12 Sept 2006
30	Cyprus <sup>c</sup>	DTC	20 Mar 1990	1 Jan 1991
		Protocol	4 May 2012	1 April 2013
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	10 Jul 2014	1 Apr 2015
31	Czech Republic	DTC	8 Jun 2006	22 Mar 2007
		Protocol	9 Mar 2012	26 Nov 2012
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	26 Oct 2012	1 Jan 2015

	Jurisdiction	Type of Eol arrangement	Date signed	Date in force
32	Denmark	DTC	25 May 2007	27 March 2008
		Protocol	16 Sep 2009	01 May 2010
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	27 May 2010	1 Jan 2015
33	Egypt	DTC	16 Oct 1962	28 Oct 1963
34	Estonia	DTC	5 Apr 2001	12 Nov 2002
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	29 May 2013	1 Jan 2015
35	Faroe Islands <sup>d</sup>	Multilateral Convention	Extended	
36	Finland	DTC	26 Jul 2000	1 Apr 2001
		Protocol	04 Mar 11	1 Dec 2011
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	27 May 2010	1 Jan 2015
37	France	DTC	26 Mar 1993	1 Sep 1994
		Protocol	23 May 2011	1 May 2012
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	27 May 2010	1 Jan 2015
38	Former Yugoslav Republic of Macedonia	DTC	10 Sep 2007	20 Jan 2008
39	Gabon	Multilateral Convention	3 Jul 2014	Not in force
40	Georgia	DTC	11 Apr 2005	1 Mar 2006
		Protocol	4 June 2012	Pending
		Multilateral Convention	3 Nov 2010	1 Jan 2015
41	Germany	DTC	24 Aug 2000	18 Aug 2002
		Protocol	29 Dec 2010	1 Mar 2012
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	3 Nov 2011	Not in force
42	Ghana	Multilateral Convention	10 Jul 2012	1 Jan 2015
43	Gibraltar <sup>a</sup>	TIEA	17 Sep 2009	1 May 2010
		Multilateral Convention	Extended	
44	Greece	DTC	18 Jul 2007	1 Apr 2009
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	21 Feb 2012	1 Jan 2015
45	Greenland <sup>d</sup>	Multilateral Convention	Extended	1 Jan 2015

	<b>Jurisdiction</b>	<b>Type of Eol arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
46	Guatemala	Multilateral Convention	5 Dec 2012	Not in force
47	Guernsey <sup>a</sup>	TIEA	14 May 2014	23 Nov 2014
		Multilateral Convention	Extended	
48	Hong Kong, China	DTC	25 May 2010	1 Jan 2011
		Protocol	25 June 2012	3 Jul 2013
49	Hungary	DTC	25 Feb 1975	9 Feb 1976
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	12 Nov 2013	1 Mar 2015
50	Iceland	Multilateral Convention	27 May 2010	1 Jan 2015
51	India	DTC	8 Nov 1999	5 Sep 2001
		Multilateral Convention	26 Jan 2012	1 Jan 2015
52	Indonesia	DTC	24 Jul 1986	1 Oct 1988
		Multilateral Convention	3 Nov 2011	1 May 2015
53	Iran	DTC	11 Mar 2002	11 Jul 2004
54	Ireland	DTC	24 May 1966	5 Jan 1968
		Protocol	16 Dec 2009	01 May 2011
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	3 Nov 2011	1 Jan 2015
55	Isle of Man <sup>a</sup>	Multilateral Convention	Extended	
56	Israel	DTC	29 Jan 1970	26 Jan 1971
57	Italy	DTC	29 Jun 1981	6 Apr 1985
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	27 May 2010	1 Jan 2015
58	Japan	DTC	20 Dec 1961	4 Apr 1963
		Multilateral Convention	3 Nov 2011	1 Jan 2015
59	Jersey <sup>a</sup>	TIEA	7 Sept 2012	1 June 2013
		Multilateral Convention	Extended	
60	Kazakhstan <sup>e</sup>	DTC	10 Sep 2004	1 Mar 2006
		Multilateral Convention	23 Dec 2013	1 Aug 2015
61	Kyrgyzstan	DTC	18 Sep 2001	1 May 2003
62	Korea	DTC	8 Oct 1985	1 Dec 1987
		Multilateral Convention	27 May 2010	1 Jan 2015
63	Kuwait	DTC	13 Jun 2002	1 Mar 2004

	Jurisdiction	Type of Eol arrangement	Date signed	Date in force
64	Latvia	DTC	14 Dec 2005	16 May 2007
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	29 May 2013	1 Jan 2015
65	Libya	DTC	16 Sep 2010	Pending
66	Liechtenstein	DTC	5 Nov 1969	7 Dec 1970
		Protocol	29 Jan 2013	1 Jan 2014
		Multilateral Convention	21 Nov 2013	Not in force
67	Lithuania	DTC	6 Apr 2005	17 Nov 2005
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	7 Mar 2013	1 Jan 2015
68	Luxembourg	DTC	18 Oct 1962	7 Feb 1964
		Protocol	07 Jul 2009	1 Sep 2010
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	29 May 2013	1 Jan 2015
69	Malaysia	DTC	20 Sep 1989	1 Dec 1990
70	Malta	DTC	29 May 1978	13 July 1979
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	26 Oct 2012	1 Jan 2015
71	Mauritius	TIEA	10 March 2015	Pending
72	Mexico	DTC	13 Apr 2004	1 Jan 2005
		Protocol	18 Sep 2009	01 Jul 2010
		Multilateral Convention	27 May 2010	1 Jan 2015
73	Moldova	DTC	29 Apr 2004	1 Jan 2005
		Multilateral Convention	27 Jan 2011	1 Jan 2015
74	Monaco	TIEA	15 Sep 2009	1 Aug 2010
		Multilateral Convention	13 Oct 2014	Not in force
75	Mongolia	DTC	3 Jul 2003	1 Oct 2004
76	Montenegro	DTC	16 Jun 2014	21 Apr 2015
77	Montserrat <sup>a</sup>	Multilateral Convention	Extended	
78	Morocco	DTC	27 Feb 2002	12 Nov 2006
		Multilateral Convention	21 May 2013	
79	Nepal	DTC	15 Dec 2000	1 Jan 2002

	Jurisdiction	Type of Eol arrangement	Date signed	Date in force
80	Netherlands	DTC	1 Sep 1970	21 Apr 1971
		Protocol	8 Sep 2009	01 Jul 2010
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	27 May 2010	1 Jan 2015
81	New Zealand	DTC	21 Sep 2006	1 Dec 2007
		Multilateral Convention	26 Oct 2012	1 Jan 2015
82	Nigeria <sup>f</sup>	Multilateral Convention	29 May 2013	1 Sep 2015
83	Norway	DTC	28 Nov 1995	1 Dec 1996
		Protocol	16 Sep 2009	1 June 2013
84	Qatar	DTC	30 Dec 2010	7 March 2012
85	Pakistan	DTC	4 Aug 2005	1 Jun 2007
86	Philippines	DTC	9 Apr 1981	1 Apr 1982
		Multilateral Convention	29 Sep 2014	Not in force
87	Poland	DTC	13 Jan 2004	1 May 2005
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	9 Jul 2010	1 Jan 2015
88	Portugal	DTC	29 Dec 1970	27 Feb 1972
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	27 May 2010	1 Jan 2015
89	Romania	DTC	30 Mar 2005	1 Feb 2006
		Protocol	1 Oct 2012	1 Nov 2013
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	15 Oct 2012	1 Jan 2015
90	Russia	DTC	13 Apr 2000	30 Dec 2002
		Multilateral Convention	03 Nov 2011	1 July 2015
91	St Vincent and the Grenadines	TIEA	14 Sep 2009	1 Jan 2012
92	San Marino	DTC	24 Nov 2004	1 Dec 2005
		Protocol	18 Sep 2009	1 Jun 2010
		Exchange of Notes	16 Nov 2012 27 Nov 2012	1 Sep 2013
		Multilateral Convention	21 Nov 2013	Not in force
93	Saudi Arabia	DTC	19 Mar 2006	1 Jun 2007
		Multilateral Convention	29 May 2013	Not in force

	<b>Jurisdiction</b>	<b>Type of EoI arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
94	Serbia	DTC	7 May 2010	17 Dec 2010
95	Seychelles	Multilateral Convention	24 Feb 2015	Not in force
96	Singapore	DTC	30 Nov 2001	22 Oct 2002
		Protocol	15 Sep 2009	1 Jun 2010
		Exchange of Notes	3 Sept 2012 16 Oct 2012	1 May 2014
		Multilateral Convention	29 May 2013	Not in force
97	Sint Maarten <sup>b</sup>	Multilateral Convention	Extended	1 Jan 2015
98	Slovak Republic	DTC	7 Mar 1978	12 Feb 1979
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	29 May 2013	1 Jan 2015
99	Slovenia	DTC	1 Oct 1997	1 Feb 1999
		Protocol	28 Sep 2011	1 Nov 2012
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	27 May 2010	1 Jan 2015
100	South Africa	DTC	4 Mar 1996	6 Feb 1997
		Protocol	22 Aug 2011	1 Mar 2012
		Multilateral Convention	3 Nov 2011	1 Jan 2015
101	Spain	DTC	20 Dec 1966	1 Jan 1968
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	11 Mar 2011	1 Jan 2015
102	Sweden	DTC	14 May 1959	29 Dec 1959
		Protocol	17 Dec 2009	16 Jun 2010
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	27 May 2010	1 Jan 2015
103	Switzerland	DTC	30 Jan 1974	4 Dec 1974
		Protocol	3 Sep 2009	1 Mar 2011
		Protocol	4 Jun 2012	14 Nov 2012
		Multilateral Convention	15 Oct 2013	Not in force
104	Syria	DTC	3 Mar 2009	Pending
105	Chinese Taipei	DTC	12 July 2014	20 Dec 2014
106	Tajikistan	DTC	10 Apr 1981	1 Oct 1982
		DTC	7 June 2011	1 July 2012
		Protocol	13 Mar 2013	Pending

	<b>Jurisdiction</b>	<b>Type of Eol arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
107	Thailand	DTC	8 May 1985	1 Jul 1986
108	Tunisia	DTC	23 Jun 1977	4 Sep 1978
		Multilateral Convention	16 July 2012	1 Jan 2015
109	Turkey	DTC	28 Mar 2008	1 Oct 2009
		Multilateral Convention	3 Nov 2011	Not in force
110	Turkmenistan	DTC	12 May 2015	Not in force
111	Turks and Caicos Islands <sup>a</sup>	Multilateral Convention	Extended	
112	Ukraine	DTC	16 Oct 1997	20 May 1999
		Multilateral Convention	27 May 2010	1 Jan 2015
113	United Arab Emirates	DTC	22 Sep 2003	1 Sep 2004
114	United Kingdom	DTC	30 Apr 1969	13 Nov 1970
		Protocol	11 Sep 2009	19 Nov 2010
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	27 May 2010	1 Jan 2015
115	United States	DTC	31 May 1996	1 Feb 1998
		Multilateral Convention	27 May 2010	Not in force
116	Uzbekistan	DTC	14 Jun 2000	1 Aug 2001
117	Venezuela	DTC	12 May 2006	17 Mar 2007
118	Viet Nam	DTC	2 Jun 2008	1 Jan 2010

*Notes:* a. Extension by the United Kingdom.

b. Extension by the Kingdom of the Netherlands.

c. Footnote by Turkey: The information in this document with reference to « Cyprus » relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey 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”.

Footnote 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.”

d. Extension by the Kingdom of Denmark.

e. Kazakhstan has ratified the Multilateral Convention. It will enter into force in Kazakhstan on 1 August 2015.

f. Nigeria has ratified the Multilateral Convention. It will enter into force in Nigeria on 1 September 2015.

## Summary of agreements per category

The table below provides a list of jurisdictions with which Austria has concluded an EOI agreement with a division per category:

Categories of EOI agreements	Total
<b>Number of DTCs/TIEAs that provide exchange of all types of information including banking information</b>	<b>43</b>
Andorra; Bahrain; Belarus; Belgium; Bosnia and Herzegovina; Bulgaria; Canada; Chile; Cyprus; Czech Republic; Denmark; Finland; France; Germany; Georgia; Guernsey; Gibraltar; Hong Kong, China; Ireland; Jersey; Luxembourg; Libya; Lichtenstein; Mauritius; Mexico; Monaco; Montenegro; Netherlands; Norway; Qatar; Romania; St. Vincent and the Grenadines; San Marino; Serbia; Singapore; Slovenia; South Africa; Sweden; Switzerland; Chinese Taipei; Tajikistan; Turkmenistan and the United Kingdom.	
<b>Number of DTCs/TIEAs to the standard</b>	<b>34</b>
Andorra; Bahrain; Belarus; Canada; Chile; Cyprus; Czech Republic; Denmark; Finland; France; Germany; Georgia; Gibraltar; Guernsey; Hong Kong, China; Ireland; Jersey; Libya; Lichtenstein; Mauritius; Monaco; Montenegro; Netherlands; Norway; Romania; St. Vincent and the Grenadines; San Marino; Singapore; Slovenia; Sweden; Switzerland; Chinese Taipei; Tajikistan and the United Kingdom.	
<b>Number of DTCs/TIEAs to the standard that are in force</b>	<b>29</b>
Andorra; Bahrain; Canada; Cyprus; Czech Republic; Denmark; Finland; France; Germany; Georgia; Gibraltar; Guernsey; Hong Kong, China; Ireland; Jersey; Liechtenstein; Monaco; Montenegro; Netherlands; Norway; Romania; St Vincent and the Grenadines; San Marino; Singapore; Slovenia; Sweden; Switzerland; Chinese Taipei and the United Kingdom.	
<b>Number of EOI relationships (DTCs, TIEAs and the EU Directive 2011/16/EU) to the standard</b>	<b>94*</b>
Albania; Andorra; Anguilla; Argentina; Aruba; Australia; Azerbaijan; Bahrain; Belarus; Belgium; Belize; Bermuda; Brazil; British Virgin Islands; Bulgaria; Cameroon; Canada; Cayman Islands; Chile; China; Colombia; Costa Rica; Croatia; Curacao; Cyprus; Czech Republic; Denmark; Estonia; Faroe Islands; Finland; France; Gabon; Georgia; Germany; Ghana; Gibraltar; Greece; Greenland; Guatemala; Guernsey; Hong Kong, China; Hungary; Iceland; India; Indonesia; Ireland; Isle of Man; Italy; Japan; Jersey; Kazakhstan; Korea; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; Mauritius; Mexico; Moldova; Monaco; Montenegro; Montserrat; Morocco; Netherlands; New Zealand; Nigeria; Norway; Philippines; Poland; Portugal; Romania; Russia; San Marino; St Vincent and the Grenadines; Saudi Arabia; Seychelles; Singapore; Sint Maarten; Slovakia; Slovenia; South Africa; Spain; Sweden; Switzerland; Chinese Taipei; Tajikistan; Tunisia; Turkey; Turkmenistan; Turks & Caicos; Ukraine; United Kingdom and the United States.	
<b>Number of EOI relationships to the standard that are in force</b>	<b>74</b>
Albania; Andorra; Anguilla; Argentina; Aruba; Australia; Bahrain; Belgium; Belize; Bermuda; British Virgin Islands; Bulgaria; Cayman Islands; Canada; Colombia; Costa Rica; Croatia; Curacao; Cyprus; Czech Republic; Denmark; Estonia; Faroe Islands; Finland; France; Georgia; Germany; Ghana; Gibraltar; Greece; Greenland; Guernsey; Hong Kong, China; Hungary; Iceland; India; Indonesia; Ireland; Isle of Man; Italy; Japan; Jersey; Korea; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; Mexico; Moldova; Monaco; Montenegro; Montserrat; Netherlands; New Zealand; Norway; Poland; Portugal; Romania; San Marino; St Vincent and the Grenadines; Singapore; Sint Maarten; Slovakia; Slovenia; South Africa; Spain; Sweden; Switzerland; Chinese Taipei; Tunisia; Turks & Caicos Islands; Ukraine; and the United Kingdom.	

\*On 29 May 2013 Austria signed the Multilateral Convention, which was ratified by Austrian Parliament on 28 August 2014 and which entered into force on 1 December 2014. As a result, the Multilateral Convention was included for the purpose of calculating the number of EOI relationships, in addition to DTCs, TIEAs and the EU Directive 2011/16/EU.



## **Annex 3: List of all laws, regulations and other material received**

### **Federal Constitution Act**

### **Corporate laws**

- Commercial register Act
- Entrepreneurial Code
- Stock Corporation Act
- Limited liability Companies Act
- Co-operative Act.
- Federal public foundations and funds Act
- Private foundations Act
- European Economic Interest Grouping Act

### **Regulatory laws**

- Federal Banking Act
- Financial Market Authority Act
- Stock Exchange Act
- Insurance Supervision Act
- Federal Act regarding the Supervision of Investment Services

## **Taxation laws**

Fiscal Code  
Income tax Act  
Value added tax Act  
Fiscal Administration Organisation Act  
Fiscal Offences Act  
Non-Contentious Proceedings Act

## **Information exchange for tax purposes laws**

Administrative Assistance Implementation Act with explanatory remarks  
DTCs and TIEAs signed by Austria since March 2009

## **Other laws**

Civil law notaries' Code  
Accountancy Act  
Solicitor-Advocates' Code  
Chartered Accountant Professionals Act  
Disciplinary Statute for Solicitor-Advocates and Trainee Solicitor-Advocates  
Criminal Code  
Criminal procedure Code  
Act of 3 May 1868 governing procedures for the giving of oaths in court

## **Annex 4: People interviewed during on-site visit**

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

Representatives of the Austrian Ministry of Justice.

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

Representatives of the local tax office.

For more information  
**Global Forum on Transparency and  
Exchange of Information for Tax Purposes**  
[www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency)  
[www.eoi-tax.org](http://www.eoi-tax.org)  
Email: [gftaxcooperation@oecd.org](mailto:gftaxcooperation@oecd.org)