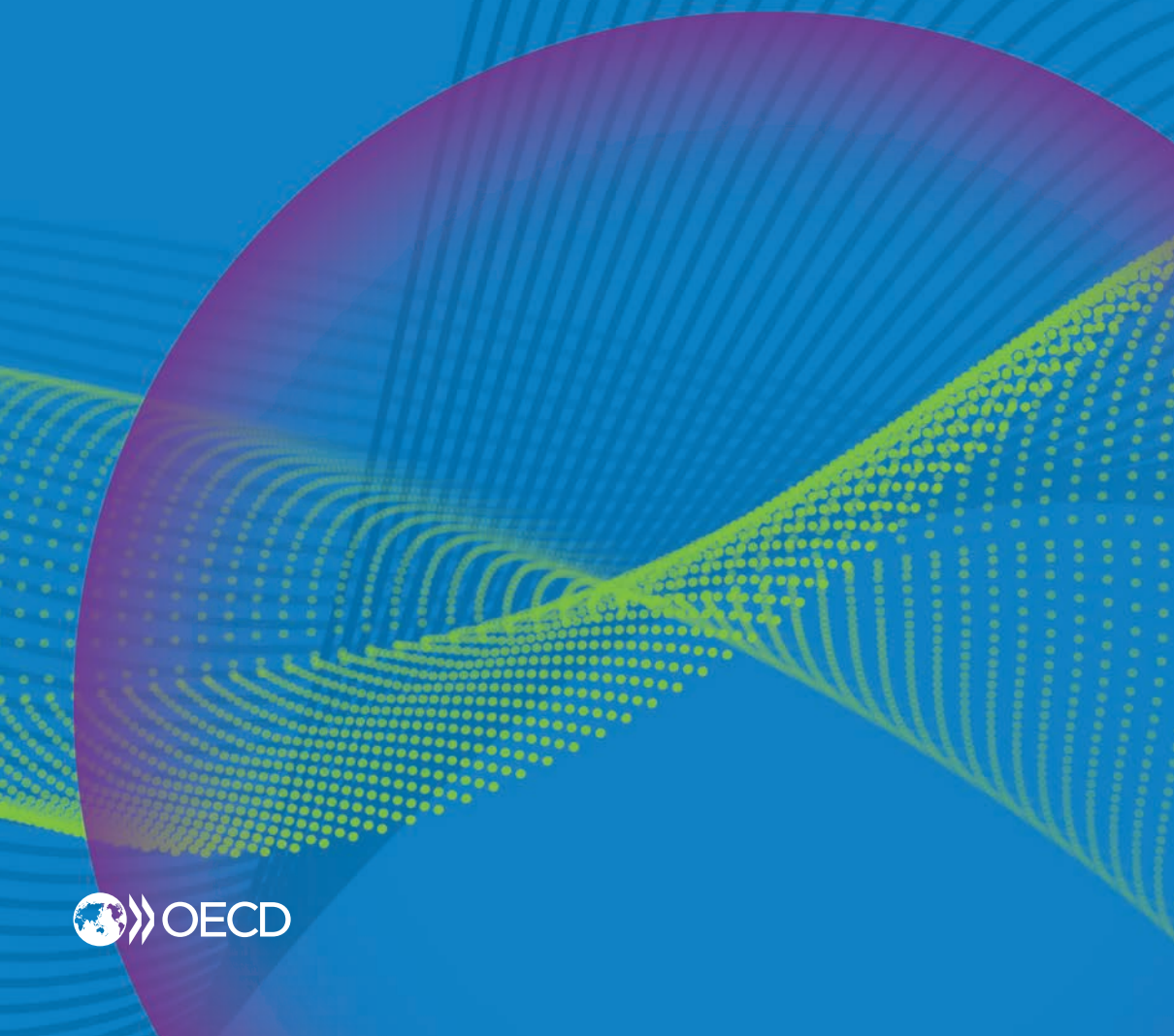
GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

ROMANIA

2024 (Second Round)



OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Romania 2024 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

This peer review report was approved by the Peer Review Group of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) on 27 February 2024 and adopted by the Global Forum members on 27 March 2024. The report was prepared for publication by the Global Forum Secretariat.

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Note by the Republic of Türkiye
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. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union
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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 160 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

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

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

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

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

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

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

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

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

Consideration of the Financial Action Task Force Evaluations and Ratings

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

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

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

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

More information

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

Abbreviations and acronyms

2016 Terms of Reference	Terms of Reference related to Exchange of Information on Request (EOIR), as approved by the Global Forum on 27-28 October 2015
AML	Anti-Money Laundering
AML Law	Law No. 129 of 11 July 2019 on preventing and combating money laundering and terrorist financing
BO Guidance	"Guide to Identifying Beneficial Owners" (*Ghid de Identificare a Beneficiarilor Reali*) issued in 2022 by the National Office for the Prevention and Control of Money Laundering in consultation with supervisory authorities, self-regulatory bodies and the Romanian Association of Banks
CCN	Common Communication Network, the digital platform used for exchange of information among EU Member States
CDD	Customer Due Diligence
DTC	Double Taxation Convention
EIG	Economic Interest Grouping
EEIG	European Economic Interest Grouping
EOI	Exchange of information
EOIR	Exchange of Information on Request
EU	European Union
EUR	Euro, official currency of the 20 Member States of the European Union that are part of the Economic and Monetary Union
FATF	Financial Action Task Force

FPC	Law No. 207/2015 on the Fiscal Procedure Code, as subsequently amended and supplemented
GDP	Gross Domestic Product
GFAD	General Anti-Fraud Directorate
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
GO 26/2000	Government Order No. 26 of 30 January 2000 concerning associations and foundations
IBAN	International Bank Account Number
IIEU	International Information Exchange Unit
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
NAFA	National Agency for Fiscal Administration
NBR	National Bank of Romania
NOPCML	National Office for the Prevention and Control of Money Laundering
NTRO	National Trade Register Office
PO-46.05	Operational Procedure 46.05 on "International exchange of information in the field of direct taxes"
PO-46.07	Operational Procedure 46.07 on "Resolving requests for information received from other states"
RON	Romanian Leu, official currency of Romania
SA	Joint Stock Company (*Societate pe acţiuni*)
SCA	Partnership limited by shares *(Societate in comandita pe actiuni)*
SCS	Limited partnership (*Societate in comandita simpla*)
SE	European Company (*Societate europeană*)
SNC	General Partnerships (*Societate in nume colectiv*)
SRL	Limited Liability Company (*Societate cu răspundere limitată*)
TCSP	Trust or Company Service Provider
TIEA	Tax Information Exchange Agreement

Trade Register Law	Law No. 26 of 7 November 1990 on the trade register in force until 25 November 2022, superseded by Law No. 265 of 2022 regarding the trade register and for the modification and completion of other normative acts affecting registration in the trade register, starting from 26 November 2022
USD	United States Dollar
VAT	Value Added Tax

Executive summary

1. This report analyses the implementation of the standard of transparency and exchange of information on request in Romania in the second round of reviews conducted by the Global Forum. It assesses both the legal and regulatory framework in force on 8 December 2023 and the practical implementation of this framework against the 2016 Terms of Reference, including in respect of EOI requests received and sent during the review period from 1 October 2019 to 30 September 2022. This report concludes that Romania continues to be rated overall **Largely Compliant** with the standard. In 2016, the Global Forum evaluated Romania in a Phase 2 review against the 2010 Terms of Reference for the implementation of the legal and regulatory framework in practice. The report of that evaluation (the 2016 Report) concluded that Romania was rated Largely Compliant overall (see Annex 3).

Comparison of ratings for First Round Report and Second Round Report

Element		First Round Report (2016)	Second Round Report (2024)
A.1	Availability of ownership and identity information	Partially Compliant	Partially Compliant
A.2	Availability of accounting information	Compliant	Largely Compliant
A.3	Availability of banking information	Compliant	Largely Compliant
B.1	Access to information	Compliant	Compliant
B.2	Rights and Safeguards	Compliant	Compliant
C.1	EOIR Mechanisms	Compliant	Compliant
C.2	Network of EOIR Mechanisms	Compliant	Compliant
C.3	Confidentiality	Compliant	Compliant
C.4	Rights and safeguards	Compliant	Compliant
C.5	Quality and timeliness of responses	Largely Compliant	Compliant
	OVERALL RATING	**Largely Compliant**	**Largely Compliant**

Note: the four-scale ratings are Compliant, Largely Compliant, Partially Compliant, and Non-Compliant

Progress made since previous review

2. The 2016 Report concluded that the legal and regulatory framework of Romania generally ensured the availability, access and exchange of information. However, certain gaps identified – in the availability of ownership information and the exchange of information – prevented these elements of the standard to be considered as fully implemented.

3. Romania has made significant progress in exchanging information and providing status updates in a timely manner, to address the recommendation made in the previous review (see below).

4. The recommendations made on the availability of legal ownership information have been addressed. Bearer shares are no longer permitted to be issued in Romania. Existing bearer shares were either converted or cancelled. Where the company failed to take either of those actions, the courts have dissolved these non-compliant companies. To address recommendations made in the previous review, legislative amendments have also been introduced to ensure availability with the tax authorities of legal ownership information of foreign companies and partnerships with a place of effective management in Romania.

5. The legal ownership information of joint stock companies and partnerships limited by shares is available with the entities themselves through their register of shareholders/members. Sanctions have now been introduced for non-compliance with the requirement to keep such a register. Actions are expected from Romania to ensure that legal ownership information of these entities continues to be available even when they are declared inactive or cease to exist (see below).

6. Finally, the standard on transparency was strengthened in 2016 to require the availability of beneficial ownership information of legal persons and arrangements. Romania revised its anti-money laundering (AML) framework to set up registers of beneficial owners and introduced corresponding obligations on all actors involved. Certain improvements are required to ensure that beneficial ownership information is available in line with standard (see below).

Key recommendations

7. All key recommendations relate to the availability of information.

8. Generally, the availability of beneficial ownership information is required through the AML framework which sets out the registers of beneficial owners that are populated through the declarations on beneficial owners filed by legal entities and arrangements and the customer due diligence

obligations of AML-obliged persons. Effective supervision and enforcement of the obligations set out in the AML framework needs to be ensured, hence, a recommendation is made in this regard (Elements A.1 and A.3). The legal and beneficial ownership information is also not ensured in the case of nominee arrangements, fiducia and foreign trusts managed in Romania (Element A.1).

9. More specific recommendations relate to particular situations. First, the large proportion of entities that are declared as inactive by the tax authorities poses significant challenges to the availability of ownership and accounting information. Recommendations have been made to review the system and implement appropriate supervision on such entities (Elements A.1 and A.2).

10. The availability of information after entities cease to exist is also not always ensured in Romania. Continued availability of legal ownership information of domestic joint stock companies and partnerships limited by shares is not assured in all cases for five years after they cease to exist (Element A.1). Recommendations have also been made to ensure availability of accounting information for at least five years concerning entities and arrangements that cease to exist as the legislative obligations are unclear and failures were noted in practice (Element A.2).

11. Continued availability of banking records after a bank is liquidated for a period of five years, as required by the standard, is also not assured and a recommendation is issued in this regard (Element A.3).

12. The recommendation on ensuring the availability of accounting information of foreign trusts with Romanian resident administrators or trustees continues as no steps have been taken to address it since the previous review (Element A.2).

Exchange of information in practice

13. Romania's EOI network has expanded with the increased number of jurisdictions participating in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention). Efforts have also been made to align existing bilateral EOI instruments with the standard.

14. Romania has considerable experience in EOI and is considered to be an important partner by its peers. The volume of exchanges has increased in the current review period where Romania received 645 requests and sent 424 requests, as compared to 494 EOI requests received and 176 EOI requests sent in the period under review in the 2016 Report.

Romania's resources and organisational processes have stabilised and allow for timely and quality responses.

15. Significant progress has been observed on the timeliness of exchanges. Romania was able to respond to 83% of the requests within 90 days and 96% within 180 days, as against 54% and 75% respectively, of the requests during the previous review period. Romania has upgraded its rating from Largely Compliant to Compliant on Element C.5.

Overall rating

16. Romania is rated as Partially Compliant on Element A.1, Largely Compliant on Elements A.2 and A.3 and Compliant on all other elements. Romania is therefore rated overall Largely Compliant with the EOIR standard on a global consideration of its compliance with the individual Elements.

17. This report was approved at the Peer Review Group of the Global Forum on 27 February 2024 and was adopted by the Global Forum on 27 March 2024. A follow up report on the steps undertaken by Romania to address the recommendations made in this report should be provided to the Peer Review Group in accordance with the methodology for enhanced monitoring as per the schedule in Annex 2 of the methodology. The first such self-assessment report from Romania will be expected in 2026, and subsequently once every two years.

Summary of determinations, ratings and recommendations

Determinations and ratings	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities (Element A.1)		
The legal and regulatory framework is in place but needs improvement	Non-professional nominee shareholders do not have any obligation to maintain information on the identity of the customer (nominator) and its beneficial owner(s). In general, there is no obligation for a nominee shareholder to disclose its nominee status or the identity of the nominator to the company. Without this disclosure, the company would not know whether the shareholder is a nominee. These two issues can prevent the company from maintaining and reporting accurate information.	Romania is recommended to ensure that nominee shareholders acting as legal owners on behalf of any other persons disclose their nominee status to the company.
	Romanian legal entities and arrangements are required to file declarations on their beneficial ownership to the registers of beneficial owners. However, for fiducia set up before 2019, no transitional provisions were included to require them to file declarations on their beneficial owners.	Romania is recommended to ensure that beneficial ownership information of all fiducia is available in line with the standard.

Determinations and ratings	Factors underlying recommendations	Recommendations
	The Romanian legal framework does not ensure the availability of identity and beneficial ownership information of foreign trusts that are administered in Romania or that have trustees resident in Romania.	Romania is recommended to ensure that identity and beneficial ownership information of foreign trusts administered in Romania or with trustees resident in Romania is available in line with the standard.
EOIR Rating: Partially Compliant	Joint stock companies and partnerships limited by shares must submit their register of shareholders to the National Trade Register Office upon dissolution or liquidation. However, this obligation is not monitored or enforced.	Romania is recommended to ensure that legal ownership information on all companies is always available, in line with the standard, at least for a period of five years after they cease to exist.
	Legal entities may declare economic inactivity to the Trade Register. Tax authorities also designate these economically inactive entities and other entities (under certain conditions) as "inactive" in the tax database. Both categories of inactive entities retain legal personality and may continue to remain in the taxpayer database and on the trade register indefinitely. They are not prohibited from undergoing ownership changes, and some can continue conducting transactions within or outside Romania. They are also not subject to any effective monitoring or supervision. The availability of up-to-date legal ownership information on inactive companies, particularly joint stock companies and partnerships limited by shares is dependent on the availability of the legal representative, who is not obliged to be in Romania.	Romania is recommended to review its system, whereby a number of "inactive" entities remain with legal personality in the tax database and the trade register, and to implement appropriate supervision to ensure that legal and beneficial ownership information on inactive companies and partnerships is always available in line with the standard.

Determinations and ratings	Factors underlying recommendations	Recommendations
	Romania has also introduced an obligation on all companies and partnerships to file beneficial ownership information declarations with the trade register, but it is not known if companies and partnerships that have declared temporary inactivity with the trade register or have been declared inactive by the tax authorities have complied with this obligation. There is a substantial population of inactive legal person taxpayers in Romania (24% of the registered taxpayers) and the availability of legal and beneficial ownership information is not assured for them in all cases.	
	Romanian legal entities and arrangements must file declarations on beneficial owners and notify changes therein with the registers maintained by the respective governing authorities. There is, however, no effective mechanism available for companies to become aware of changes in their beneficial ownership. The requirement for an annual review/update of beneficial ownership information applies only in a small subset of cases, but these are not identified. No action has been taken against entities that have not complied with the filing obligation, nor are any checks performed to verify the accuracy and currency of the beneficial ownership information filed. Reliance is placed on the discrepancy reporting obligation of reporting entities under the anti-money laundering law (AML-obliged persons), but in the absence of a specified frequency of updating beneficial ownership information, the information held by the AML-obliged person may itself not be up to date in all cases. Some non-financial AML-obliged persons test the information submitted by the client against that held	Romania is recommended to put in place a comprehensive supervision and enforcement mechanism to ensure the availability of accurate and up-to-date beneficial ownership information of all legal entities and arrangements in line with the standard in all cases.

Determinations and ratings	Factors underlying recommendations	Recommendations
	in the register of beneficial owners and do not undertake independent due diligence. Also, banks do not always properly identify beneficial owners on the basis of control through means other than ownership. There is also insufficient understanding of "nominee" shareholding. Moreover, deficiencies in the application of customer due diligence (CDD) measures relating to identification of beneficial owners were noted during the supervisory activity on banks and certain non-financial AML-obliged persons. No information is available on the supervision of other non-financial AML-obliged persons.	
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (Element A.2)		
The legal and regulatory framework is in place but needs improvement	The Accounting law does not explicitly require the retention of accounting records and underlying documentation after a legal entity or arrangement ceases to exist in all cases.	Romania is recommended to ensure that accounting information of all relevant legal entities and arrangements is available in line with the standard, including for at least five years after the legal entity or arrangement ceases to exist.
	Romanian law does not include any accounting record keeping obligations for foreign trusts administered by Romania-resident trustees or administrators. Romania-resident administrators or trustees acting in a professional business capacity, being subject to record keeping requirements for the determination of their own income, are required to keep all records necessary for determining whether the trust income is taxable in their hands. Therefore, a trustee resident in Romania would be able to provide the tax authorities with information on the records regarding trusts which relate to their income, however,	Romania is recommended to ensure that accounting records of foreign trusts that are administered by Romania-resident trustees or administrators are available in line with the standard.

Determinations and ratings	Factors underlying recommendations	Recommendations
	these records may not fully reflect the financial position and assets/liabilities of the foreign trust.	
EOIR Rating: Largely Compliant	Romania has a large proportion (24%) of legal person taxpayers, most of which have been declared as "inactive" by the tax authorities due to non-compliance with filing obligations. Such inactive taxpayers retain legal personality and are not prohibited from carrying out commercial activity and holding assets either inside or outside Romania. There is no effective monitoring mechanism to ensure that inactive taxpayers comply with their statutory obligations. Furthermore, an inactive taxpayer can retain the status of "inactive" indefinitely, without being de-registered from the taxpayer database or the trade register. During the review period, Romania failed to provide accounting information in respect of a taxpayer which had continued to operate outside Romania despite having been declared inactive by the tax authorities.	Romania is recommended to review its system, whereby a number of "inactive" entities remain with legal personality in the tax database and the trade register, and to implement appropriate supervision to ensure that accounting information of inactive companies and partnerships is available in line with the standard.
Banking information and beneficial ownership information should be available for all account-holders (Element A.3)		
The legal and regulatory framework is in place, but certain aspects of the legal implementation of the element need improvement	Due to conflicting legal provisions, it is not clear whether after liquidation due to bankruptcy of a bank, the banking information would be archived with the National Archives, with a private archival service provider or at all. It is also not clear if all customer information, including underlying documentation collected as part of the customer due diligence process, would also be archived. Moreover, the period for which the banking records must be retained is not stipulated in law.	Romania is recommended to ensure that banking information is retained in line with the standard, including for at least five years after a bank ceases to exist or a foreign bank ceases operations in Romania.
	Besides bankruptcy, other scenarios leading to liquidation of a bank, re-organisation of a bank, or the cessation of banking operations in Romania by foreign banks are not envisaged in the legal provisions for retention of banking information.	

Determinations and ratings	Factors underlying recommendations	Recommendations
EOIR Rating Largely Compliant	The bank representatives displayed a general understanding of the concept of beneficial ownership and related obligations under the anti-money laundering law (AML Law). However, it was explained that they do not identify beneficial owners of companies on the basis of control through "other means" as it cannot always be demonstrated through supporting documents. Therefore, in cases where no natural person can be identified as the beneficial owner on the basis of control over more than 25% of the shares, the senior management personnel are identified as the beneficial owners. The AML Law lists companies that have nominee shareholders as bearing potentially increased risk and requires AML-obliged persons to undertake additional customer due diligence measures in such cases, but they are unfamiliar with the concept of "nominee". The supervisory activity has also identified deficiencies in the application of CDD measures in some cases.	Romania is recommended to strengthen its supervision and enforcement to secure the availability of beneficial ownership information of bank accounts in line with the standard in all cases.
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) (Element B.1)		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (Element B.2)		
The legal and regulatory framework is in place		
EOIR Rating Compliant		

Determinations and ratings	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should provide for effective exchange of information (Element C.1)		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (Element C.2)		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (Element C.3)		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (Element C.4)		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner (Element C.5)		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
EOIR Rating Compliant		

Overview of Romania

18. This overview provides some basic information about Romania that serves as context for understanding the analysis in the main body of the report.

19. Romania is a semi-presidential republic in Europe, bordering Bulgaria, Hungary, Moldova, Serbia, Ukraine as well as the Black Sea, with a population of 19 million (approx.) as of 1 January 2022.[1] It is divided into 41 counties and the municipality of Bucharest, which also serves as the capital. Romania is a member of the European Union (EU) since 1 January 2007.

20. Romania is a high-income economy and had a Gross Domestic Product (GDP) of USD 301.26 billion and a per capita GDP of USD 15 892, in 2022.[2] The most important sectors of the economy were industry (21.7%), wholesale and retail trade, transport, accommodation and food services (19.7%) and public administration, defence, education, human health and social work activities (16.5%). The official currency is Romanian Leu (RON).[3]

Legal system

21. In Romania, the President is the head of state, and the Prime Minister is the head of government. Each county is administered by a county council, responsible for local affairs, and a prefect responsible for administering national affairs at county level.

22. Romanian legal system is based on civil law. The Constitution and constitutional amendment laws form the apex of the hierarchy of legal norms. International agreements are ratified by the Parliament and become

1. Source: https://european-union.europa.eu/principles-countries-history/key-facts-and-figures/life-eu_en (accessed on 28 June 2023).
2. Source: Romania | Data (worldbank.org): https://data.worldbank.org/country/romania (accessed on 1 August 2023).
3. EUR 1=RON 4.9604 as on 28 June 2023 (Source: Romanian leu (RON) (europa.eu): https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-ron.en.html).

a part of the domestic law. In case of a conflict, international tax agreements would have precedence over the domestic tax law.

23. The principles, structure and organisation of the Romanian judicial system are laid down in the Romanian Constitution and in Law 304/2004 on judicial organisation. Romania has a hierarchical judicial system. The High Court of Cassation and Justice functions as the Supreme Court and has courts of appeal, tribunals, specialised courts and district courts subordinate to it. Tax matters are handled by special divisions organised in the courts at all levels.

Tax system

24. Taxes in Romania are governed by the Fiscal Code and the Fiscal Procedure Code (FPC). The tax system includes both direct taxation (corporate income tax, simplified tax regime for micro-enterprises, personal income tax, taxation of non-residents, mandatory social security contributions, local taxes and fees) and indirect taxation (goods and services tax and excise duties).

25. All entities other than fiducia are required to register with the tax administration for tax purposes while all fiducia are required to register with the tax administration for record purposes (see paragraph 188 et seq.). Tax registration is carried out by the National Agency for Fiscal Administration (NAFA) on the basis of a tax registration statement and entails the assignment of a fiscal identification code, and the issuance of a fiscal registration certificate. A tax registration statement must be submitted within 30 days from: a) the date of establishment according to Law No. 182 of 17 October 2016 regarding the conduct of economic activities by authorised natural persons, individual businesses and family businesses; b) the date of establishment in Romania of foreign legal entities that have their place of effective management in Romania; c) the date of the start of the activity for natural persons who carry out economic activities independently or exercise a profession, except for those who are registered in the trade register; d) the date of obtaining the first income or acquiring the status of employer, as the case may be, in the case of natural persons, other than those mentioned in c); or e) the date of obtaining the first income, in the case of non-resident natural and legal persons who do not have a permanent establishment or a representative office in Romania (Article 82, FPC).

26. Individuals resident in Romania are taxed on their worldwide income. Income from self-employment, intellectual property rights; wages and salary equivalents, rental income, investments, pensions, agricultural, forestry and fish farming activities, prizes and other sources are subject to tax at a rate of 10%.

27. Romanian legal entities, legal persons established under European law and having their registered office in Romania, and foreign legal entities with their place of effective management[4] in Romania are considered to be resident in Romania and are taxable on their worldwide income (Article 7(37), Fiscal Code). A corporation tax rate of 16% is applied to taxable profit of all Romanian resident legal entities. All dividend distributions are taxed at a rate of 8%.

28. There are six free zones located in the customs territory of Romania, namely Constanţa, Brăila, Galati, Sulina, Giurgiu and Curtici-Arad.[5] The customs procedures applicable to these free zones have been laid down through the Order of the President of NAFA No. 2759/2016. The registration and accounting record-keeping requirements for companies operating in the free zones are the same as for companies operating in the rest of Romania (see sections A.1 and A.2 for further details).

Financial services sector

29. The banking sector forms the most significant part of the Romanian financial services sector and caters mainly to domestic customers. As of June 2023, there were 34 credit institutions[6] operating in Romania with a total asset value of RON 679.3 billion (EUR 136.9 billion), which formed 48.09% of Romania's GDP.

30. Foreign banks authorised and supervised in an EU Member State may operate in Romania through a subsidiary (Romanian legal person), or through a branch or remotely on the basis of the EU passporting system.[7].

4. "Place of effective management" is defined as the place where, unless otherwise demonstrated, the foreign legal person carries out operations which correspond to economic, real and substantive purposes and where at least one of the following conditions is met: a) the economic-strategic decisions necessary to direct the activity of the foreign legal person as a whole are taken in Romania by the executive directors/members of the board of directors; or b) at least 50% of the executive directors/members of the foreign legal person's board of directors are resident (Article 7, FPC).
5. The establishment and territorial delimitation of free zones in Romania as well as the regulation on the organisation, operation, exploitation, administration and control of the free zone is governed by Law no. 84/1992 on the regime free zones, amended and supplemented by Law no. 244/2004.
6. This included 33 banks (commercial banks, savings banks and branch offices of foreign banks) and 1 credit co-operative network.
7. The EU passporting system for banks and financial services companies enables firms that are authorised in any State within the EU or the European Economic Area to trade freely in any other with minimal additional authorisation. These passports are the foundation of the EU single market for financial services.

Foreign banks from other jurisdictions must establish a Romanian subsidiary or a branch and obtain a licence for providing banking services in Romania.

31. The National Bank of Romania (NBR) is the central bank and the competent authority for the licensing and supervision of credit institutions, payments institutions and electronic money institutions, and monitors the activity of non-banking financial institutions.

32. The Financial Supervisory Authority is the supervisory authority for the capital market comprising securities market, investment funds, insurance and reinsurance and pension funds.

Anti-money laundering framework

33. Romania overhauled its anti-money laundering (AML) framework in 2019 with the enactment of Law No. 129 of 11 July 2019 on preventing and combating money laundering and terrorist financing (AML Law), which became effective on 21 July 2019. It amended the anti-money laundering provisions existing at the time by transposing into Romanian law provisions of Directive (EU) 2015/849 and Directive (EU) 2018/843 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (commonly referred to as the EU 4th and 5th AML Directives, respectively).

34. Obligations under the AML Law apply to "reporting entities" (referred to as "AML-obliged persons" in this report), which include credit institutions, financial institutions, auditors, accountants and tax advisors, notaries, lawyers and other independent legal professionals, when they assist in formation, operation or administration of a legal entity/arrangement or when they assist, including when they participate on behalf of the client, in property or financial transactions, and Trust or Corporate Service Providers providing services other than those mentioned before (Article 5).

35. The National Office for the Prevention and Control of Money Laundering (NOPCML) is the financial intelligence unit of Romania which receives, analyses and processes financial information. The NOPCML supervises compliance with the provisions of the AML framework by certain non-bank financial institutions and other AML-obliged persons not otherwise supervised. It also co-ordinates with other self-regulatory bodies, like the National Union of Romanian Bar Associations, for the supervision of their members. NBR is the AML supervisor for domestic and foreign credit institutions, payment institutions, electronic money institutions and certain non-banking financial institutions operating in Romania.

36. Romania is a member of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

The Fifth Round Mutual Evaluation Report of Romania was adopted in May 2023. Romania is rated Partially Compliant on Recommendation 22 (Designated Non-Financial Businesses and Professions: Customer Due Diligence) and Recommendation 24 (Transparency and Beneficial Ownership of Legal Persons) and Largely Compliant on Recommendation 10 (Customer Due Diligence) and Recommendation 25 (Transparency and Beneficial Ownership of Legal Arrangements), with a moderate level of effectiveness on Immediate Outcome 5 (Legal Persons and Arrangements).[8]

Recent developments

37. The main development in Romania's legal and regulatory framework since the 2016 Report is the enactment of Law No. 129 of 11 July 2019 on preventing and combating money laundering and terrorist financing (AML Law) which prohibited the issuance of bearer shares, formalised obligations relating to maintenance of beneficial ownership information by legal entities and arrangements and set up registers of beneficial ownership information.

38. Amendments made to the Fiscal Code introduced tax registration requirements for foreign companies and partnerships with their place of effective management in Romania with effect from 1 January 2021, for ensuring availability of legal ownership information of such legal entities.

39. In November 2022, Romania introduced Law No. 265/2022 on the trade register which superseded the existing legislation, *inter alia*, to transpose into national law Directives (EU) no. 1132/2017 and no. 1151/2019 regarding the use of digital tools and processes. It formalises the procedure for setting up companies through the online platform set up during the pandemic and the issuance of electronic registration certificates; introduces a central electronic platform for publication of documents and sets up new benchmarks regarding the system of interconnection of business registers of the EU Member States. This law also introduces corresponding amendments in the Romanian Company Law, along with other amendments which *inter alia* relate to removing the requirement for payment of share capital before a company's incorporation, and new/increased sanctions for certain failures including failure to keep a shareholders' registry and failure to submit the report on the economic situation of the company within 60 days of the liquidator's appointment.

40. These developments are discussed under relevant sections of this report.

8. Mutual Evaluation of Romania (fatf-gafi.org): https://www.fatf-gafi.org/en/publications/Mutualevaluations/MER-Romania-2023.html.

Part A: Availability of information

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

A.1. Legal and beneficial ownership and identity information

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

42. The 2016 Report noted that up-to-date ownership information on limited liability companies and partnerships was available with the trade register, and in respect of joint stock companies and partnerships limited by shares at the level of the entity. However, certain gaps in the legal and regulatory framework resulted in Romania being rated as Partially Compliant with Element A.1 of the standard.

43. Most importantly, joint stock companies and partnerships limited by shares could issue bearer shares but information on the holder of bearer shares was not available in all cases. Therefore, a recommendation was made to introduce mechanisms enabling their identification. This recommendation has since been addressed in view of the legislative and enforcement actions taken by Romania. Bearer shares are no longer permitted to be issued. Existing bearer shares were either converted or cancelled. Where the company failed to take either of those actions, the courts have dissolved the non-compliant companies.

44. During the previous review, while specific mechanisms were in place to ensure compliance by companies, no direct sanctions were applicable to joint stock companies and partnerships limited by shares which failed to maintain a register of their shareholders/members. The recommendation made to put in place appropriate enforcement measures in this regard has now been addressed through the introduction of appropriate sanctions.

45. Finally, the previous review noted that ownership information of foreign entities operating in Romania was not assured in all cases. Romania was recommended to ensure availability of ownership information of foreign companies and partnerships having their place of effective management in Romania in all cases. Romania now requires them to register with the tax administration and provide legal ownership information at the time of registration. Changes in legal ownership must also be notified to the tax administration.

46. This report notes concerns regarding the continued availability of legal ownership information, in line with the standard, when a company ceases to exist, in particular, a joint stock company or a partnership limited by shares.

47. Non-professional nominee shareholders are not covered by any obligation to maintain identity and beneficial ownership information of the nominator. Nominees, in general, are not required to disclose their nominee status or the identity of the nominator to the company. Without this disclosure, the company would not know whether the shareholder is a nominee, and the availability of accurate information may be compromised.

48. The standard now requires the availability of beneficial ownership information. In Romania, this requirement is met through Law No. 129 of 11 July 2019 on preventing and combating money laundering and terrorist financing, as subsequently amended and supplemented (AML Law), that sets out the definition and method of identification of beneficial owners of legal entities and arrangements.

49. The AML Law requires AML-obliged persons to gather beneficial ownership information as part of the customer due diligence (CDD) measures. It also requires legal entities and arrangements to identify their beneficial owners and submit a declaration in this regard to the register of beneficial owners maintained, since 2019, by the National Trade Register Office (for companies and partnerships), the Ministry of Justice (for associations, foundations and federations) and the National Agency for Fiscal Administration (for fiducia and similar legal arrangements). Romanian fiducia set up before 2019, however, are not covered by the requirement to file declarations on beneficial ownership. The availability of identity and beneficial ownership information of foreign trusts that are administered in Romania or have Romania-resident trustees is also not ensured.

50. The large proportion of taxpayers that have declared temporary economic inactivity or have been declared as inactive (under certain conditions) by the tax authorities also pose a challenge to the availability of legal and beneficial ownership information. For inactive taxpayers that are joint stock companies and partnerships limited by shares, reliance is laid on the legal representative for continued availability of the register of shareholders but the legal representative itself is not required to be in Romania. The

compliance of such inactive taxpayers with obligations related to declaration of beneficial ownership information is also unknown.

51. There is need for a comprehensive supervision and enforcement mechanism for ensuring the availability of accurate and up-to-date beneficial ownership information of all relevant legal entities and arrangements. Companies are required to maintain up-to-date beneficial ownership information but there is no effective mechanism available for companies to become aware of changes in their beneficial ownership and there is no periodic review/update of information, except in a small subset of cases. No checks are performed to verify if the beneficial ownership information filed is accurate or has been updated in a timely manner. No action has been taken against non-compliant entities. The only verification mechanism is the discrepancy reporting obligation of AML-obliged persons. However, non-financial AML-obliged persons were seen to test the information submitted by the client against that held in the register of beneficial owners and not undertake any independent due diligence. Gaps are also noted in the practices adopted by banks with respect to identification of beneficial owners on the basis of control through other means. The supervisory authorities have also identified deficiencies in the application of CDD measures.

52. During the review period, Romania received 373 requests for legal and beneficial ownership information, primarily in respect of companies. The peers were satisfied with the responses provided by Romania.

53. The conclusions are as follows:[9]

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement.

Deficiencies identified/Underlying factor	Recommendations
Non-professional nominee shareholders do not have any obligation to maintain information on the identity of the customer (nominator) and its beneficial owner(s). In general, there is no obligation for a nominee shareholder to disclose its nominee status or the identity of the nominator to the company. Without this disclosure, the company would not know whether the shareholder is a nominee. These two issues can prevent the company from maintaining and reporting accurate information.	Romania is recommended to ensure that nominee shareholders acting as legal owners on behalf of any other persons disclose their nominee status to the company.

9. The tables of determinations and ratings shown in this report display changes made compared to the previous published report. On publication, the box will display as a clean version.

Deficiencies identified/Underlying factor	Recommendations
Romanian legal entities and arrangements are required to file declarations on their beneficial ownership to the registers of beneficial owners. However, for fiducia set up before 2019, no transitional provisions were included to require them to file declarations on their beneficial owners.	Romania is recommended to ensure that beneficial ownership information of all fiducia is available in line with the standard.
The Romanian legal framework does not ensure the availability of identity and beneficial ownership information of foreign trusts that are administered in Romania or that have trustees resident in Romania.	Romania is recommended to ensure that identity and beneficial ownership information of foreign trusts administered in Romania or with trustees resident in Romania is available in line with the standard.

Practical Implementation of the Standard: Partially Compliant

Deficiencies identified/Underlying factor	Recommendations
Joint stock companies and partnerships limited by shares must submit their register of shareholders to the National Trade Register Office upon dissolution or liquidation. However, this obligation is not monitored or enforced.	Romania is recommended to ensure that legal ownership information on all companies is always available in line with the standard, at least for a period of five years after they cease to exist.
Legal entities may declare economic inactivity to the Trade Register. Tax authorities also designate these economically inactive entities and other entities (under certain conditions) as "inactive" in the tax database. Both categories of inactive entities retain legal personality and may continue to remain in the taxpayer database and on the trade register indefinitely. They are not prohibited from undergoing ownership changes, and some can continue conducting transactions within or outside Romania. They are also not subject to any effective monitoring or supervision. The availability of up-to-date legal ownership information on inactive companies, particularly joint stock companies and partnerships limited by shares is dependent on the availability of the legal representative, who is not obliged to be in Romania. Romania has also introduced an obligation on all companies and partnerships to file beneficial ownership information	Romania is recommended to review its system, whereby a number of "inactive" entities remain with legal personality in the tax database and the trade register and to implement appropriate supervision to ensure that legal and beneficial ownership information on inactive companies and partnerships is always available in line with the standard.

Deficiencies identified/Underlying factor	Recommendations
declarations with the trade register, but it is not known if companies and partnerships that have declared temporary inactivity with the trade register or have been declared inactive by the tax authorities have complied with this obligation. There is a substantial population of inactive legal person taxpayers in Romania (24% of the registered taxpayers) and the availability of legal and beneficial ownership information is not assured for them in all cases.	
Romanian legal entities and arrangements must file declarations on beneficial owners and notify changes therein with the registers maintained by the respective governing authorities. There is, however, no effective mechanism available for companies to become aware of changes in their beneficial ownership. The requirement for an annual review/update of beneficial ownership information applies only in a small subset of cases, but these are not identified. No action has been taken against entities that have not complied with the filing obligation nor are any checks performed to verify the accuracy and currency of the beneficial ownership information filed. Reliance is placed on the discrepancy reporting obligation of reporting entities under the anti-money laundering law (AML-obliged persons), but in the absence of a specified frequency of updating beneficial ownership information, the information held by the AML-obliged person may itself not be up to date in all cases. Some non-financial AML-obliged persons test the information submitted by the client against that held in the register of beneficial owners and do not undertake independent due diligence. Also, banks do not always properly identify beneficial owners on the basis of control through means other than ownership. There is also insufficient understanding of "nominee" shareholding. Moreover, deficiencies in the application of customer due diligence (CDD) measures relating to identification of beneficial owners were noted during the supervisory activity on banks and certain non-financial AML-obliged persons. No information is available on the supervision of other non-financial AML-obliged persons.	Romania is recommended to put in place a comprehensive supervision and enforcement mechanism to ensure the availability of accurate and up-to-date beneficial ownership information of all legal entities and arrangements in line with the standard in all cases.

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

54. The types of companies that can be incorporated in Romania and their incorporation procedures remain the same as described in the 2016 Report (paragraphs 47 et seq.).

Types of companies

55. Companies in Romania are governed by Law No. 31 of 16 November 1990 on Companies (Company Law). Article 2 allows the following types of companies, all with legal personality, to be set up for carrying out activities for profit purposes:[10]

- **Limited Liability Company** (*Societate cu răspundere limitată*) (SRL) must have between 1 and 50 members. Since November 2020, there are no minimum capital or minimum share value requirements, except that the share capital must be divided into equal shares. The liability of each member is limited to the value of the subscribed capital. It is the most preferred type of company. As on 20 June 2023, there were 1 354 216 SRLs registered in Romania.
- **Joint Stock Company** (*Societate pe acţiuni*) (SA) has at least two shareholders and a minimum capital of the RON equivalent of EUR 25 000, which is divided into registered shares of equal value of at least RON 0.1 (EUR 0.02). They are usually larger than SRLs. The liability of the shareholders is limited to the value of the subscribed capital. SAs' system of management may be unitary (through an authorised director) or dualist (consisting of a board of directors and a supervisory board). As on 20 June 2023, there were 10 076 SAs registered in Romania.
- **Partnership limited by shares** *(Societate in comandita pe actiuni)* (SCA) is a hybrid structure between a partnership and a joint stock company, formed by one or more managing (active) partners, who are indefinitely and jointly liable, and limited (silent/ sleeping) partners who are shareholders and liable only up to the amount of their contributions. The rules applicable to SAs, including the minimum number of shareholders and the minimum capital contribution, also apply to SCAs, except those related to a dualist system of management. As on 20 June 2023, there were 3 SCAs registered in Romania.

10. Partnerships are also treated as companies and governed by the company law framework. Notwithstanding the above, due to certain formal and structural differences (as in the 2016 Report), they are discussed under Element A.1.3.

- **European company** (*Societas Europaea*) (SE) is governed by the European Commission's Regulation No. 2157/2001 on the Statute for a European Company, in addition to Company Law. An SE can only be established as an SA by at least two companies originating in different countries of the European Economic Area through merger, conversion or establishment of a holding/subsidiary company. It must have a minimum capital of the RON equivalent of EUR 120 000. All other rules relating to SAs in Romania apply to SEs with their head office in Romania (Article 270^{2a}, Company Law).[11] As on 20 June 2023, there were 6 SEs registered in Romania.

56. Companies are constituted through a memorandum and/or articles of association (singly/ together referred to as the constitutive act). The constitutive act must include *inter alia* the identification details of the shareholders (of an SRL)/ founders (of an SA)[12]/ active and limited partners (of an SCA) along with the number and value of shares held, details of the registered office, the company's object of activity, and the term and method of dissolution or liquidation (Articles 5 to 8, Company Law). For SAs and SCAs, the constitutive act also includes identification details of the first board of directors or supervisory board, powers conferred to the directors and the method of management, administration, functioning and control of administration of the company by the statutory bodies. The identification details mentioned above include a) for natural persons: full name, personal number code for Romanian nationals (or its equivalent for foreign nationals), place and date of birth, domicile and citizenship; b) for legal persons: name, head office, nationality, registration number with the trade registry for Romanian entities (or the equivalent registration number of a foreign entity) (Article 8^1, Company Law).

57. Romanian Company Law does not envisage re-domiciliation of foreign companies in Romania or of Romanian companies outside Romania.

11. As per Romania's numbering convention, when an article is added between two pre-existing articles, a numerical is added in superscript. For example, if new articles are added between pre-existing articles 2 and 3, the new articles would be numbered as 2^1, 2^2, 2^3 in sequential order. 2^1 may also be written as 2^1.

12. The signatories of the constitutive act as well as the persons with a decisive role in the setting up of the company are considered as founders (Article 6(1), Company Law). This does not necessarily amount to the initial shareholders when the shares are offered to the public.

Legal ownership and identity information requirements

58. The legal ownership and identity requirements for Romanian companies are found mainly in the Company Law. Up-to-date legal ownership information of SRLs is available with the central Trade Register. For SAs and SCAs, up-to-date legal ownership information is available in the register of shareholders maintained by the companies themselves. For foreign companies with their place of effective management in Romania, such information is required to be available with the tax authorities. The obligations under the anti-money laundering framework do not ensure availability of legal ownership information of all relevant entities in line with the standard. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

Companies covered by legislation regulating legal ownership information[13]

Type	Company Law	Tax Law	AML Law
SRLs	All	None	Some
SCAs	All	None	Some
Sas	All	None	Some
Foreign companies (tax resident)	None	All	Some

Company Law requirements on ownership information

59. Law No. 26 of 7 November 1990 on the trade register in force until 25 November 2022, was superseded by Law No. 265 of 2022 regarding the trade register and for the modification and completion of other normative acts affecting registration in the trade register, starting from 26 November 2022 (Trade Register Law).

60. Trade registers have been organised in each of the 41 counties and in the municipality of Bucharest at the offices of the National Trade Register Office (NTRO), which is a public institution subordinated to the Ministry of Justice. All information in the county-level trade registers is publicly available and duplicated in the central Trade Register maintained at the headquarters of NTRO in Bucharest.

61. Within 15 days of the conclusion of the constitutive act and before commencing economic activity, all types of companies must register, for

13. The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" means that the legislation, whether it meets the standard or not, contains requirements on the availability of ownership information for every entity of this type. "Some" means that an entity will be covered by these requirements if certain conditions are met.

incorporation, with the trade register in the county where the company's headquarters is to be located (Article 36, Company Law). The registration procedure is the same for all legal persons.

62. For registration, a company must submit, among other things, its constitutive act, containing identification details of the shareholders (of an SRL), founders (of an SA) and active and sleeping partners (of an SCA) along with the number and value of shares held. Thus, information on the first set of legal owners is available with the trade register.

63. The application for registration must contain information on the legal representative(s) (viz. full name, date and place of birth, personal identification number, nationality and address) who are authorised to represent the company before third parties and in legal proceedings. The legal representatives also sign the application for registration and are responsible for the legality, authenticity and accuracy of the information therein. Unless declared as legal representatives with the Trade Register, directors or the Board of Management of the company would not be considered as legal representatives. As of January 2024, 1 615 995 legal representatives are registered with the Trade Register.

64. Additionally, a copy of the document certifying the right of use over the space intended for corporate headquarters, proof of availability check and reservation of company name, and a tax registration form are submitted as part of the application for registration. Any change in the headquarters of the company is required to be notified to the trade register. SEs are additionally required to submit documents relating to the existence and financial health of the companies involved (from other countries in the European Economic Area), and documents relating to the mode of creation of the SE (see paragraph 55). The documents may be submitted by hand, by post or electronically.

65. The registrar reviews the application form for completeness and must decide on the registration request within one working day of the submission of the request (Article 105, Trade Register Law).[14] In case any documents are found missing, the registrar may grant an additional 15 days to the applicant for rectifying the deficiency.

66. Once registration in the trade register is approved, the trade register forwards the attached tax registration form (see paragraph 63) to the National Agency for Fiscal Administration (NAFA) for registration for tax purposes. The final registration certificate issued contains both the trade

14. Law 265/2022 superseded Law 26/1990 on the trade register and shifted the power to decide on the registration request of a company from a delegated judge to the registrar.

register registration number and the tax identification number. An extract of the resolution containing the details of registration (registration number, tax identification number, names and addresses of founders and directors, etc.) must be published in the Official Gazette of Romania within 21 working days from when the registration form was submitted. For SEs, within 30 days of registration, the NTRO also notifies the Official Journal of the European Union regarding the registration.

67. SRLs, SCAs and SAs must maintain a register of shareholders including the following details in respect of each shareholder: full name, personal code number or registration number, denomination, place of residence or registered office, and subscribed capital (Articles 177 and 198, Company Law). The directors of an SRL and the board of directors of an SA/SCA are responsible for compliance with this obligation.

68. Any transfer of shares must be recorded in the register of shareholders of the company (Articles 98 and 203, Company Law).

69. The transfer of shares of an SRL must also be registered with the trade register (Article 203, Company Law). There are no corresponding sanctions for non-compliance, however, as the shareholding enters into effect with respect to third parties only upon registration in the trade register, it functions as a self-executing mechanism. As a result, updated legal ownership information is available in the trade register in respect of SRLs.

70. All applications for registration (including for registering changes in ownership), along with the supporting documents and certificate of registration and the documents on the basis of which entries are made in the trade register, are retained by the trade register in electronic form (after conversion, where the documents were filed in physical format) and kept permanently.

71. The transfer of shares of an SA or a SCA is not required to be registered with the trade register but is valid only through a recording in the register of shareholders with the signature of the assignor and the assignee or by their proxies. Thus, updated legal ownership information of SAs and SCAs is available in the register of shareholders maintained by the companies themselves.

72. Companies listed on the stock exchange (which are 84 as of November 2023) are obliged to register their shareholder information with the Central Depository for securities settlement. Unlisted companies may also choose to keep their shareholder information with the Central Depository, but no statistics are available in this regard.

Status of companies in the Trade Register

73. The Trade Register reflects the current status of all registered companies. Where a company discontinues economic activity, it must register its "temporary inactivity" with the trade register. The temporarily inactive status can be maintained for a maximum period of three years (also see paragraph 91), during which the temporarily inactive companies are not permitted to continue economic activity and may be liable to sanctions if found to be in violation of this provision. They may also seek a specific exemption for some interim reporting (the obligation to file an annual tax return remains). Upon resumption of economic activity, the company must notify the trade register to update its status. As of June 2023, 95 091 SRLs and 157 SAs had notified their temporary inactivity to the Trade Register.[15]

74. Romanian authorities advised that temporarily inactive companies may undertake ownership changes and remain liable to obligations relating to maintenance, updating and reporting (as applicable) of legal ownership information as described in the previous section.

Companies that ceased to exist

75. Companies may cease to exist through dissolution. A company may be dissolved due to, among other reasons, expiry of the term of the company; impossibility to carry out or fulfil the company's object of activity; a decision of the general meeting; a court decision, upon the reasoned request of a shareholder; or bankruptcy (Article 227, Company Law). The dissolution of companies must be registered with the trade register and published in the Official Gazette of Romania (Article 232, Company Law). The dissolution triggers liquidation proceedings, unless the dissolution is consequent to a merger, a division, or is not required/followed (Article 233, Company Law).[16]

76. Where a company is under liquidation, this status is also notified to the trade register. Upon completion of the liquidation process, a request must be filed for striking the company off from the trade register.

77. The legislation requires that legal ownership information be available with the trade register after a company ceases to exist (in any manner).

15. These respectively form 7% and 1.5% of the total SRLs and SAs registered on the Trade Register.

16. Romanian authorities explained that a formal liquidation process with the appointment of a liquidator would not be required a) when the majority of the shareholders agree on the distribution of assets and ensure that the liabilities to the creditors have been extinguished or regularised, and b) when the company is deleted from the Trade Register for not appointing a liquidator within the specified time limit.

In respect of SRLs that cease to exist, the legal ownership information would continue to be available with the trade register. On the other hand, upon liquidation, the register of shareholders of SAs and SCAs must be submitted to the trade register, where it will be kept for a period of five years (Article 261, Company Law).

78. Compliance with the obligation to transfer the register of shareholders to the trade register is not established. As per the data available with the NTRO, 18 SAs were dissolved by court action and 13 SAs were liquidated during the review period but only 9 SAs fulfilled the requirement to transfer the register of shareholders to the trade register. There is also no systematic monitoring or enforcement of this obligation. Thus, it remains uncertain if legal ownership information of SAs and SCAs would be available in all cases even after they cease to exist. **Romania is recommended to ensure that legal ownership information on all companies is always available in line with the standard, at least for a period of five years after they cease to exist**.

Tax law

79. Romanian tax law does not require domestic companies to submit any legal ownership information. The information held by the central Trade Register is directly accessible by NAFA pursuant to two Co-operation Protocols concluded between NTRO and NAFA in 2006 and 2010.

Foreign Companies

80. Branches of foreign companies are permitted to be set up in Romania (Article 44, Company Law). They are required to register with the county trade register (Article 24, Trade Register Law). The application form must include *inter alia* the name of the foreign company, its legal form, the registration number in the country of incorporation, constitution documents of the foreign company, address of the registered office and object of activity of the branch. During the current review period, 316 branches of foreign companies were registered in Romania.

81. The 2016 Report recommended Romania to require foreign companies and foreign partnerships with legal personality having their place of effective management in Romania to maintain information on their ownership in all cases. To address this recommendation, Romania now requires foreign legal persons with a place of effective management in Romania to register with NAFA for tax purposes and submit details of shareholding.

82. As of 1 January 2021, Law No. 227/2015 on the Fiscal Code provides that a foreign company may register as having or be determined to have its place of effective management in Romania (Article 8^{1}, Fiscal Code) (also see

paragraph 27). Foreign companies with their place of effective management in Romania were required to register this status with the tax authorities within six months of the enactment of this provision.

83. For demonstrating that its place of effective management is in Romania, the foreign company is required to submit copies of its constitution documents, proof of incorporation, details of shareholding and the decision of the shareholders/associates/founders/members of the board of directors/ executive directors of the foreign legal person regarding the establishment of the place of effective management in Romania.

84. Once a foreign company is determined to have a sufficient nexus with Romania, it must register with the tax authorities within 30 days of such determination and it becomes subject to the obligations relating to keeping the minutes of meetings of the board of directors/shareholders, maintaining and keeping accounting records in Romania, and maintaining its residence in Romania for a period of at least one fiscal year (Article 8^1, Fiscal Code). Any subsequent changes in the shareholding are required to be notified to NAFA within 45 days.

85. Where a foreign company determined to have its place of effective management in Romania fails to register with the tax administration or report changes in the ownership information within the stipulated timelines, it may be liable to the fine for non-submission of tax registration within the stipulated time lines that ranges from RON 1 000 to RON 5 000 (EUR 201 to EUR 1008) for legal persons classified as medium-sized and large taxpayers and from RON 500 and RON 1 000 (EUR 100 to EUR 201) for other legal persons (Article 336, Fiscal Procedure Code).

86. Since the introduction of this provision, 14 foreign companies have registered as having their place of effective management in Romania. These included 11 foreign companies which were already existing in Romania. Two foreign companies were determined to have their place of effective management in Romania following a tax audit.

87. The compliance with the obligation to report changes in ownership information is not monitored and there was no information available on whether these companies have updated their legal ownership information within the stipulated timelines. Romania should monitor compliance of foreign companies with a place of effective management in Romania with the obligation to report changes in legal ownership information in a timely manner to the tax authorities (see Annex 1).

Anti-money laundering law requirements

88. Under AML Law, AML-obliged persons are required to apply CDD measures prior to establishing a business relationship, executing an occasional transaction or where there are doubts about the veracity of the recorded information, in order to obtain identity and beneficial ownership information of customers, obtain information on the purpose and intended nature of the business relationship or occasional transaction, and take reasonable measures to understand the ownership and control structure of the customer. The requirement to understand the ownership and control structure of the customer also does not ensure availability of full legal ownership information on the customer in all cases.

89. As AML-obliged persons have to identify all the beneficial ownership of their customers, availability of complete legal ownership information is assured in cases where the legal owners correspond with beneficial owners, however, it may be less likely where the shareholding is diversified. Hence, the AML framework is not considered a reliable source of legal ownership information in all cases. The AML framework, being more relevant to availability of beneficial ownership information, is discussed comprehensively under that section (see paragraph 113 et seq.)

Implementation, enforcement measures and limited oversight of the registrar

90. The NTRO functions as a single portal for incorporation and tax registration for companies. NTRO's website lists the documents required for each type of company as provided by the governing law. The period under review saw fresh registrations of 293 646 SRLs, 309 SAs and 1 SCA with the trade registers.

91. Trade Register Law foresees a limited supervisory role for the NTRO. With effect from 26 November 2022, the Company Law (Article 237²) entrusts the NTRO with the responsibility to determine if a company may be subject to dissolution due to:

a. non-resumption of economic activity after three years of suspension (see paragraphs 73 and 74)

b. expiration of the document certifying the right of use over the space intended for the registered office or the transfer of its right of use or ownership

c. expiration of the fixed term company as mentioned in the constitutive act.

92. During the on-site visit, it was informed that the NTRO performs checks (some of which are automated) to verify if any company falls into any of the aforementioned conditions. If any of the circumstances mentioned in the previous paragraph comes to pass, a corresponding entry is made against the name of the company in the database. The lists of defaulting companies are formed at the level of the county trade registers. In accordance with the Company Law (Articles 237 and Article 237²), the list of defaulting companies is now also circulated through the electronic bulletin of the trade register (during the review period, the lists were displayed on NTRO's website or on the service portal) and also transmitted to NAFA. If corrective action is not taken within 15 days, the NTRO would conclude that the conditions for de-registration are met. This would be notified on the trade register and communicated to the company and NAFA. The company has a period of 15 days to complain against the notification. Any complaint filed is forwarded by the NTRO to the competent county court. If no such complaint is filed, NTRO registers the declaration of de-registration in the trade register and the company goes into liquidation. During the review period, the NTRO filed requests for de-registration in respect of 256 SRLs and 3 SAs, all of which were accepted by the court.

93. The NTRO does not undertake any other enforcement measures with respect to accuracy or timely update of legal ownership information.

Supervision by the tax administration

94. The 2016 Report noted that while there were some measures in place to ensure compliance by companies, there were no sanctions available to be applied in cases where SAs and SCAs failed to maintain ownership information, therefore Romania was recommended to introduce appropriate enforcement measures to address the risk of SAs and SCAs not complying with the requirement to maintain a register of their shareholders and members. To address this, with effect from November 2022, failure on the part of SAs/SCAs to maintain a register of shareholders is liable to a fine of between RON 5 000 (EUR 1 008) and RON 15 000 (EUR 3 024) (Article 270³(2¹)), Company Law). NAFA is designated as the authority for detection of infringements and levy of sanctions. If the SA/SCA fails to correct the deficiency within 30 days of the application of sanction, it would be liable for dissolution by the court.

95. NAFA checked the availability of the register of shareholders during some of its tax inspections. For 192 SAs, the availability of register of shareholders was checked by NAFA and it was confirmed to be available in all these cases. While there is no systematic programme for monitoring compliance of SAs and SCAs with the requirement to maintain up to date legal ownership information, this is mitigated by the self-executing nature of the

provisions related to joint stock companies, i.e. shareholders would only be able to enforce their rights upon inclusion in the register. The recommendation is therefore considered addressed.

Inactive taxpayers

96. Article 92 of the Fiscal Procedure Code stipulates that a taxpayer may be declared as "inactive" under the following situations:

a. It fails to file any statutory declarations during a calendar half-year even after 15 days of the deadline.

b. It avoids checks carried out by the tax authorities by filing inaccurate particulars.

c. Tax authorities establish that it is not operating from its declared address.

d. It registers temporary inactivity in the trade register.

e. Term of the company as per the constitutive act expired.

f. It no longer has statutory bodies.

g. The agreement to use a space as a registered office expired.

97. For taxpayers falling under situations a) to c), the "inactive" status is an enforcement measure by the tax authorities against non-compliance by the taxpayer. In contrast, the inactivity under situation d) is a self-declared status, which gets replicated from the trade register (see paragraph 73 and 74). For taxpayers falling under situations e) to g) (see paragraph 96), information is received from the NTRO with a request to declare them as "inactive".

98. As noted in paragraph 73, temporarily inactive companies (situation d)) are not permitted to conduct economic activity. In all other situations (i.e. other than d)), continuation of economic activity is not prohibited. Such fiscally inactive taxpayers remain subject to the obligations relating to the payment of taxes and compulsory social contributions; however, they cannot benefit from any deductions of costs and VAT relating to the purchases made (Article 11, Fiscal Code). Correspondingly, persons acquiring goods and/or services from inactive taxpayers do not benefit from the right to deduct expenses and value added tax relating to those purchases. Romania considers it to be an important deterrent factor. Romanian authorities advised that fines for non-compliance may be applied before the taxpayer is declared inactive and the declaration as "inactive" is itself an enforcement measure. Interest and penalty for late payment of taxes would apply when the taxpayer finally files the missing declaration and pays the taxes due.

99. The inactive status of the taxpayer is notified to the taxpayer and recorded in its fiscal record, as well as in the fiscal record of its legal representative. This results in cancellation of the value added tax (VAT) registration of the taxpayer, but this does not affect the operation of bank account(s). A fiscally inactive taxpayer can change its status to "active" in the fiscal records if it files all its statutory declarations and there are no outstanding tax liabilities. Romanian authorities consider that since the state of inactivity itself is a sanction, which is recorded in the fiscal records, it applies with no time limit, until the taxpayer corrects the related deficiencies.

100. NAFA also maintains a public register of inactive/reactivated taxpayers which records, *inter alia* a) identification data of the taxpayer, b) the date on which the taxpayer is declared inactive, and c) the date of re-activation. As of December 2023, there were 419 041 inactive taxpayers recorded in the register, which included 391 857 SRLs, 2 025 SAs and 2 SEs.[17] Inactive taxpayers that are legal persons form 24.11% of the total taxpayers in Romania.[18] SRLs and SAs that have declared temporary inactivity to the Trade Register form 24.3% and 7.8% of the total inactive SRLs and SAs, respectively (see paragraph 73). The following table provides the data on the number of taxpayers that were declared inactive and reactivated during 2019-22.

Year	Number of taxpayers declared inactive	Number of reactivated taxpayers
2019	47 058	14 069
2020	40 604	12 886
2021	38 837	14 634
2022	51 239	14 599
Total	**177 738**	**56 188**

101. The table reflects that each year, the number of new declarations is three times the number of reactivations, thus leaving a large proportion of taxpayers which may potentially remain inactive for an indefinite period of time.

102. During the period under review, NAFA conducted 1 580 tax inspections on inactive taxpayers, on the basis of a risk-based selection applied for all taxpayers.[19] No specific risks presented by inactive taxpayers are taken

17. In addition, there were 1 074 General Partnerships (SNCs), 76 Limited Partnerships (SCSs) and 24 007 other forms of taxpayers.
18. As of December 2023, the total number of legal person taxpayers in Romania were 1 738 286.
19. The risk-based selection of taxpayers for tax inspections takes into account risks related to, *inter alia*, fiscal registration, fiscal declarations, amount of declaration,

into consideration. As a result, 201 sanctions amounting to RON 843 466 (EUR 170 040) were applied and additional tax of RON 595 983 880 (EUR 120 148 351) was established. The proportion of inactive taxpayers covered by these tax inspections is only 0.3%, which is insufficient to assure that inactive taxpayers are effectively monitored.

103. Taxpayers falling under situations d) to g) are expected to be covered by the checks performed and actions taken by NTRO for their de-registration (see paragraph 91), but the number of de-registration is very low (see paragraph 92).

104. It occurred during the review period that a taxpayer was declared "inactive" due to the expiration of the document certifying its right of use over the space intended for the registered office (situation g)) before the period under review. Nevertheless, it continued to operate outside Romania and the legal representative domiciled outside Romania could not be contacted (also see paragraph 249). This company continues to be registered on the Trade Register at the time of writing of this report, i.e. seven years since the expiry of the document certifying its right of use over the space intended for the registered office. No explanation was available on why this company was not de-registered.

105. Romanian authorities advised that the legal representatives of the inactive taxpayer would remain responsible for the company's compliance with obligations to keep and maintain all records as required by law, including the register of shareholders. Where the legal representative is not located in Romania, sanctions for non-compliance may be communicated through post, advertisement or the NAFA website. In practice, the requirement to maintain all records, including the register of shareholders might not be complied with and there is no active monitoring of compliance of such entities. For SAs and SCAs, the legal ownership information is only required to be kept with the company itself. In an event that an SA/ SCA is declared inactive due to non-compliance, availability of legal ownership information to the EOI Competent Authority would rely on the availability of the legal representative, who is not required to be in Romania. There are 129 816 legal representatives (including Romanian and foreign citizens) representing 110 738 companies (i.e. 8.1% of the registered companies) who are domiciled outside of Romania. Moreover, while the sanctions may be communicated through the aforementioned means, doubts remain on how they will be enforced.

106. Inactive taxpayers retain legal personality and can continue to remain indefinitely in the tax database and the trade register. Such entities are not prohibited from conducting transactions within Romania. They

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fulfilment of payment obligations to the consolidated general budget and to other creditors.

can also remain commercially active or hold assets outside of Romania. However, they are not subject to any effective monitoring or supervision. There is a large number of inactive taxpayers in Romania and the availability of up-to-date legal ownership information is not assured in all cases, therefore, **Romania is recommended to review its system, whereby a number of inactive companies remain with legal personality in the tax database and the trade register, and to implement appropriate supervision to ensure that up-to-date legal ownership information on inactive companies is always available in line with the standard**.

Nominees

107. The 2016 Report noted that Romanian law does not contain the concept of nominees, nor does it explicitly prohibit this activity. On the other hand, it was noted that "mandate without representation" is permitted by Romanian law (Articles 2039 to 2042, Civil Code) and is defined as a contract where one party (agent or mandatary) concludes legal acts in his/her own name but on behalf of another party (principal) and assumes the obligations arising from such acts *vis-à-vis* third parties, even if the third parties were aware of the mandate. The 2016 Report noted that the mandate contract must be recorded in the trade register to be opposable to third parties. However, this is limited to cases where the mandate is bestowed on the administrator or legal representative of the company to act on behalf of the company.

108. There continues to be no express prohibition on rendering nominee services in Romania. Since the 2016 Report, Romania has also legislated the revised AML Law which defines a "trust or company service provider" (TCSP) as a service provider that on a professional basis, *inter alia*, "acts or arranges for another person to act as a shareholder in a legal person other than a company whose shares are traded on a regulated market which is subject to disclosure requirements in accordance with European Union law or internationally established standards" (Article 2(l)(5), AML Law).[20]

20. "Trust or company service providers" are defined as service providers that provide on a professional basis any of the following services to third parties: 1) constitute companies or other legal persons; 2) acts as a director or manager of a company or is a partner of a partnership or joint venture or a similar capacity in other legal persons, or arranges for another person to perform those functions or qualities; 3) provides a registered office, an address for service or any other service connected with a company or any other legal person or similar legal arrangement; 4) acts as fiduciary in a trust or similar arrangement or arranges for another person to exercise that capacity; 5) acts or arranges for another person to act as a shareholder in a legal person other than a company whose shares are traded on a regulated market which is subject to

109. TCSPs are covered by CDD obligations and must notify the NOPCML of the commencement, suspension and termination of TCSP activity. Pursuant to the CDD obligations, the TCSPs would hold information on the identity of the customer, i.e. nominator and its beneficial owner. As of October 2023, there were 920 TCSPs operating in Romania.

110. Non-professional nominees are not precluded and are not covered by the AML obligation to maintain information on the identity and beneficial owner of the nominator.

111. Finally, there is no obligation for the nominee to disclose its nominee status or the identity of the nominator to the company, to the trade register or to any other AML-obliged persons engaged by the company. Without this disclosure, the company would not know whether the shareholder is a nominee, and this can prevent it from maintaining and reporting accurate information to supervisory authorities and relevant persons, including AML-obliged persons (see also paragraph 122). Therefore, **Romania is recommended to ensure that nominee shareholders disclose their nominee status to the company**.

112. AML Law lists companies that have nominee shareholders as characteristic of a situation with potentially increased risk and requires AML-obliged persons to undertake additional CDD measures in such cases, including obtaining additional information on the customer and the beneficial owner, on the nature of business relationship, on the source of funds and wealth, and conduct enhanced monitoring of the business relationship by increasing the number and frequency of controls applied. During the on-site visit, however, unfamiliarity with the concept of "nominee" was noted. Romania's MONEYVAL Fifth Round Mutual Evaluation Report observes that undetected use of nominee shareholders has been noted by prosecutors.[21] However, the authorities interviewed maintained that nominee relationships did not exist in Romania. In view of the above, **Romania is recommended to put in place a comprehensive supervision and enforcement mechanism to ensure the availability of adequate, accurate and up-to-date beneficial ownership information on companies in line with the standard in all cases**.

disclosure requirements in accordance with European Union law or internationally established standards.

21. Paragraph 564 – Romania – Fifth Round Mutual Evaluation Report.

Availability of beneficial ownership information

113. Since 2016, the standard requires that beneficial ownership information be available on companies. In Romania, this aspect of the standard is applied through the AML framework. The company law and the tax law do not contain any obligations in relation to beneficial ownership information.

114. Most notably, the AML Law introduced an obligation on legal persons and arrangements to identify their beneficial owners and submit a declaration in this regard to the register of beneficial owners maintained by the NTRO (for companies and partnerships). These registers form the primary source of beneficial ownership information in Romania. At the same time, AML-obliged persons are required to collect beneficial ownership information on their clients as part of their CDD obligations. The obligations on the companies and the AML-obliged persons are discussed in detail in the following sections.

Companies covered by legislation regulating beneficial ownership information

Type	AML Law – Companies	AML Law – BO Register	AML Law – CDD	Tax Law	Company Law
SRLs	All	All	Some	None	None
SCAs	All	All	Some	None	None
SAs	All	All	Some	None	None
Foreign companies (tax resident)	None	None	All[22]	None	None

115. The requirements on identification of beneficial ownership of companies are contained in AML Law that entered into effect on 21 July 2019 (see paragraph 33). The AML Law sets out the definition and methods of identification of "beneficial owner", which are used by all legal persons and arrangements as well as AML-obliged persons.

Definition of beneficial owner

116. The AML Law transposes the definition of beneficial owner as set out in the EU 4th AML Directive and defines a "beneficial owner" as "any natural person who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction, operation or activity is performed" (Article 4(1), AML Law). As per Article 4(2)(a), for companies, the beneficial owner(s) includes the following:

22. Where a foreign company has a sufficient nexus, then the availability of beneficial ownership information is required to the extent the company has a relationship with an AML-obligated service provider that is relevant for the purposes of EOIR. (Element A.1.1 Footnote 9).

> 1. the natural person(s) who ultimately owns or controls a legal person through the exercise of ownership, directly or indirectly, of a sufficient number of shares or voting rights to ensure control, or through participation in the legal person's equity, or through the exercise of control by other means, the owned or controlled legal person not being a legal person registered in the commercial register whose shares are traded on a regulated market subject to disclosure requirements in accordance with European Union law or equivalent international standards ensuring adequate transparency of ownership information. The holding of 25% plus one share or equity participation in a company of more than 25% by a natural person is an indication of the direct exercise of ownership. The holding of 25% plus one share or equity participation of a company in a proportion of more than 25% by a foreign corporate entity, which is under the control of a natural person, or by several foreign corporate entities controlled by the same natural person, is an indication of the indirect exercise of ownership;
>
> 2. if, after due diligence and provided there are no grounds for suspicion, no person is identified in accordance with point 1 or where there is any doubt that the person identified is the beneficial owner, the natural person occupying the position of senior management, namely: the manager(s), members of the board of directors/supervisory board, directors with powers delegated by the manager/board of directors, members of the management board. Reporting entities shall keep records of the measures taken to identify the beneficial owners in accordance with point 1 and this point, as well as the difficulties encountered in the verification of the identity of the beneficial owner;

117. Guidance on how this method for identification of beneficial owners of companies is to be applied is available in the "Guide to Identifying Beneficial Owners" (hereinafter referred to as the BO Guidance) issued in 2022 by the National Office for the Prevention and Control of Money Laundering (NOPCML) in consultation with supervisory authorities, self-regulatory bodies and the Romanian Association of Banks. The BO Guidance applies to legal persons themselves and to AML-obliged persons.

118. The BO Guidance explains that the identification of beneficial owners of a company (and all other legal persons) should follow a three-step approach, of which the first two steps must be applied simultaneously – 1) calculation of the percentage of ownership of capital/ shares, 2) identification of the persons who effectively control the entity either through voting rights or by other means, and 3) if the previous two steps do not lead to the

determination/identification of the beneficial owners, the person(s) forming the senior management of the legal person are considered to be the beneficial owners. This approach is in line with the standard.

119. For the determination of percentage of ownership, the BO Guidance reiterates the criteria mentioned in the definition that a shareholding of 25% threshold plus one share (being a unit of shareholding) or equity participation of more than 25% would be an indication of the direct exercise of beneficial ownership, which is in line with the standard. The guidance does not explicitly mention any look-through provision, but the examples provided clarify that any intermediate foreign legal persons should be looked through to find the natural person who ultimately controls the company. The Romanian authorities consider that despite the absence of supporting guidance or examples, where a natural person(s) exercises control through multiple domestic entities or where natural persons jointly own or control shares or voting rights beyond the threshold, all natural persons concerned must be identified as beneficial owners. Romania should clarify in guidance the aspects of indirect ownership without any foreign participation and "joint" ownership or control (see Annex 1).

120. The BO Guidance further clarifies that if a natural person holds less than 25% of capital, the person would not be automatically eliminated, rather the person should be tested against step 2 of control through voting rights or through other means. For voting rights too, a threshold of 25% would be indicative of control. Further, it is elucidated that control may be exercised through preferential shares giving veto rights, or delegation of representation by a minority shareholder to one or more persons.

121. Examples of situations that may lead to control being exercised through "other means" include existence of informal representation agreements, control exercised by senior management of an entity over all subsidiaries downstream in the ownership structure, existence of trust/trust constructions, and interposition of third parties as apparent shareholders based on truthful public information or contracts attesting to this capacity. However, the BO Guidance could benefit from further explanation or practical illustrations of these situations as during the review process, the Romanian authorities were unable to explain how these elements are expected to be applied in practice to identify beneficial owners on the basis of control through "other means". Romania should adequately explain the situations which may lead to control being exercised through "other means" as contained in the BO guidance to enable their application in practice (see Annex 1).

Companies' obligations

122. The AML Law requires all legal persons and fiducia and legal arrangements similar to fiducia to obtain and keep adequate, accurate and up-to-date beneficial ownership information, including the basis on which a person is identified as a beneficial owner and the measures taken to identify beneficial owners. This information must be made available to supervisory authorities on request (Article 19, AML Law) and must be provided to AML-obliged persons as part of CDD information.

123. Beneficial owners are required to provide the company with all documents and information, including details of beneficial interests held, to allow the company to fulfil their beneficial ownership information reporting obligations (Article 19(1[1]), AML Law).

124. The Romanian authorities stress that it is the obligation of the legal person to ensure that the beneficial ownership information available with them is accurate and up to date. The law, however, does not provide for an effective mechanism for companies to become aware of a change in their beneficial ownership – there is no obligation on the beneficial owners to inform the company when they acquire such status, there is no requirement for the company to periodically contact the beneficial owners to confirm if they retain the status, and there are no actions that the company can take if a beneficial owner or any of the intermediate entities refuse or fail to provide the requisite information. While sanctions by supervisory authorities may apply if the beneficial owners do not provide the required information (see paragraph 150), as confirmed by Romanian authorities they would not apply on intermediate entities. In case of beneficial owner(s) that are foreign natural persons, Romanian authorities informed that they would record the details of the foreign natural person in the minutes of the inspection, but this would not have any punitive effect on the foreign natural person (see paragraph 158).

Register of beneficial owners

125. The AML law further provides that beneficial ownership information of all registered legal persons must be recorded in a central register of beneficial owners of companies organised at the level of the NTRO. Accordingly, the AML Law introduced amendments in the Company Law, elaborating the obligations on companies relating to filing of beneficial ownership information with the NTRO.

126. Legal representatives of companies must submit a declaration regarding their beneficial owners to the register maintained by the NTRO at the time of registration with the trade register (Article 56, Company Law). These provisions also apply to existing legal persons registered with the

trade register, which were required to file a declaration of beneficial owners to the NTRO by 9 June 2022.

127. All declarations must include identification details of the beneficial owner(s) (full name, date and place of birth, personal identification number, series and number of identity document, nationality, and domicile or residence) and the manner in which control is exercised.

128. In case of a change in the beneficial ownership information, another declaration must be filed with the NTRO within 15 days of the change.

129. There is an annual filing requirement in a limited number of cases. Legal persons that have in their shareholding structure entities that are registered or headquartered in jurisdictions that are considered non-co-operative, high-risk or are under the oversight of international bodies for prevention of money laundering and terrorist financing,[23] must file annual declarations within 15 days of the approval of the annual financial statements. As of 14 September 2023, 1 461 companies had submitted annual declarations, however no information is available on the total number of companies that are expected to file annual declarations.

130. Availability of up-to-date beneficial ownership information is contingent on the changes in beneficial ownership information being notified to the register by the companies. The companies are required to keep up-to-date beneficial ownership information, but they do not have an effective mechanism available to become aware of any changes in their beneficial ownership (see paragraph 124) and the back-stop option of the annual review/update of information is only foreseen in a small subset of cases. As a result, availability of up-to-date beneficial ownership information is not assured in all cases (see paragraph 158).

131. There are no record retention arrangements specified for the company itself, but the NTRO must keep the information submitted with the register of beneficial owners for a period of 10 years from the date the company ceases to exist (Article 19(5^4), AML Law).

Quality of the information in the Register of beneficial owners

132. As noted above (paragraph 126), all declarations must include identification details of the beneficial owner(s) (full name, date and place of birth, personal identification number, series and number of identity document, nationality, and domicile or residence). The declaration also includes the manner in which control is exercised, but the NTRO advised that due to the

23. NOPCML publishes lists of such jurisdictions on its website (https://www.onpcsb.ro/en/p/3/link-uri-utile).

design of the declaration which corresponds to Article 4(2)(a)(1) (see paragraph 116), it is not possible to distinguish whether beneficial owners have been identified on the basis of ownership or control. On the other hand, a distinction is made for senior managing officials. Senior managing officials were recorded as beneficial owners for 11 329 companies, which is 1.2% of the companies that have filed BO declarations (see paragraph 151).

133. In the sample declarations supplied by the NTRO, the entries under the column for "the manner in which control is exercised" indicated "unprecedented". The NTRO informed that given these are self-declarations, the information as provided by the company is recorded and no further explanation was available.

134. Access to the register is granted to enforcement and supervisory authorities, judicial authorities and NOPCML, without alerting the persons involved. The register is also interconnected with the central European platform.[24] The register is directly accessible by the EOI authorities (see paragraph 299) and by AML-obliged persons. Third persons who can demonstrate legitimate interest may also access specific information held in the register through a written request and on payment of a fee.

135. While the AML Law requires NTRO to check that the information held in the register of beneficial owners of companies is adequate, accurate and up to date, discrepancy reporting by authorities and AML-obliged persons is the only means to ensure that the information held in the register is accurate and up to date.

136. During the on-site visit, it was noted that all AML-obliged persons (including banks) understood the discrepancy reporting obligations. The bank representatives indicated that if any discrepancies are noticed, as a first step, clarifications are sought from the client and the client is advised to update the information held in the register. If the client's explanation is not found to be satisfactory or the client fails to update the information held in the register, the bank reports the discrepancy to the register. The non-financial AML-obliged persons had also notified a discrepancy in one case where the information held in the register had not been updated. When the NTRO receives a discrepancy report, it enters a provisional indication of the existence of a discrepancy in the register against the entity, which remains until the discrepancy is resolved.

137. Until 1 January 2022, the NTRO forwarded the information to the NOPCML (which functions as the Financial Intelligence Unit) to take

24. In accordance with EU Directive No. 2015/849, the beneficial ownership registers established by EU Member States are interconnected through the Beneficial Ownership Registers Interconnection System ("BORIS").

necessary enforcement measures against the company concerned for correcting the discrepancy. At the time of writing, no information was available on the actions taken by the FIU to resolve discrepancies forwarded by the NTRO.

138. Since January 2022, the only action taken by the NTRO is the recording of the existence of a discrepancy. No alerts are sent to the company and the NTRO expects the matter to be resolved between the AML-obliged person and its client. The NTRO indicated that, as of 12 July 2023, 392 discrepancies had been reported, out of which 356 discrepancies remained unresolved (i.e. 91%). Discrepancies have generally been reported by banks and mainly related to the incorrect application of or the non-reporting of all natural persons holding more than 25% shareholding in the company.

Customer Due Diligence obligations

139. Obligations to conduct CDD measures apply to all AML-obliged persons (see paragraph 34). CDD measures include identification of the customer on the basis of documents, data or information obtained from secure and independent sources, and taking reasonable measures to verify the identity of the customer and the beneficial owner of the customer, understand the ownership and control structure of the customer and assess the purpose and nature of the business relationship. AML-obliged persons are also required to identify and verify the identity of any person who acts on behalf of a customer. During the on-site visit, the bank representatives explained that while conducting CDD measures, they do not identify beneficial owners on the basis of control through "other means" as it cannot always be demonstrated through supporting documents, thus, it is not accepted by compliance officers. Therefore, in cases where no natural person can be identified as the beneficial owner on the basis of control over more than 25% of the shares, the senior management personnel are identified as the beneficial owners. This practice is neither in line with the provisions of AML Law, nor in line with the standard (see paragraph 158). Further, it was noted that the non-financial AML-obliged persons only tested the beneficial ownership information supplied by the client (see paragraph 122) against the information held in the register and did not conduct any other independent due diligence.

140. AML-obliged persons must apply CDD measures when establishing a business relationship or when carrying out occasional transactions above a set threshold (Article 13, AML Law). These measures must also be applied when there is a suspicion of money laundering or terrorist financing or there is doubt about the veracity or sufficiency of the identification information already held about the customer or beneficial owner. During the on-site visit, the bank representatives informed that where CDD measures cannot be undertaken, they would refuse to establish or continue the relationship, in application of Article 11(9) of the AML Law.

141. AML-obliged persons must carry out ongoing monitoring of the business relationship to ensure that the transactions carried out are consistent with the customer's profile and the documents, data or information held are up to date and relevant (Article 11, AML Law). For existing customers, CDD measures are also required to be applied on a risk-sensitive basis, including when there is a change in the customer's circumstances (Article 14, AML Law). However, there is no specified risk-aligned threshold frequency for applying CDD measures or updating beneficial ownership information of the customer, should the information not already be updated due to other triggers (change, doubt or suspicion). The NOPCML advised that non-financial AML-obliged persons supervised by it update information as per their internal policies, which may require updating of information "whenever necessary" or at a specified frequency. The bank representatives indicated that they generally review CDD information every year for high risk, every three years for standard risk and every five years for low-risk customers (see paragraph 158).

142. Since July 2020, AML-obliged persons are also required to apply CDD measures if they have a legal obligation to contact the customer during the relevant calendar year to examine the beneficial ownership information, including if the AML-obliged person is a reporting financial institution with a legal obligation to report information on relevant bank accounts to NAFA for exchange purposes.[25]

143. Identification of customers and beneficial owners must include – a) for natural persons – full name, personal identification number, place of birth, nationality and address; b) for legal persons – the particulars contained in the constitutive act or the registration certificate and the particulars of the legal representative of the legal person.

144. AML-obliged persons may apply simplified due diligence measures exclusively to low-risk customers (Article 16, AML Law). The classification of a low-risk level is determined upon an overall consideration of the customer risk factors, product, service, transaction or delivery channel risk factors, and geographical risk factors. The examples of low customer risk provided in the law include listed companies, public administrations or enterprises, and customers residing in geographical low-risk areas (e.g. EU Member States, third countries with effective AML systems, third countries identified from credible sources as having low levels of corruption or other criminal activities and third countries that have effectively implemented FATF recommendations). NBR Regulation No. 2/2019 and Order No. 37 of 2 March 2021 of the President of NOPCML approving the Implementing Rules for

25. This requirement relates to the automatic exchange of information on financial accounts.

AML Law clarify that the simplified CDD measures do not exempt from the application of CDD measures but may include adjusting the manner of application of all or some of the CDD measures regarding the volume of information, the number of sources of information, the frequency and intensity of the transaction monitoring and updating of information (Article 15, NBR Regulation No. 2/2019). The NBR representatives interviewed during the on-site visit explained that beneficial owners are expected to be identified even in cases where simplified due diligence measures are applied, which is in line with the standard. The bank representatives confirmed this approach and informed that they expect the customers to provide information on the beneficial owners in all cases.

145. Additional CDD measures must be applied in all cases which pose an increased risk (Article 17, AML Law). AML Law lists factors which may be characteristic of situations with potentially increased risk, which *inter alia* include – i) companies that have nominee shareholders or bearer shares; ii) companies with unusually or excessively complex shareholding structure vis-à-vis the nature of their business; iii) products or transactions that foster anonymity and iv) persons from countries that do not apply international AML standards, non-co-operating jurisdictions, or high-risk countries. In such cases, AML-obliged persons are required to obtain additional information on the customer, beneficial owner, nature of business relationship and source of funds; examine the background and purpose of all transactions that are complex, inconsistent with the customer's transactional history or do not have an apparent economic, commercial or lawful purpose; and conduct enhanced monitoring of the business relationship by increasing the number and frequency of controls applied.

146. AML-obliged persons may rely on due diligence undertaken by third parties that apply similar CDD measures and document retention arrangements and are similarly supervised. In such cases, the responsibility for fulfilling all CDD requirements lies with the person using the information obtained from the third parties. AML-obliged persons must also ensure that the information can be obtained from the third parties immediately and underlying documentation upon request. The bank representatives interviewed during the on-site visit informed that third party due diligence is rarely utilised, and banks generally conduct their own CDD measures.

147. The records of transactions and information collected pursuant to CDD measures, along with the supporting documents must be kept for a period of five years (from the date of an occasional transaction or from the date of termination of business relationship) in a form admissible in judicial proceedings.

148. The scope of application of CDD measures in Romania is large. In particular, it is difficult to perform an economic activity in Romania without

having a bank account. Pursuant to Law No. 70 of 2 April 2015 to strengthen financial discipline on cash receipts and payments operations and to amend and supplement Government Emergency Ordinance No. 193/2002 on the introduction of modern payment systems (Law 70/2015), all proceeds of receipts and payments made by legal entities, authorised individuals, individual enterprises, family enterprises, self-employed, self-employed individuals, associations and other entities with or without legal personality from/to any of these categories of persons will be realised only through non-cash payment instruments (Article 1). They may undertake cash transactions up to RON 5 000 (EUR 1 008) per person with an overall ceiling of RON 10 000 (EUR 2 016) per day. A daily ceiling of RON 50 000 (EUR 10 080) applies on cash transactions relating to transfer of goods or rights (including real estate), provision of services and lending or repayment of loans. Romanian authorities indicated that this implies that all persons conducting business must have a bank account in Romania and thus, have a relationship with an AML-obliged person.[26]

Enforcement measures and oversight – Companies

149. The NTRO is only responsible for recording the information filed and does not have much supervisory or enforcement authority. The power to detect infringements and apply sanctions for non-compliance with the obligations related to filing of declarations on beneficial owners lies with the General Anti-Fraud Directorate (GFAD) within NAFA.

150. Sanctions apply when companies or the beneficial owners do not comply with their obligations (Article 43, AML Law). A warning or a fine ranging between RON 25 000 (EUR 3 024) and RON 150 000 (EUR 30 240) may be applied on natural persons. For legal persons, the aforementioned fines may be increased by 10% of the total revenue relating to the tax period completed prior to the date of drawing up the report establishing and imposing penalties, and applied on members of the management body or other responsible persons. A fine ranging between RON 5 000 (EUR 1 008) and RON 10 000 (EUR 2 016) applies on the legal representative of the legal person (Article 57, AML Law). Continued non-compliance even 30 days after the application of the fine may result in the dissolution of the legal person by the court at the request of the NTRO. There are no sanctions available for late or non-filing of change declarations.

151. The table below provides an overview of the declarations filed by companies as on 20 June 2023.

26. Romania's MONEYVAL Fifth Round Mutual Evaluation Report (paragraph 837) noted that an estimated 80% of the legal persons incorporated in Romania hold a bank account in the country.

Declarations on beneficial owners filed by companies

Type	Total number of registered entities	Number of entities which have filed declarations on beneficial owners	Compliance rate
SRL	1 354 216	951 252	70%
SA	10 076	5 643	56%
SCA	3	1	33%
SE	6	4	66%

152. As noted above, only 70% of SRLs have complied with their obligation to file the declarations. The rate of compliance for SAs, SCAs and SEs is even lower. Yet, no sanctions have been applied on the non-compliant entities by GFAD.

153. The availability of up-to-date beneficial ownership information of companies that declare temporary inactivity in the trade register (see paragraphs 73 et seq.) or are declared inactive by tax authorities (see paragraph 96 et seq.) is not assured. While the Romanian authorities maintain that these companies remain subject to the requirement to file a declaration of beneficial owners or notify any changes in beneficial ownership to the register, no information is available on whether any such companies have complied with the requirement to file declarations on beneficial owners or whether any enforcement measures were taken for non-compliance. **Romania is recommended to review its system, whereby a number of "inactive" companies remain with legal personality in the tax database and the trade register and should implement appropriate supervision to ensure that beneficial ownership information on inactive companies is always available in line with the standard**.

Enforcement measures and oversight – AML-obliged persons

154. The NOPCML supervises certain categories of AML-obliged persons like TCSPs and notaries. It also co-ordinates with the regulatory bodies for lawyers, auditors, accountants, etc. on AML supervision. The number of entities registered with the NOPCML as of September 2022, is tabulated below.

Type of entity	Number of entities registered with the NOPCML
TCSPs	761
Public Notaries	2 550
Lawyers	22 818
Certified accountants and tax consultants	53 842

155. The NOPCML undertakes both off-site and on-site inspections, which may result in action plans being issued to the AML-obliged persons, who are then expected to report on the actions taken to address the deficiencies identified. With respect to the obligations under AML Law, the supervisory activities of the NOPCML re-commenced in April 2021, after having been suspended since February 2020 due to the COVID-19 pandemic. From 1 January to 30 September 2022, the NOPCML reviewed 43 TCSPs, among other non-financial service providers under its purview. The NOPCML issued six warnings and two fines amounting to RON 50 000 (EUR 10 080), however, none of these enforcement measures were applied on TCSPs.

156. NOPCML authorities advised that during the inspections, it checks the submission of declarations on beneficial ownership made by the non-financial AML-obliged persons under its supervision, updating of the declarations, as well as the identification of the existence of discrepancies. With regard to CDD measures applied by such persons, it was often noted that they did not properly apply CDD measures that would allow the identification and verification of the client and/or the beneficial owner. As a result, documents regarding the proper identification of the client and the beneficial owner were not found available in all cases. There were also instances where the non-financial AML-obliged persons encountered difficulties in identifying the beneficial owner of clients that had an opaque or complex structure with non-resident entities interposed in the structure. Non-compliance was also noted with the obligations relating to ongoing monitoring of the business relationship. No information was available on the AML supervision of lawyers, auditors and accountants by the respective supervisory bodies (such as the National Union of Romanian Bar Associations for lawyers) or by NOPCML (see paragraph 35).

157. The National Bank of Romania (NBR) is the supervisory authority for all credit institutions, payment institutions, electronic money institutions and certain non-banking financial institutions which are engaged in lending activities as their core business. Details on the supervisory activities of the NBR are described under Element A.3 (see paragraphs 275 et seq.).

Conclusion

158. All companies are required to file declarations on their beneficial ownership to the register of beneficial owners. Although sanctions are available for non-compliance, no action has been taken against entities that have not complied with the obligation to file declarations on beneficial owners (see paragraph 152). Any changes in the beneficial ownership information must be notified to the register within 15 days. There is however no mechanism to ensure that companies become aware of any changes in their

beneficial ownership, and the requirement for an annual review/update of information is only foreseen in a small subset of cases (see paragraph 129). No checks are performed to verify if the beneficial ownership information filed is accurate or has been updated in a timely manner. The only verification mechanism is the discrepancy reporting obligation of AML-obliged persons, however, the accuracy of information held by the AML-obliged persons also suffers from the practices adopted – non-financial AML-obliged persons were seen not to undertake any independent due diligence; bank representatives indicated that they generally do not identify beneficial owners on the basis of control through other means as there may be no documentary evidence to corroborate such findings (see paragraph 139); and there was a general lack of understanding about nominee relationships which are listed as indicators of potentially increased risk requiring additional CDD measures by the AML Law. Moreover, in the absence of a specified risk-aligned frequency for updating beneficial ownership information, the information held by the AML-obliged persons may itself not be up to date in all cases (see paragraph 141). The supervisory activity has also identified deficiencies in the application of CDD measures by banks and certain non-financial AML-obliged persons. No information was available on the AML supervision of other non-financial AML-obliged persons (see paragraph 156). As a result, the availability of accurate and up to date beneficial ownership information of companies is not assured in all cases. **Romania is recommended to put in place a comprehensive supervision and enforcement mechanism to ensure the availability of accurate and up-to-date beneficial ownership information of companies in line with the standard in all cases**.

Availability of ownership information in EOIR practice

159. Romania received 373 requests for legal and beneficial ownership information and did not face any challenges in providing the requested information, although the break-down of requests seeking legal ownership information and those seeking beneficial ownership information is not available. The peer input received also did not indicate any issues in this respect.

A.1.2. Bearer shares

160. The 2016 Report noted that SAs and SCAs were permitted to issue bearer shares and Romania did not have any mechanisms in place to ensure that information on owners of bearer shares is available to the authorities in all cases. Therefore, Romania was recommended to introduce mechanisms enabling the identification of holders of bearer shares.

161. In July 2019, Romania enacted the AML Law, whereby Company Law was amended to remove references to bearer shares and resultantly, permit SAs and SCAs to only issue registered shares, which may be in physical or dematerialised format (Article 54, AML Law). Since then, the issuance and transfer of bearer shares is prohibited (Article 61, AML Law). By 21 January 2021, holders of bearer shares were required to deposit their bearer shares at the headquarters of the issuing company, for their conversion into registered shares. Companies had to submit amended constitutive acts to the trade register. Any bearer shares that remained undeposited by the deadline would stand cancelled, with a consequential reduction in the share capital of the company. Non-compliance with the obligation to convert shares would result in the dissolution of the company.

162. The Romanian authorities informed that as of 21 July 2019, 460 companies had issued bearer shares and the total number of bearer shares in circulation was close to 865 million.[27] Out of these,

- 284 companies converted/cancelled their bearer shares or changed their legal form to SRL, whereby all holders of bearer shares were registered with the trade register.
- There were 84 non-compliant companies, out of which 66 companies have been dissolved by the court at the request of the NTRO and the remaining 18 are currently in the process of dissolution.
- 23 companies have been delisted.
- 69 companies are undergoing bankruptcy or insolvency proceedings.

163. In view of the aforementioned legislative and enforcement actions, all bearer shares as of 21 July 2019 stand extinguished. Further, as mentioned in paragraph 161, SAs and SCAs are no longer permitted to issue bearer shares. Therefore, the recommendation is addressed.

164. During the review period, Romania did not receive any EOI request relating to bearer shares.

A.1.3. Partnerships

165. Under Romanian law, the provisions relating to formation and registration of partnerships remain the same as those noted in the 2016 Report. Partnerships in Romania have legal personality and are treated as companies (akin to SRLs) under the company law as well as the tax law (as noted

27. For comparison, as of 29 April 2016, 334 SAs were entitled to issue bearer shares and a total of 426 million bearer shares were in circulation (see paragraph 100 of the 2016 Report).

in paragraph 55). All registration requirements applicable to companies are equally applicable to partnerships. The legal framework for availability of legal and beneficial ownership information of partnerships and its implementation in practice is described in the following sections.

Types of partnerships

166. Romanian law permits the formation of four types of partnership which all have legal personality.

- **General Partnership** (*Societate in nume colectiv*) (SNC), governed by the Company Law, is established by means of a partnership agreement, with at least two general partners which are jointly and severally liable. The partners may be natural or legal persons. As of 20 June 2023, there were 2 136 SNCs registered in Romania.
- **Limited Partnership** (*Societate in comandita simpla*) (SCS), governed by the Company Law, is established by means of a partnership agreement and has two categories of partners – general partners which are jointly and severally liable and limited partners which are liable up to their capital contribution (Article 2). The partners may be natural or legal persons. The administration of the SCS is entrusted to one or several general partners (Article 88). A limited partner may conclude operations on behalf of the SCS only based on a special power of attorney which is to be entered in the trade register. As of 20 June 2023, there were 188 SCS registered in Romania.
- **Economic Interest Group** (*Grup de Interes Economic*) (EIG), governed by Law 161/2003,[28] is an association of 2 to 20 natural or legal persons, set up for a specified period of time (Article 118). It is constituted through a memorandum of association to facilitate or develop its members' economic activity and to improve the results of that activity. It is created for profit purposes and its activity must relate to the economic activities of its members. Members bear unlimited liability and are jointly and severally liable (Article 119). An EIG may be set up with or without capital, but it cannot issue shares, bonds or other negotiable securities. As of 20 June 2023, there were 42 EIGs registered in Romania.
- **European Economic Interest Group** (*Grup European de Interes Economic*) (EEIG), governed by Law 161/2003 and Council

28. Law No. 161 of 19 April 2003 on certain measures to ensure transparency in the exercise of public dignities, public functions and the business environment, prevention and sanctioning of corruption.

Regulation (EEC) No 2137/85 of 25 July 1985 on the establishment of the European Economic Interest Grouping, is an association of two or more companies or partnerships from EU Member States. All provisions relating to EIGs also apply to EEIGs. As of 20 June 2023, there were 14 EEIGs registered in Romania.

167. The constitutive act of all partnerships must contain name and form of the partnership, identification information on the general/limited partners,[29] details of the registered office, the partnership's object of activity, and the term and method of dissolution or liquidation.

Identity information

Information kept with the trade register

168. Partnerships are subject to the same registration requirements as described under Element A.1.1 for companies (see paragraph 59 et seq.). All partnerships must register with the trade register within 15 days of the conclusion of its constitutive act, before commencing economic activity.

169. All partnerships must register information on their founding partners with the trade register. Inclusion or removal of a partner is governed by the constitutive act and results in the modification of the constitutive act upon agreement of all partners. Any modification of the constitutive act of an SNC, SCS EIG and EEIG must be registered with the trade register for it to be enforceable against third parties. As a result, updated legal ownership information of an SNC, SCS, EIG and EEIG would be available with the trade register, even in cases where they declare temporary inactivity to the trade register or are declared inactive by NAFA. As of December 2023, there were 1 074 inactive SNCs and 76 inactive SCSs in the records of NAFA.

170. As discussed above (see paragraph 82) foreign partnerships with legal personality and with their place of effective management in Romania do not have any obligation to register with the trade register but may register with the tax authorities (see paragraph 172).

29. For individuals: name, surname, personal identification number and, where applicable, equivalent in accordance with applicable national law, place and date of birth, domicile/residence and nationality, identity document/passport, series, number, issuer, date of issue, period of validity. For legal persons: the firm, headquarters, nationality, order number in the business register and/or the unique registration code, the unique identifier at European level, according to the applicable national law.

Information kept with the tax authorities

171. Legal ownership information available with the trade register is directly accessible by NAFA (see paragraph 79). This does not include information on relevant foreign partnerships.

172. The 2016 Report recommended Romania to require foreign partnerships with legal personality having their place of effective management in Romania to maintain information on their ownership/identity of their partners in all cases. Romania has introduced requirements for foreign legal persons with a sufficient nexus with Romania to register with NAFA for tax purposes and submit details of partners and notify any subsequent changes in partners within 45 days.

173. No foreign partnerships with legal personality and sufficient nexus with Romania are currently registered in Romania.

Beneficial ownership

174. The standard requires that beneficial ownership information be available on partnerships. As in the cases of companies, the AML framework obliges AML-obliged persons to gather beneficial ownership information of their customers and since 2022, also obliges domestic partnerships to file beneficial ownership information with the trade register.

Definition

175. The same definition and method of identification of beneficial owners applies to partnerships, as discussed above for companies (paragraph 116 et seq.) in line with the Romanian law's consideration of partnerships as equivalent to companies. The lack of clarity in respect of "joint" ownership and control and indirect ownership only in case of foreign entities are present in case of partnerships also. Romania should clarify in guidance the aspects of indirect ownership without any foreign participation and "joint" ownership or control (see Annex 1).

176. Partnerships in Romania have legal personality distinct from their partners, but they are not required to have shares, thus the beneficial owners may not be captured by any share threshold. General partners have unlimited liability, are responsible for the management of the activities of the partnership and hold decision-making authority related to amendments to the partnership's constitutive act, dissolution of the partnership, etc. As such, the general partners exercise ultimate control over the partnership even if this control does not manifest through any shareholding in the partnership. Applying the first two steps of the method of identification of

beneficial owners simultaneously may result in all general partners being identified under control through other means.

177. The BO Guidance explains that where the general partner is registered with unlimited liability and the limited partners are registered with equity or shareholding, the beneficial owners will be the general partner, and the limited partner that holds more than 25% ownership interest. Where both the limited partners and general partners individually hold share capital, all persons holding more than 25% of the share capital should be identified as the beneficial owners. In a situation where no person owns more than 25% of the share capital, only the general partner will be identified as the beneficial owner as he/she alone has the power to represent the partnership. Finally, where the partners themselves are legal entities, the criteria for identification and effective control should be applied to the legal entities to determine their beneficial ownership. The BO Guidance takes into account the form and structure of partnerships in Romania and is in line with the standard.

Application in practice

178. AML-obliged persons are required to apply CDD measures as delineated in paragraphs 139 et seq. to partnerships, which are customers and report any discrepancies to the NTRO.

179. The oversight and enforcement of the obligations on the partnerships and on the AML-obliged persons are as described in paragraphs 149 et seq.

180. Additionally, partnerships, being legal persons subject to registration with the trade register, are obliged to maintain information on their beneficial owners and file declarations of beneficial owners to the register of beneficial owners maintained by the NTRO at the time of registration, within 15 days of change, and in a specific subset of cases, on an annual basis (see paragraphs 128 and 129). Similar to companies, in the sample declarations for partnerships supplied by the NTRO, the entries under the column for "the manner in which control is exercised", includes reference to Article 4(2)(a)(1) and a brief mention on whether control is exercised directly or indirectly.

181. The following table shows the compliance rate of partnerships with the obligation to file declarations on beneficial owners as on 20 June 2023.

Declarations on beneficial owners filed by partnerships

Type	Total number of registered entities	Number of entities which have filed declarations on beneficial owners	Compliance rate
SNC	2 136	792	37%
SCS	188	89	47%
EIG	42	14	33%
EEIG	14	8	57%

182. As in the case of inactive companies (see paragraph 153), there is no information available as to whether partnerships that have declared temporary inactivity with the Trade Register or have been declared as "inactive" by NAFA, have complied with the obligation to file declarations of beneficial owners to the register of beneficial owners maintained by the NTRO. **Romania is recommended to review its system, whereby a number of "inactive" partnerships remain with legal personality in the tax database and the trade register, and to implement appropriate supervision to ensure that up-to-date beneficial ownership information on inactive partnerships is always available in line with the standard**.

183. Overall, the compliance rate for partnerships is very low. No explanation was available for the low compliance rate. Information was also not available on the enforcement measures taken in respect of non-compliant partnerships.

184. There is no verification undertaken by the NTRO to check the accuracy and timely notification of beneficial ownership information submitted.

185. The discrepancy reporting mechanism is the only means of verification of information but may suffer from the lack of a specified risk-aligned frequency for updating beneficial ownership information. In practice, gaps have been identified in respect of the lack of independent due diligence by non-financial AML-obliged persons and the practice of the bank for identifying beneficial owners of customers. As a result, the availability of accurate and up-to-date beneficial ownership information of partnerships is not assured in all cases. **Romania is recommended to put in place a comprehensive supervision and enforcement mechanism to ensure the availability of accurate and up-to-date beneficial ownership information of partnerships in line with the standard in all cases**.

Availability of partnership information in EOIR practice

186. Romania did not receive any requests for partnership information. The peer input received also did not indicate any issues in this respect.

A.1.4. Trusts

187. Romania does not recognise the concept of trusts nor is it a Party to the Hague Convention on the Law Applicable to Trusts and on their Recognition. Nevertheless, there are no restrictions for a resident of Romania to act as trustee, protector or administrator of a trust formed under foreign law. In addition, Romania permits the establishment of fiducia.

Fiducia

188. Fiducia are legal arrangements governed by the Romanian Civil Code, which defines fiducia as "the judicial operation through which one or several settlors transfer real rights, claims, guarantees or other patrimonial rights or a group of such rights, either present or future, to one or several fiduciaries who exercise them for an established purpose to the benefit of one or several beneficiaries. These rights constitute an autonomous patrimonial mass, different from the other rights and obligations in the fiduciaries' patrimony."

189. The fiduciary contract must mention the following information (Article 779, Civil Code):

- real rights, claims rights, guarantees and other transferred patrimonial rights
- duration of transfer (which cannot be longer than 33 years from the date of signature)
- identity of settlor(s)
- identity of fiduciary(ies)
- identity of beneficiary(ies) or at least the rules allowing to determine the beneficiaries
- purpose of fiducia and extent of the powers of administration and disposition of the fiduciary.

190. The functions of fiduciaries for Romanian fiducia can only be carried out by credit institutions, investment and investment management companies, financial investment services companies, insurance and reinsurance companies incorporated under the law and notaries public and lawyers.

191. The fiducia must register the fiduciary contract with the Electronic Archive of Security Interests in Movable Property, which ensures opposability against third parties for the fiducia agreement (Article 781, Civil Code). This database can be accessed by the tax administration and the

public. Immovable property held in fiducia must be registered with the Land Register.

Requirements to maintain identity information in relation to fiducia and implementation in practice

192. Information regarding the fiducia is available with the tax authorities and with the fiduciaries.

193. The Civil Code states that the fiduciary contract and its modifications must be registered with the competent tax authority within one month of its conclusion, otherwise it would be considered null and void (Article 780, Civil Code). This requirement is operationalised and also extended to other legal arrangements similar to fiducia through Order No. 1193 of 27 July 2021 of the President of the NAFA "approving the procedure for the registration of fiduciary contracts or legal arrangements similar to fiducia, organisation and operation of the Central Register of fiducia and legal arrangements similar to fiducia, for the approval of fiducia and legal arrangements similar to fiducia, and for the approval of the model and content of issuing forms", which superseded Order No. 816/2020 of the President of the NAFA on the subject.

194. Fiduciary contracts for fiducia and legal arrangements similar to fiducia must be registered with the office of NAFA in whose record the appointed fiduciary (or any person holding an equivalent position in a legal arrangement similar to fiducia) is registered as a taxpayer. As of 30 June 2023, there were 2 402 fiducia registered with the NAFA in Romania. Romanian authorities advised that the term "legal arrangements similar to fiducia" is not defined in law.

195. At NAFA, the registration is completed in maximum five days from the date when a contract is submitted. NAFA also maintains a register of fiducia contracts which records the details of fiduciary contract, particulars of the fiduciary(ies), settlor(s) and beneficiaries and the nature of the assets in the fiducia that have generated the income. Thus, identity information of a fiducia is available with NAFA.

196. Any modification of beneficiaries and fiduciaries and the termination of the fiduciary contract must also be registered by the fiduciary with the NAFA within 30 days.

Beneficial ownership information

197. Beneficial ownership information of fiducia is available through the fiduciaries, which are AML-obliged persons (see paragraphs 190 and 201), and through the recently set up register of beneficial owners of fiducia maintained by NAFA (see paragraph 201).

198. In line with the standard, AML Law (in Article 4(2)(b)) stipulates that in the case of fiducia or legal arrangements similar to fiducia, the following shall be identified as beneficial owners:

- settlor(s) and the persons appointed to represent their interests
- fiduciaries
- beneficiaries or where the identity of the beneficiaries has yet to be determined, the class of persons in whose main interest the trust or similar legal arrangement operates
- any other natural person exercising ultimate control over the fiducia or similar legal arrangement through the direct or indirect exercise of ownership or other means.

199. The BO Guidance expects a look-through approach as it states that where the beneficiary of one trust is another legal arrangement that is further owned by another legal arrangement, the participants of the last legal arrangement that are natural persons will be registered. However, the BO Guidance does not specify if "trust" mentioned in the example refers to domestic fiducia, foreign trusts or both.

200. Fiducia and legal arrangements similar to fiducia are required to keep adequate, accurate and up-to-date information on their beneficial owners and provide this information to supervisory authorities and AML-obliged persons on request. This information must also be submitted for recording in the central register of fiducia and legal arrangements similar to fiducia organised at the level of NAFA.

201. As noted above, there were 2 402 fiducia contracts registered in the central register of fiducia as of 29 June 2023 – 2 327 contracts registered according to the NAFA President's Order No. 1985/2012; 40 contracts registered according to the NAFA President's Order No. 816/2020; and 35 contracts registered according to the NAFA President's Order No. 1193/2021. However, beneficial ownership information is only available in respect of the latter two categories as the AML Law did not provide transitional provisions for the declaration of the beneficial owners in the case of fiducia contracts registered before its entry into force. **Romania is recommended to ensure that beneficial ownership information of all fiducia is available in line with the standard**.

202. Notaries, lawyers and independent legal professionals, when they assist in the creation, operation or management of fiducia, and TCSPs, are AML-obliged persons, which are subject to CDD requirements delineated in paragraphs 139 et seq. Additionally, where the beneficiaries of a fiducia or a similar legal arrangement are designated according to particular characteristics or category, AML-obliged persons are required to obtain sufficient information so as to ensure that identity of the beneficiary can be established at the time of payment or when the beneficiary exercises its rights (Article 13(7), AML Law). AML-obliged persons are also required to report discrepancies, if any, to NAFA for resolution.

Foreign trusts having a nexus with Romania

203. There is no restriction in Romanian law that prevents a Romanian tax resident from acting as a trustee or for a foreign trust to own assets in Romania. Such trusts are not subject to any registration in the register of fiducia and similar legal arrangements, thus their number is unknown. However, where the trust owns any immoveable property, the details of previous and new owners would be disclosed to the notary public and recorded in the Land Register.

204. As per law, where the seat or place of residence of the fiduciary (or a person holding an equivalent position in a similar legal arrangement) is outside the EU and the fiduciary (or a person holding an equivalent position in a similar legal arrangement) engages in a business relationship or acquires immovable property on behalf of the trust or similar legal arrangement, the beneficial ownership information of such trusts must be submitted to the register of beneficial owners of trusts maintained by NAFA. However, the interpretation and implementation of this requirement is uncertain as the Romanian authorities could not confirm if they interpret it to mean that information on foreign trusts managed by Romanian trustees would be available in the register of beneficial owners of trusts maintained by NAFA.

205. Where a foreign trust engages any AML-obliged persons, the identity and beneficial ownership information of the trust would have to be collected as part of the CDD obligations, however, the Romanian authorities advised that the requirement for a fiduciary to be an AML-obliged person is only applicable in case of Romanian fiducia. As a result, the possibility of resident trustees of foreign trusts is not precluded, even though the authorities are not aware of this situation in practice. Such trustees would be under no obligation to maintain or retain identity and beneficial ownership information of the foreign trusts they manage.

206. Therefore, **Romania is recommended to ensure that identity and beneficial ownership information of foreign trusts administered**

in Romania or with trustees resident in Romania is available in line with the standard.

Oversight and enforcement

207. There are no sanctions available for the failure of a fiducia or similar legal arrangement to declare its beneficial ownership information.

208. NAFA checks if the beneficial ownership information provided in the declaration matches the fiducia contract. In case any discrepancy is noted, within five days, NAFA would intimate the fiduciary to rectify the discrepancy. AML-obliged persons are also expected to report discrepancies to NAFA between the beneficial ownership information gathered by them as part of their CDD obligations and that held in the register. No discrepancies have been reported thus far.

209. No information is available on the supervision of AML-obliged persons engaged in the creation, management or operation of fiducia.

210. In view of the foregoing, **Romania is recommended to put in place a comprehensive supervision and enforcement mechanism to ensure the availability of accurate and up-to-date beneficial ownership information of fiducia in line with the standard in all cases**.

Availability of trust information in EOIR practice

211. Romania did not receive any requests for information related to a fiducia or a foreign trust administered in Romania or with its trustee resident in Romania. The peer input received also did not indicate any issues in this respect.

A.1.5. Associations, Foundations and Federations

212. Romanian law only authorises the creation of not-for-profit associations, foundations and federations and does not permit their creation for patrimonial purposes (Government Ordinance No. 26/2000 on associations and foundations (GO 26/2000)).[30] They are subject to registration with the local courts where they are seated.

- **Associations** are legal entities constituted by three or more persons who, based on an agreement, pool their material contribution, knowledge or contribution to work for the realisation of activities in the general interest, without the right of restitution, of some collectives or, as the case may be, in their personal non-patrimonial

30. See paragraphs 135 to 138 of the 2016 Report.

interest (Article 4, GO 26/2000). As of March 2023, there were 105 140 associations registered in Romania.

- **Foundations** are legal entities established by one or more persons, who, on the basis of a legal deed constitute a patrimony that is permanently and irrevocably contributed to the achievement of interests of a general purpose or those of some collectives (Article 15, GO 26/2000). As of March 2023, there were 19 372 foundations registered in Romania.
- **Federations** can be formed by two or more associations or foundations, but they acquire their own legal personality (Article 35, GO 26/2000). As of March 2023, there were 1 507 federations registered in Romania.

213. Under the AML Law, associations and foundations are also subject to the requirement to file declarations of beneficial owners to the Ministry of Justice. Any change in the identification data of beneficial owner must be communicated to the Ministry of Justice within 30 days of the change (Article 34^4, GO 26/2000).

214. In the event of a dissolution of an association or a foundation, the assets remaining after liquidation cannot be transferred to natural persons; instead, they must be transferred to legal persons for the same or similar purpose. In case of dissolution of a federation, the assets are returned to the constituting associations or foundations.

215. In line with the conclusion of the 2016 Report, these entities are not considered relevant to exchange of information for tax purposes in view of the not-for-profit nature, public interest purposes, the irrevocability of the asset contribution associated with these entities.

Other relevant entities and arrangements

216. Romanian law permits the establishment of co-operatives. These are governed by Law 1 of 21 February 2005 on the organisation and functioning of co-operatives and Law No. 566 of 22 December 2004 on agricultural co-operatives, as amended and supplemented by Law No. 164 of 22 July 2016. Co-operatives are obliged to carry out activities exclusively with co-operative members, unless the memorandum of association provides otherwise. Ultimately, they are economic enterprises created for profit purposes.

217. A co-operative is an autonomous association of natural and/or legal persons, formed on the basis of their freely expressed consent, for the purpose of promoting the economic, social and cultural interests of the co-operative members, and is jointly owned and democratically controlled by its members in accordance with co-operative principles. A co-operative

must have a minimum share capital of RON 500 (EUR 100), which is divided into equal shares with a nominal value of not less than RON 10 (EUR 2). It must have at least five members. Romanian law also allows the formation of European Co-operatives, which are formed for similar purposes as domestic co-operatives, by at least five natural and/or legal persons resident in at least two EU member states and have a minimum share capital of EUR 30 000.

218. Co-operatives acquire legal personality upon registration with the trade register, which must be carried out within 15 days of signing the constitutive act. The constitutive act must contain *inter alia* the following details in respect of the co-operative: name, object, duration, identification particulars of the members, share capital, number and nominal value of shares, and number of shares allotted to each member. As of 20 June 2023, there were 2 607 Agricultural Co-operatives, 26 Consumer Co-operatives, 43 Craft Co-operatives, 1 897 Other Co-operatives and 4 European Co-operatives registered in Romania.

219. Changes in the associate members are required to be reported to the trade register.

220. Being legal persons subject to registration with the trade register, co-operatives are also required to file declarations on their beneficial owners to the NTRO and report any changes to the NTRO within 15 days. The compliance with this requirement is tabulated below.

Declarations on beneficial owners filed by co-operatives

Type	Total number of registered entities	Number of entities which have filed declarations on beneficial owners	Compliance rate
Agricultural co-operatives	2 607	1 743	66.8%
Consumer co-operatives	26	1	3.8%
Craft co-operatives	43	0	0
Other co-operatives	1 897	1 313	69%
European co-operatives	4	3	75%

221. The oversight and enforcement of this obligation remains the same as described with respect to companies (in A.1.1) and partnerships (in A.1.3). Therefore, the same conclusion applies, and **Romania is recommended to put in place a comprehensive supervision and enforcement mechanism to ensure the availability of accurate and up-to-date beneficial ownership information of co-operatives in line with the standard in all cases**.

222. Romania did not receive any EOI requests for information related to co-operatives. The peer input received also did not indicate any issues in this regard.

A.2. Accounting records

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

223. The 2016 Report concluded that Romanian accounting laws provide for accounting requirements applicable to all legal entities incorporated in Romania and legal entities which are taxable in Romania, including foreign entities. However, as no accounting requirements apply to foreign trusts which have Romanian-resident administrators or trustees, a recommendation was made in this regard. Nevertheless, the issue was considered to be limited in practice, and Romania was rated Compliant with this element of the standard.

224. Romania has not taken any actions to address the recommendation made in the 2016 Report, therefore, the same is retained.

225. In addition, this review finds that the legal and regulatory framework does not assure the availability of accounting information for at least five years after a legal entity or arrangement ceases to exist.

226. Romania has a large proportion of taxpayers that have been declared as "inactive" by the tax authorities due to non-compliance with filing obligations. They retain legal personality and are not prohibited from carrying out commercial activity and holding assets either inside or outside Romania. There is no monitoring mechanism to ensure that non-compliant taxpayers do not undertake any taxable commercial activity. Furthermore, an inactive taxpayer can retain the status of "inactive" indefinitely, without being de-registered from the taxpayer database or the trade register. The availability of accounting information and underlying documentation is required but not ensured in practice for such inactive taxpayers.

227. During the review period, Romania received 77 requests for accounting information. Romania was able to satisfactorily respond to all requests, except in two cases highlighted by the peers. These cases related to companies that had either ceased to exist or had been declared inactive (see paragraph 251 et seq.).

228. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
The Accounting law does not explicitly require the retention of accounting records and underlying documentation after a legal entity or arrangement ceases to exist in all cases.	Romania is recommended to ensure that accounting information of all relevant legal entities and arrangements is available in line with the standard, including for at least five years after the legal entity or arrangement ceases to exist.
Romanian law does not include any accounting record keeping obligations for foreign trusts administered by Romania-resident trustees or administrators. Romania-resident administrators or trustees acting in a professional business capacity, being subject to record keeping requirements for the determination of their own income, are required to keep all records necessary for determining whether the trust income is taxable in their hands. Therefore, a trustee resident in Romania would be able to provide the tax authorities with information on the records regarding trusts which relate to their income, however, these records may not fully reflect the financial position and assets/liabilities of the foreign trust.	Romania is recommended to ensure that accounting records of foreign trusts that are administered by Romania-resident trustees or administrators are available in line with the standard.

Practical Implementation of the Standard: Largely Compliant

Deficiencies identified/Underlying factor	Recommendations
Romania has a large proportion (24%) of legal person taxpayers, most of which have been declared as “inactive” by the tax authorities due to non-compliance with filing obligations. Such inactive taxpayers retain legal personality and are not prohibited from carrying out commercial activity and holding assets either inside or outside Romania. There is no effective monitoring to ensure that inactive taxpayers comply with their statutory obligations. Furthermore, an inactive taxpayer can retain the status of “inactive” indefinitely, without being de-registered from the taxpayer database or the trade register. During the review period, Romania failed to provide accounting information in respect of a taxpayer which had continued to operate outside Romania despite having been declared inactive by the tax authorities.	Romania is recommended to review its system, whereby a number of “inactive” entities remain with legal personality in the tax database and the trade register, and to implement appropriate supervision to ensure that accounting information of inactive companies and partnerships is available in line with the standard.

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

229. The requirements related to the availability of accounting information are met mainly through Law No. 82 on Accountancy (Accounting Law) which requires legal entities incorporated in Romania or taxable in Romania to maintain accounting records. The requirement for fiduciaries to maintain accounting records of fiducia managed by them emerges from the Civil Code. These obligations are replicated in the Fiscal Procedure Code (FPC), which provides the tax law framework. These obligations and their implementation in practice are analysed below.

Company Law, Accounting Law and Tax law obligations

230. The Company Law sets out the general obligation for all companies to prepare annual financial statements (checked or audited, as applicable), and submit them to NAFA in accordance with the conditions laid in the Accounting Law (Articles 182 and 185, Company Law).

231. Accounting Law operationalises and expands this obligation by requiring all companies (includes partnerships), co-operative societies, associations and other legal persons with a financial and non-profit purpose, branches of foreign legal persons, foreign legal persons carrying out activities through a permanent establishment(s) in Romania and foreign legal persons with their place of effective management in Romania must organise and maintain financial accounts (Article 1, Accounting Law).

232. Any economic and financial operation carried out must be recorded at the time it is carried out in a document that underlies the entries in the accounts, and thus becomes a supporting document (Article 6, Accounting Law). They must also mandatorily maintain a Register journal, an Inventory Book and a General Ledger according to the norms set by the Ministry of Economy and Public Finance (Article 20, Accounting Law). Holding of assets and carrying out of economic and financial operations without recording them in the accounts is prohibited and punishable by a fine ranging between RON 1 000 (EUR 201) and RON 10 000 (EUR 2 015) (Articles 11, 41 and 42, Accounting Law). Non-compliance with provisions relating to drawing and use of supporting and accounting documents for all operations carried out, their entry in the accounts during the period to which they relate, and their retention and archiving is punishable by a fine ranging between RON 300 (EUR 60) and RON 4 000 (EUR 806) (Articles 41 and 42, Accounting Law).

233. All aforementioned legal persons are also required to prepare annual financial statements, which give a true and fair view of the financial position, financial performance and other information related to the activity

carried on (Articles 5 and 9, Accounting Law). Financial statements must also be audited if an entity fulfils any two of three conditions – i) the value of its assets is RON 16 million (EUR 3.22 million) or more, ii) its net turnover is RON 32 million (EUR 6.45 million) or more, or iii) it has an average of 50 or more employees during the year.

234. In all cases, annual financial statements must be submitted to NAFA within 150 days of the end of the financial year (Article 36, Accounting Law). A failure to do so is punishable by a fine ranging between RON 1 000 (EUR 201) and RON 3 000 (EUR 605) (Articles 41 and 42, Accounting Law).

235. The FPC notes that the supporting documents and records of the taxpayer constitute evidence in determining the taxable amount (Article 72, FPC) and requires that accounting and tax records must be kept physically or electronically at the tax domicile of the taxpayer, at its registered office (or secondary offices) or may be entrusted for retention to an archiving services company (Article 109, FPC). Romanian authorities advised that the archiving services company must be in Romania.

236. The mandatory accounting records and underlying documents must be kept for a period of five years starting from the 1 July of the year following the end of the financial year in which they were drawn (Article 25, Accounting Law).

Legal entities that cease to exist and retention period

237. The Accounting Law does not contain any provision that explicitly requires the retention of accounting records and underlying documentation after an entity ceases to exist. Annual financial statements drawn for the purpose of carrying out the merger, division, conversion or liquidation of a legal entity are required to be submitted to NAFA (Article 36, Accounting Law). However, there is no corresponding requirement in respect of underlying documents. In case of a re-organisation, steps must be taken to keep and archive accounting records (Article 25[1], Accounting Law), however, no such requirement exists where the legal entity is liquidated or dissolved.

238. The Romanian authorities indicated that provisions of the Accounting Law relating to retention and archival of accounting records (see paragraph 236) would ensure the availability of accounting records and underlying documents of entities that cease to exist, and the legal representative (see paragraph 63) would remain liable for the retention of records. However, there is no requirement for taxpayers to inform the tax authorities on how or where they have archived their records for the period of activity or make them available to the tax authorities after they cease to exist. Moreover, in such cases, the legal representative may no longer be reachable or available in Romania. As a result, accounting records, in particular underlying documents, of legal

entities that cease to exist or cease operations in Romania may not be available to the Competent Authority.

239. This circumstance also occurred during the review period, where in the only request relating to a company that had ceased to exist, Romania was unable to provide the requested accounting records and underlying documents and the legal representative could not be contacted.

240. Consequently, **Romania is recommended to ensure that accounting information of all relevant legal entities and arrangements is available in line with the standard, including for at least five years after the legal entity or arrangement ceases to exist**.

Fiducia and foreign trusts

241. The Accounting law obligations do not expressly cover fiducia. The Civil Code however requires that the administrator keep separate accounts for his/her own assets and the accounts of the assets entered in the management (Article 807, Civil Code). The 2016 Report considered this obligation under the Civil Code to be applicable to fiduciaries managing fiducia and requiring them to maintain separate accounting records for the fiducia. Additionally, the Fiscal Code clarifies that the fiduciary must prepare separate accounting records for the fiducia estate; and transmit quarterly to the settlor, on a settlement basis, the income and expenses resulting from administration of the patrimony according to the contract (Article 30).

242. There are no obligations on foreign trusts with Romanian resident administrators or trustees to hold accounting information in either the Accounting Law or the Fiscal Code. The 2016 Report recommended Romania to ensure that accounting records of foreign trusts managed by Romania resident administrators or trustees are maintained for a minimum of five years. Romania has not reported any actions in this regard.

243. Romania-resident administrators or trustees acting in a professional business capacity being subject to record-keeping requirements for the determination of their own income, are required to keep all records necessary for determining whether the trust income is taxable in their hands. This includes the nature of the assets in the trust that have generated the income. Therefore, consequent to the general tax requirements in Romania requiring all taxpayers to be able to provide information to the tax authorities whenever taxable income must be determined, a trustee resident in Romania would be able to provide the tax authorities with information on the records regarding trusts which relate to their income, however, these records may not fully reflect the financial position and assets/liabilities of the foreign trust. Therefore, the recommendation from the 2016 Report is retained, and **Romania is recommended to ensure that accounting**

records of foreign trusts that are administered by Romania-resident trustees or administrators are available in line with the standard.

Oversight and enforcement of requirements to maintain accounting records

244. The compliance with the obligation to maintain accounting records is monitored and enforced by NAFA. During a fiscal inspection, the tax authorities would *inter alia* verify the information submitted in the tax declarations against the taxpayer's accounting and tax records.

245. During the review period, for active taxpayers, Romania had a tax return compliance rate of 94.69% (2019), 93.27% (2020), 94.29% (2021) and 93.79% (2022). Out of these, roughly 2% were selected for tax audits each year, based on a risk analysis (2019 – 2.68%, 2020 – 2.00%, 2021 – 1.76%, 2022 – 1.86%). The number of tax audits undertaken, and the sanctions applied are tabulated below.

Tax audits undertaken by NAFA during the review period

Year	Number of tax audits	Number of sanctions	Value of sanctions (In million RON)	Value of sanctions (In million EUR)
2019	45 912	3 883	12.95	2.61
2020	35 494	2 736	7.27	1.46
2021	39 693	2 335	6.63	1.37
2022	52 294	2 284	6.22	1.25

246. The sanctions generally related to misreporting of expenses, non-deduction of withholding taxes or other non-compliance with the VAT related requirements. Availability (or the lack thereof) of supporting underlying documents is therefore ascertained by the Romanian authorities when conducting a tax audit.

247. Separately, the General Anti-Fraud Directorate within NAFA is focused on discovering and instrumenting cases of tax evasion as well as taking preventive measures by initiating operative controls in fields of activity with a significant risk of non-compliance. During the review period, the General Anti-Fraud Directorate conducted inspections with respect to compliance with the provisions of the Accounting Law and applied 16 834 sanctions amounting RON 39.75 million (approx. EUR 8 million). The number of inspections that resulted in these sanctions is not available at the time of writing.

248. As discussed under Element A.1 (paragraphs 96 et seq.), a taxpayer may be declared as "inactive" for *inter alia* non-compliance with tax obligations. Such an inactive taxpayer would retain legal personality and is not prohibited from carrying out commercial activity and holding assets either inside or outside Romania, although there are some measures which may act as deterrents for domestic commercial activity. Furthermore, an inactive taxpayer can retain the status of "inactive" indefinitely, without being de-registered from the taxpayer database or the trade register. Inactive taxpayers are also not effectively monitored (see paragraph 102). Romania has a large number of inactive legal person taxpayers (24.11% of its total registered taxpayers) for which the availability of accounting information is not assured.

249. Romanian authorities advised that the legal representative(s) of the inactive taxpayer would remain liable to keep and maintain all records as required by law, including the accounting records. During the review period, Romania received one request relating to an inactive company, which continued to operate outside of Romania (see discussion under paragraph 104). Romania could neither contact the legal representative nor provide the requested accounting information.

250. In view of the foregoing, **Romania is recommended to review its system, whereby a number of "inactive" entities remain with legal personality in the tax database and the trade register, and to implement appropriate supervision to ensure that accounting information of inactive companies and partnerships is available in line with the standard**.

Availability of accounting information in EOIR practice

251. During the review period, Romania received 77 requests for accounting information. The requested information included information related to transactions, assets and employees, along with other tax related information.

252. Romania was able to satisfactorily respond to all but two requests.

253. In one case, the company had dissolved in the middle of the period for which information had been requested. Romania confirmed that the company had carried out transactions with the taxpayer under investigation in the requesting jurisdiction but was unable to provide any accounting records, even for the period before the dissolution of the company.

254. In another case, the company had been declared inactive by the tax authorities, and the legal representative of the company could also not be contacted. No taxable transactions/incomes had been declared to the tax authorities for the period covered by the request. From Romania's point of view, the company did not carry out economic activities during the

investigated period (as any invoice to or from a Romanian economic partner would be detected), although no tax audit was conducted to confirm the same. As a result, no accounting documents were available to be provided to the requesting partner.

A.3. Banking information

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

255. The 2016 Report noted that the AML framework ensured availability of information pertaining to bank accounts and related financial and transactional information and rated Romania as Compliant with Element A.3 of the standard.

256. Since then, Romania has revamped its AML framework by legislating a new AML Law, which continues to assure availability of banking information, except for the continued availability of banking records after a bank is liquidated, for a period of five years as required by the standard.

257. The standard, as strengthened in 2016, requires the availability of beneficial ownership information of all bank accounts. Romania seeks to satisfy this requirement through the obligations of AML Law.

258. With respect to practical implementation of the legal and regulatory framework, this review notes gaps in the identification of beneficial owners on the basis of control through "other means". Moreover, the inadequate understanding of the concept of "nominees", which is identified as an area of potentially increased risk by the law, also raises concerns. Continued and strengthened supervision is expected to ensure that the deficiencies identified in the understanding and implementation of the AML obligations relating to CDD and identification of beneficial owners are addressed.

259. Romania received 184 requests for banking information and responded to all requests to the peers' satisfaction.

260. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
Due to conflicting legal provisions, it is not clear whether after liquidation due to bankruptcy of a bank, the banking information would be archived with the National Archives, with a private archival service provider or at all. It is also not clear if all customer information, including underlying documentation collected as part of the customer due diligence process would also be archived. Moreover, the period for which the banking records must be retained is not stipulated in law. Besides bankruptcy, other scenarios leading to liquidation of a bank, re-organisation of a bank, or the cessation of banking operations in Romania by foreign banks are not envisaged in the legal provisions for retention of banking information.	Romania is recommended to ensure that banking information is retained in line with the standard, including for at least five years after a bank ceases to exist or a foreign bank ceases operations in Romania.

Practical Implementation of the Standard: Largely Compliant

Deficiencies identified/Underlying factor	Recommendations
The bank representatives displayed a general understanding of the concept of beneficial ownership and related obligations under the anti-money laundering law (AML Law). However, it was explained that they do not identify beneficial owners of companies on the basis of control through “other means” as it cannot always be demonstrated through supporting documents. Therefore, in cases where no natural person can be identified as the beneficial owner on the basis of control over more than 25% of the shares, the senior management personnel are identified as the beneficial owners. The AML Law lists companies that have nominee shareholders as bearing potentially increased risk and requires AML-obliged persons to undertake additional customer due diligence measures in such cases, but they are unfamiliar with the concept of “nominee”. The supervisory activity has also identified deficiencies in the application of CDD measures in some cases.	Romania is recommended to strengthen its supervision and enforcement to secure the availability of beneficial ownership information of bank accounts in line with the standard in all cases.

A.3.1. Record-keeping requirements

Availability of banking information

261. As of June 2023, 33 banks are licensed to operate in Romania (see paragraph 29).

262. Banking is a regulated activity in Romania and requires a banking licence granted by the NBR (Article 4, Credit Institutions Ordinance). Banks can only carry out specified activities which include acceptance of deposits, consumer credit and mortgage credit, financial leasing, brokerage services on financial market, safe custody services and portfolio management and advice (Article 18, Credit Institutions Ordinance). Banks are prohibited from opening and managing anonymous accounts, anonymous savings books, or anonymous safe deposit boxes, or providing anonymous prepaid card payment services (Article 10(1), AML Law).

263. As at the time of the 2016 Report, banks are regulated by, amongst others, the Emergency Ordinance No. 99 of 6 December 2006 on Credit Institutions and Capital Adequacy (Credit Institutions Ordinance), which applies to both domestic banks and branches of foreign banks (with respect to their operations in Romania).

264. Banks, being AML-obliged persons, are obliged to undertake CDD measures foreseen under AML Law (described under Element A.1, paragraph 140 et seq.) to identify and verify the identity of the customer, its beneficial owner(s) and any other person acting on behalf of the customer, when establishing a business relationship or when carrying out certain occasional transactions. Banks must also carry out ongoing monitoring of the business relationship to ensure that the transactions carried out are consistent with the customer's profile and that the documents, data or information held are up to date and relevant.

265. The bank representatives interviewed during the on-site process advised that where CDD measures cannot be undertaken, as per internal policy, the bank refuses to establish or continue the relationship.

266. Banks must record all transactions and keep a copy of the contractual documents, the internal documentation related to the transactions carried out and the daily record of the records for each client (Article 121, Credit Institutions Ordinance). The AML Law requires that all records obtained during the CDD process, including supporting documents, transaction records, and the results of any analysis carried out in relationship with the client, must be kept for a period of five years from the date of termination of the business relationship with the client.

267. Pursuant to the obligations under the FPC, banks must report information on all bank accounts held with them on a daily basis to NAFA (Articles 61(2) and 61[1], FPC), which maintains a central register for Romanian bank accounts. The register contains identification information of all natural or legal persons who own, or control payment accounts and bank accounts identified by IBAN, or safe deposit boxes.

268. Where a bank is wound up, the liquidator is required to submit documents relating to the bank to the National Archives of the county or the municipality of Bucharest, as applicable, within 60 working days of the decision to close the bankruptcy procedure (Law No. 85 of 25 June 2014 on insolvency prevention and insolvency proceedings.) On the other hand, Law No. 16 of 2 April 1996 regarding the National Archives stipulates that in case of legal entities for which bankruptcy has been declared, the liquidator will finance the transfer of the archive to an economic operator authorised to provide archival services in accordance with the requirements of Law No. 85 of 25 June 2014 regarding Insolvency Prevention and Insolvency Procedures. Given the varying obligations, it is not clear where the banking information would be archived after liquidation due to bankruptcy or if any information on the archival service used is required to be filed with the supervisor. It is also not clear whether the archived information would include all customer information, including underlying documentation collected during the CDD process. Moreover, the period for which the archived information must be retained is not stipulated in law. Other scenarios leading to the liquidation of a bank, re-organisation (merger/division) of a bank or the cessation of banking operations in Romania by foreign banks are not envisaged in the legal provisions for retention of information. In cases of re-organisation, it is expected that the successor bank would retain client information for business continuity but the retention of transactional information for a period of five years from the conclusion of the transaction, as required by the standard, is not assured. **Romania is recommended to ensure that banking information is retained in line with the standard including for at least five years after a bank ceases to exist or a foreign bank ceases operations in Romania**.

Beneficial ownership information on account holders

269. The standard was strengthened in 2016 to specifically require that beneficial ownership information be available in respect of all account holders.

270. CDD obligations under AML Law require banks to collect information on the beneficial owners of account holders. For this purpose, they apply the definition of beneficial owner and the method of identifying beneficial owners as available under AML Law and the BO Guidance issued by NOPCML in 2022 (see paragraph 116 et seq.). Therefore, the absence

of "joint" ownership or control and indirect ownership being envisaged only in the context of foreign participation and not within structures layered with only domestic entities, identified under Element A.1 also apply here (paragraphs 119 and 175). Romania should clarify in guidance the aspects of indirect ownership without any foreign participation and "joint" ownership or control (see Annex 1).

271. The BO Guidance also includes examples of situations which may lead to control being exercised through other means but as noted under Element A.1, these would benefit from further explanation (paragraph 117). Therefore, Romania should adequately explain the situations which may lead to control being exercised through "other means" as contained in the BO guidance to enable their application in practice (see Annex 1).

272. As noted under Element A.1 (paragraph 144), beneficial ownership information of customers would be gathered even in cases where simplified due diligence measures are applied.

273. Beneficial ownership information collected as part of CDD measures must be reviewed and updated on a risk-sensitive basis, including when there is a change in the customer's circumstances. In furtherance to the requirement under the AML Law, NBR's Regulation No. 2 of 6 September 2019 requires banks to lay down in their internal know-your-customer norms, periodic risk-based update frequency for customers' information and documents, as well other situations in which customer information must be updated. The bank representatives indicated that, in practice, they generally review CDD information every year for high risk, every three years for standard risk and every five years for low-risk customers. The bank representatives interviewed also confirmed that the NBR checks for the availability of up-to-date beneficial ownership information during its supervisory activities.

274. The NBR's supervisory activity includes an assessment of how the bank updates the documents used to identify the customer. An assessment of the appropriateness of the updating frequency adopted by the bank and its implementation in practice have been key areas of focus during NBR's inspections. The frequencies applied by banks were seen to vary but where the frequency was found to be too low and inconsistent with industry practice, the NBR issued supervisory orders to modify the frequency. It also noted that generally banks were updating information, but in respect of some customers, the timeline for updating information was not followed. At least in one case, the NBR has applied a fine amounting to RON 500 000 (EUR 100 798) for non-compliance with supervisory measures ordered by the NBR and initiating or continuing the business relationship or executing certain transactions in violation of the AML Law, which included not updating information for five clients and shortcomings in the process of identifying the beneficial owner for three clients. While the NBR's supervisory activity

has been focused towards ensuring periodic updating of client information, it remains that there is no binding guidance on the frequency at which beneficial ownership information must be periodically reviewed/updated for all risk categories, where such information is not updated due to any other triggers. Romania should clarify the rules in the legal and regulatory framework for updating the information obtained during the CDD process (see Annex 1).

Oversight and enforcement

275. The NBR is the designated supervisory authority of (domestic and foreign) banks operating in Romania for compliance with the AML obligations set out in AML Law (Article 27, AML Law).

276. Since 2019, the NBR has implemented a risk-based approach to supervision, which takes into account 1) risks arising from the business model, the size, nature, volume and complexity of the institution's activities, 2) risks arising from internal governance and the internal control system, at the level of enforcing international sanctions, and preventing money laundering and terrorism financing, 3) risks arising from the way in which the AML framework is applied, and 4) risks arising from the way in which international sanctions are implemented. Banks are generally designated as "medium risk" due to the supervisory environment in which they operate as compared to other regulated entities. In respect of risks arising from the way in which the AML legal framework is applied, the NBR assesses how the bank defines and ensures the identification of the beneficial owner(s); procedures and processes for applying standard, simplified or additional CDD measures; evaluation and classification of clients and transactions according to their associated potential risk; management of the risks associated with customers and transactions presenting a potentially higher risk; updating and management of documents used to identify customers, as well as secondary records and records of customer financial operations, etc.

277. The supervisory activity involves conducting full scope supervisions every three years for institutions determined to be high risk and medium-high risk and every five years for all other institutions. The NBR also conducts targeted inspections which focus on specific topics on the basis of findings from previous inspections or off-site information analyses. From 2020, the NBR has been sending sector-specific annual questionnaires to check the AML-related policies and their implementation. Starting 2022, the annual questionnaires have been supplemented by a requirement to file quarterly reports.

278. When deficiencies are identified, the NBR orders supervisory measures and issues letters of recommendation. In certain cases, the inspected banks are also asked to submit action plans for redressal of the deficiencies identified. The NBR monitors the appropriate implementation of the

supervisory measures and recommendations, within the deadlines set. In case of failure to implement supervisory measures within the deadline or of their improper implementation, the bank would be either sanctioned or provided additional time, upon request, to address the gaps. Available sanctions include written or public warnings, a fine on the bank of up to 10% of its total annual turnover with a maximum of RON 23 million (EUR 4.63 million) and a fine on the natural person responsible ranging between RON 10 000 (EUR 2 016) and RON 23 million (EUR 4.63 million) (Article 27(8), AML Law).

279. On-site inspections carried out by the NBR and the sanctions applied during the review period are tabulated below.

Sanctions applied by the NBR

Year	Number of banks inspected	Fines (number)	Fines (value)	Written warning	Other
2019	26	7	EUR 43 202	0	28
2020	18	0	0	6	15
2021	12	0	0	3	7
2022	27	2	EUR 110 000	10	20

Note: "Other" includes supervisory orders and recommendation letters.

280. NBR's inspections covered all banks in Romania. Due to the pandemic-related restrictions prevailing during 2020 and 2021, the supervisory activity saw a decline as on-site inspections had to be rescheduled in some cases. In other cases, they were carried out exclusively off-site. All supervisory activity included an assessment of implementation of CDD measures and identification of beneficial owners. In respect of the application of CDD measures, deficiencies noted related to the failure to apply appropriate additional CDD measures for certain clients from high-risk sectors (mainly on lending/leasing companies), inconsistent monitoring of business relationships and transactions and delays in updating of customer data in some cases (also see paragraph 274).

281. Based on the risk factors identified, the NBR has issued recommendations and supervisory orders prescribing corrective measures to be implemented in a time bound manner, on improving the management framework, policies, procedures and implementing controls for mitigation and management of risks. The recommendations made included exercising increased vigilance by implementing additional controls on dormant accounts, centralisation of the approval of the initiation of business relations regardless of risk, eliminating possible situations of derogation from the application of internal norms regarding CDD and opening of accounts, taking proportionate actions to counteract risks arising during the updating

of client information instead of automatic termination of the business relationship conducting training sessions on AML obligations, and implications of non-compliance with the same. In certain cases, some important banks were asked to review their entire customer portfolio, including the identification of beneficial owners.

282. While the scope of the NBR's supervisory activity is adequate, certain gaps were identified in the understanding and implementation of the AML obligations relating to CDD and identification of beneficial owners during the on-site interaction with bank representatives. Although the bank representatives displayed a general understanding of the concept of beneficial ownership, it was explained that they do not identify beneficial owners of companies on the basis of control through "other means" as it cannot always be demonstrated through supporting documents. Therefore, in cases where no natural person can be identified as the beneficial owner on the basis of control over more than 25% of the shares, the senior management personnel are identified as the beneficial owners. Moreover, there was a general lack of understanding about nominee arrangements, which are listed as indicators of potentially increased risk requiring additional CDD measures by the AML Law. Continued and strengthened supervision is expected to ensure that the gaps identified (during the on-site and in NBR's supervisory activity) in the understanding and implementation of the AML obligations relating to CDD and identification of beneficial owners are addressed. Therefore, **Romania is recommended to strengthen its supervision and enforcement to secure the availability of beneficial ownership information of bank accounts in line with the standard in all cases**.

Availability of banking information in EOI practice

283. Romania received 184 requests for banking information of companies and individuals and was able to provide the requested information in all cases. Peers did not report any issues relating to banking information of accounts held in Romania.

Part B: Access to information

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

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

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

285. The 2016 Report noted that Romania's legal and regulatory framework in relation to access to information was in place and its practical implementation was Compliant with the standard. The situation remains generally the same.

286. Romanian authorities have ready access to ownership, accounting and banking information through the internal databases, which do not require the use of access powers. Where information is required to be gathered from an information holder, broad access powers are available pursuant to the Fiscal Procedure Code (FPC). At the time of the previous review, these powers could only be exercised by the tax authorities involved in fiscal inspections, however, since 2017, most of these powers can be directly utilised by EOI authorities organised at the local, county level. Enforcement measures are also available to compel production of information. In addition, bank secrecy cannot be used as a ground to refuse to provide requested information to the tax authorities and professional privilege may be overridden with the consent of the taxpayer.

287. During the review period, Romania effectively used its access powers to obtain information required for exchange purposes.

288. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the legislation of Romania in relation to access powers of the competent authority.

Practical Implementation of the Standard: Compliant

No issues in the implementation of access powers have been identified that would affect EOIR in practice.

B.1.1. Ownership, identity and banking information and B.1.2. Accounting records

Authorities involved in gathering information

289. The Head of the International Information Exchange Unit (IIEU) is the delegated Competent Authority for administrative co-operation (including EOI) in tax matters. The IIEU is supported by 50 local Exchange of Information Units (EOI Units) organised at the county level, which gather information required for EOI purposes.

290. At the time of the 2016 Report, on receipt of an EOI request, a reference had to be made to the tax authorities in charge of fiscal inspections in order to gather the requested information (Articles 125 and 135, FPC). Subsequently, Order 3076/2017 granted certain powers available under the FPC to the local EOI Units to directly gather information from the taxpayer or "any other persons with whom the taxpayer has or had economic and legal relationships" (hereinafter referred to as the "information holder"). References may still be made to the tax authorities in charge of fiscal inspections where more stringent actions are necessary (see section B.1.4).

General information gathering powers

291. Operational Procedure 46.07 on "Resolving requests for information received from other states" (PO-46.07) details the access powers from the FPC that are available to local EOI Units and the procedures to be applied for the exercise of these powers. PO-46.07 clarifies that the rules established therein are applicable for EOI requests received from both EU Member States and other jurisdictions with which Romania has signed international legal agreements.

292. In general, local EOI Units obtain information directly from the taxpayer/information holder using an invitation to headquarters (Articles 56 and 64, FPC), a request for information (Articles 58 and 64, FPC) or through an onsite verification (Article 65, FPC). With the entry into force of Order 3076/2017 of 27 October 2017 regarding the model and content of the forms used in the taxpayer verification activity by the tax information structures, the local EOI Units are permitted to use these access powers for EOI purposes without invoking any special procedures. These powers are, however, not available to the IIEU.

293. Invitation to headquarters and request for information are issued when limited information is required from the taxpayer, i.e. which does not require a verification of the taxpayer's premises.

294. An onsite verification is used when a large volume of documents is required to be verified. It is preceded by a notice informing about the information required and when the local EOI Unit officers are expected to visit the premises of the taxpayer/information holder. For conducting the onsite verification, the local EOI Unit officers carry an authorisation order issued by the head of the local EOI Unit and may seek assistance from the police or other public agents, if required. In case of refusal of entry into premises by a taxpayer/information holder who is a natural person, the local EOI Unit officers can ask a Court for an order. Following an onsite verification, an invitation to headquarters or a request for information is issued to the taxpayer to provide the necessary information.

295. During the review period, information was directly obtained from the taxpayer/information holder in 319 cases, i.e. for about half of the requests received (see also paragraph 315), mostly for accounting information.

296. A special procedure applies to access information from banks. Information, such as bank account opening documents, balances or information regarding the operation of the bank accounts, is requested from the bank concerned through a specially designed portal (pursuant to Article 61(1), FPC and NAFA President's Order No. 3770/2015 of 23 December 2015). Banks are required to provide the information on turnovers/account balances within five working days if information is requested for a period of less than three years, and within ten working days for a period of more than three years. Information and documents regarding opening of account, declaration or modification of power of attorney, etc. must be provided within 25 working days from the date of the request.

297. The peer input received was generally satisfactory although one peer informed that Romania was unable to provide the requested accounting information in two cases. Romania explained that in one case the taxpayer had been dissolved during the requested period (see paragraph 239); and in the

other case, the taxpayer was declared inactive, and the legal representative of the taxpayer could not be contacted (see paragraph 249).

Access to each type of information

298. For all tax-related information, the IIEU and the local EOI Units have direct access to NAFA's taxpayer database that provides a 360-degree profile of the taxpayer. All Romanian natural persons are identified by a 13-digit personal numerical code which is contained in all official documents.

299. **Ownership** (legal and beneficial) information is accessed through the central registers organised at the level of the National Trade Registry Office (NTRO) (for companies and partnerships) (see paragraphs 69, 125, 169 and 180), at the level of NAFA (for fiducia) (see paragraphs 192 et seq.) and at the level of the Ministry of Justice (for associations, foundations and federations) (see paragraph 213). As noted in paragraph 71, the central register organised at the level of the NTRO does not contain up-to-date legal ownership information of joint stock companies (SAs) and partnerships limited by shares (SCAs); rather it is only available in the register of shareholders maintained by the SAs and SCAs themselves. During the review period, Romania received 13 EOI requests relating to SAs but legal ownership information was not sought in any of them. The Romanian authorities advised that even for SAs and SCAs, the legal ownership information would be accessed from the central register organised at the level of the NTRO. Therefore, Romania should ensure that legal ownership information of SAs and SCAs is obtained from the companies themselves for responding to EOI requests (see Annex 1).

300. **Accounting** information is obtained through the tax database held within NAFA or directly from the taxpayer/information holder. As mentioned under Element A.2 (see paragraph 233), taxpayers are required to file annual financial statements to the tax authorities. These statements can be directly accessed by the IIEU and the local EOI Units for purposes of exchange of information on request. Where additional information is required, such as underlying documents, the local EOI Units can gather the information from the taxpayer/information holder by utilising the access powers available to them (see paragraphs 291 et seq.). Romania indicated that in all 77 requests for accounting information, the requested accounting information was sought from the taxpayer, except in one case where the taxpayer had ceased to exist (see paragraph 239).

301. For **banking** information, the local EOI Unit first consults the central register for bank accounts, which contains identification information of all natural or legal persons who own or control payment accounts and bank accounts identified by IBAN, or safe deposit boxes held at a credit institution

in Romania (see paragraph 267). As a result, Romania can obtain banking information when either the bank account number, the name of the account holder or the beneficial owner, or the Romanian personal numerical code of the account holder is provided by the requesting jurisdiction, however only the name may not be sufficient to uniquely identify the taxpayer under investigation.

302. The IIEU and the local EOI Units also have access to other centralised registers such as the registers on moveable and immoveable assets.

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

303. The FPC expressly refers to EOIR. It stipulates that, in response to an EOI request from an EU Member State, the Romanian authorities must communicate any information they hold or obtain from any administrative enquiries necessary to gather the information (Articles 288 and 289, FPC). In respect of non-EU jurisdictions, the FPC lays down an obligation to co-operate (Article 71, FPC) and designates NAFA as the competent authority "for exercising all rights and fulfilling all obligations" regarding EOI.

304. The Romanian authorities confirmed that there are no domestic tax interest restrictions to the access powers available to the local EOI Units. The same treatment and domestic access powers are applied, regardless of whether the requests are received from EU Member States or from non-EU jurisdictions.

305. During the review period, Romania received 20 requests which did not involve any domestic tax interest and mainly related to banking and property information. Romania successfully exchanged information in all cases. No peers have indicated any issues relating to domestic tax interest being applied by Romania.

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

306. Failure of a taxpayer/information holder to make available registers, records, business documents and/or any other documents in response to an invitation to headquarters, a request for information or during an onsite audit, is subject to a fine between RON 25 000 (EUR 5 040) and RON 27 000 (EUR 5 443) for legal persons classified as medium-sized and large taxpayers, and a fine between RON 6 000 (EUR 1 210) and RON 8 000 (EUR 1 613) for other taxpayers, including natural persons (Article 336(2)(a), FPC).

307. Credit institutions, payment institutions and electronic money institutions that fail to provide the requested banking information are subject to a fine between RON 1 000 (EUR 201) and RON 5 000 (EUR 1 008) for legal persons classified as medium-sized and large taxpayers and a fine between RON 500 (EUR 101) and RON 1 000 (EUR 201) for other taxpayers (Article 336(2)(d), FPC).

308. The FPC also includes powers of fiscal inspection with or without prior notice (Articles 113 and 135, FPC), however, the local EOI Unit officers cannot invoke these powers. In a scenario where these powers are required to be invoked (where the taxpayer/information consistently does not provide information in response to a request for information or in an onsite audit or where information relevant for Romanian tax purposes is discovered by the local EOI Unit officers), the local EOI Unit may make a reference to the relevant fiscal inspection division to exercise these powers (see the 2016 Report, paragraphs 215 to 217).

309. During the review period, one penalty, amounting to RON 2 000 (EUR 403), was applied for non-compliance with the obligation to provide information. As a result, the information holder provided the requested information.

B.1.5. Secrecy provisions

Bank secrecy

310. Emergency Ordinance No. 99 of 6 December 2006 on Credit Institutions and Capital Adequacy (Emergency Ordinance 99/2006) requires credit institutions to preserve secrecy of all facts, data or information of the client or in relation to a client's account (Article 111). This covers information related to the person, property, activity, business, personal or business relationships of the client as well as balances, turnovers, operations performed, services provided or agreements concluded with the client. The obligation extends to all employees of the credit institutions and continues even after a client relationship ceases (Article 112, Emergency Ordinance 99/2006).

311. Exceptions are available to these secrecy obligations. Bank secrecy may be lifted when, *inter alia*, an authority or institution, entitled by special law to require and/or receive such information in order to fulfil its specific tasks, seeks this information through a written request explicitly stating the information required (Article 113(2), Emergency Ordinance 99/2006). As noted in paragraph 301 above, the local EOI Units are entitled to seek banking information directly from the banks when required for EOIR purposes. The bank representatives interviewed during the on-site visit confirmed this

understanding. During the period under review, banks always responded to requests for information from the local EOI Units.

Professional secrecy

312. The FPC allows priests, lawyers, tax consultants, auditors, chartered accountants, doctors and psychotherapists to refuse to provide information that they may become aware of in the exercise of their activity (Article 67, FPC). However, such professionals cannot refuse to provide information (except commercial, industrial or professional secrets or information the disclosure of which would be contrary to public order) regarding the fulfillment of the obligations stipulated by the tax legislation, both as taxpayers and as persons exercising the respective profession. In such situations, as per the FPC, these professionals (except priests) would provide information if they receive the consent of the person about whom the information is requested. This was confirmed to be the case by the professionals interviewed during the on-site visit. This is a narrower approach than that set in the standard. While the Romanian authorities confirmed that professionals, particularly lawyers, were not used as a source of information, nevertheless, Romania should ensure that the requirement for consent does not lead to delays in or becomes an impediment for access to information (see Annex 1).

B.2. Notification requirements, rights and safeguards

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

313. The 2016 Report found that the Romanian law does not require the notification of the person who is the object of an EOI request either prior to exchanging information or post the exchange of information (paragraphs 263 to 265, 2016 Report). This continues to be the case.

314. Romanian authorities informed that when requesting information from a person through an invitation to headquarters, a request for information or an on-site audit, the information required to be shared with the taxpayer is the date, time and place where the taxpayer must appear or when the EOI Unit officers would visit, the legal basis of the request, the documents that the taxpayer is required to provide and the applicable sanctions in case of non-compliance. The purpose of the exercise would be mentioned as collection of information and clarifications necessary to establish the fiscal status. Romania confirmed that the fact that the information is required to respond to an EOI request is not disclosed to the taxpayer.

315. Romanian authorities informed that the majority of information required for responding to EOI requests is available in the centralised registers. Where information is required to be obtained from the taxpayer/information holder, the taxpayer/information holder is not informed about the EOI request or the reasons for initiating the information gathering measures. Therefore, despite the absence of an explicit anti-tipping off obligation, the risk that the taxpayer/information holder would become aware of the EOI purpose of the information gathering measure is very low.

316. Where the requesting jurisdiction expressly requests that the taxpayer must not be notified, Romania provides information that is available in the centralised registers.

317. Romanian authorities further advised that there are no special appeal rights applicable in the context of EOI and no appeals have been made in connection to EOI requests during the review period.

318. None of the peers reported concerns relating to notification requirements or rights and safeguards available to taxpayers in Romania.

319. The conclusions are as follows:

Legal and Regulatory Framework: in place

The rights and safeguards that apply to persons in Romania are compatible with effective exchange of information.

Practical Implementation of the Standard: Compliant

The application of the rights and safeguards in Romania is compatible with effective exchange of information.

Part C: Exchange of information

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

C.1. Exchange of information mechanisms

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

321. In the 2016 Report, Romania was rated as Compliant with the requirements of Element C.1. Romania had a network of 127 EOI partners (including jurisdictions covered by the Multilateral Convention) and the EOI relationships were found to be generally in line with the standard, except the Double Taxation Convention (DTC) with Kuwait. Romania was recommended to re-negotiate this agreement so that it provides for effective exchange of information. As the Multilateral Convention has entered into force in Kuwait in 2018, Romania's EOI relationship with Kuwait is now considered to be in line with the standard.[31]

322. Since the 2016 Report, Romania has signed a DTC with Hong Kong, China. Romania's EOI network has further expanded with the increased participation to the Multilateral Convention and now covers 160 jurisdictions. EOI relationships with 16 jurisdictions are not supplemented by the Multilateral Convention but only three (DTCs with Egypt, the Philippines and Uzbekistan)

31. Romania indicated that Kuwait has not responded to its request to re-negotiate the Article on EOI in the bilateral DTC.

are fully in line with the standard.[32] Therefore, Romania should continue its efforts to bring the other EOI relationships in line with the standard.

323. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms of Romania.

Practical Implementation of the Standard: Compliant

No issues have been identified that would affect EOIR in practice.

C.1.1. Standard of foreseeable relevance

324. The 2016 Report noted that even though a vast majority of Romania's DTCs use the term "necessary" in lieu of "foreseeably relevant", Romania considers the formulations "necessary" or "relevant" as equivalent to "foreseeably relevant" and interprets them in line with the Commentary to Article 26(1) of the OECD Model Tax Convention. This remains the case and Romania confirmed that the term "necessary" in the 15 out of the 16 bilateral EOI relationships not supplemented by the Multilateral Convention[33] is interpreted as equivalent to "foreseeably relevant".

325. Since the last review, Romania has re-negotiated seven[34] DTCs and signed new Protocols to two[35] DTCs. As a part of these revisions, the EOI article has been aligned with Article 26 of the OECD Model Tax Convention and "foreseeably relevant" information is expected to be exchanged, except in one DTC (United Arab Emirates) where the term used is "necessarily relevant". The Romanian authorities informed that the Romanian translations of "foreseeably relevant" and "necessarily relevant" are the same and Romania considers "necessarily relevant" as equivalent to "foreseeably relevant". Moreover, both Romania and United Arab Emirates are signatories

32. DTCs with Algeria, Bangladesh, Belarus, Democratic People's Republic of Korea, Egypt, Ethiopia, Iran, Sri Lanka, Sudan, Syria, Tajikistan, Turkmenistan, Uzbekistan and Zambia. Further, the Multilateral Convention is not yet in force in the Philippines, while the United States has not signed the Protocol to the Multilateral Convention.
33. The DTC with Uzbekistan now uses the term "foreseeably relevant" (see paragraph 325).
34. DTCs with Bosnia and Herzegovina, Bulgaria, China, Italy, Norway, Spain and United Arab Emirates.
35. DTCs with Israel and Uzbekistan. The Protocol with Israel has not yet entered into force.

to the Multilateral Convention. Hence, their EOI relationship is consistent with the standard.

326. Romania was recommended to renegotiate the DTC with Kuwait as it does not specifically provide for the exchange of information in aid of the administration and enforcement of domestic laws (paragraph 284, 2016 Report). Since then, the Multilateral Convention has entered into force in Kuwait. therefore, Romania's EOI relationship with Kuwait is now in line with the standard.

Clarifications and foreseeable relevance in practice

327. The FPC stipulates that requested information would be considered to be foreseeably relevant if the requesting jurisdiction considers that, in line with its domestic law, there is a reasonable possibility that the information requested may be relevant to the tax situation of a taxpayer(s) and it is justified for the purposes of the investigation (Article 288, FPC, applicable to EOI exchanges with EU Member States, see paragraph 303). It further provides that in order to demonstrate foreseeable relevance, the requesting jurisdiction must provide the fiscal purpose and specify the information necessary for the application of the legal rules in force in respect of the taxes covered.

328. In practice, to determine that an EOI request meets the standard of foreseeable relevance, Romania expects an explanation on the relevant background and the relevance of the information requested. There is no distinction made in this connection between EU-Member states and non-EU jurisdictions. Where any of the elements is found to be missing from the request or unclear, Romania seeks a clarification from the requesting jurisdiction.

329. During the review period, clarifications were sought in respect of 17 out of the 645 requests (less than 3% of cases). The reasons for seeking the clarifications included inaccurately filled e-forms for request and insufficient explanation on the foreseeable relevance of the information requested. In one case, the request for clarification led to the withdrawal of the request as the requesting jurisdiction made a fresh request including the requested elements.

330. One request was declined by Romania. The request was not considered to be foreseeably relevant as the nexus with the requesting jurisdiction was not clearly established and Romania's request for clarification remained unanswered (see paragraph 400).

331. No peers have indicated any issues in respect of Romania's interpretation or application of the standard of foreseeable relevance.

Group requests

332. Romania's EOI instruments do not contain language prohibiting group requests. The FPC foresees group requests and stipulates that where an EOI request concerns a group of taxpayers that cannot be individually identified, the requesting jurisdiction must provide:

- a detailed description of the group
- an explanation of the applicable law and the facts on the basis of which there is reason to believe that the taxpayers in the group have not complied with the applicable law
- an explanation of how the information requested would help determine whether the taxpayers in the group have complied with the legal requirements
- where applicable, facts and circumstances relating to the involvement of a third party that actively contributed to the possible non-compliance of the taxpayers in the group with the applicable law (Article 288, FPC, applicable to EOI exchanges with EU Member States).

333. The officers of the IIEU interviewed during the on-site visit were unfamiliar with what constitutes a group request and how its foreseeable relevance would be established. Romania did not receive or send any group requests during the peer under review. Nevertheless, for effective exchange of information in case of group requests, Romania should ensure that group requests are processed in line with the standard (see Annex 1).

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

334. The standard requires that the EOI mechanisms should allow for exchange of information in respect of all persons, i.e. not be restricted to persons who are resident in one of the contracting parties for purposes of a treaty or a national of one of the contracting states.

335. Out of Romania's 160 EOI relationships, 144 EOI relationships are covered by the Multilateral Convention, which allows for exchange of information in respect of all persons. As mentioned above (paragraph 326), Romania's DTC with Kuwait restricts EOI to carrying out the purposes of the Convention. Romania's EOI relationship with Kuwait is now covered by the Multilateral Convention, therefore, Romania considers that EOI in a broader manner is now possible between the two jurisdictions. Therefore, the in-text recommendation in the 2016 Report (paragraph 290) is addressed.

336. The remaining 16 EOI relationships are premised on bilateral instruments that allow for EOI for the purposes of the Convention and for application of domestic laws relating to taxes covered by the Convention. EOI is not restricted by Article 1 (Persons) of the Conventions, except in two cases,[36] where there is no explicit exception to the restrictions in Article 1 (Persons). Moreover, in one case, exchange of information is permitted for the application of the domestic laws only insofar as they relate to "an item covered by the Convention".[37] As such, exchange of information in respect of all persons is not assured in these cases. Romania should ensure that its relationships with the United States and Zambia are brought in line with the standard (see Annex 1).

337. Romania received at least one request where the subject of the request was not a resident of either of the Contracting States. Romania sought clarification on the foreseeable relevance of the information requested. In the absence of any clarification from the requesting jurisdiction, Romania declined the request (also see paragraph 400).

C.1.3. Obligation to exchange all types of information and C.1.4. Absence of domestic tax interest

338. An EOI mechanism is considered to enable effective exchange of information when it does not permit the requested jurisdiction to decline to supply information solely because the information is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. Further, it should allow for exchange of information without regard to whether the requested jurisdiction needs the information for its own tax purposes.

339. The 144 EOI relationships covered by the Multilateral Convention are in line with standard, as the Multilateral Convention contains provisions corresponding to Article 26(4) and 26(5) of the OECD Model Tax Convention.

340. Among the 16 bilateral EOI relationships not supplemented by a multilateral agreement in force, only one bilateral instrument[38] contains provisions corresponding to Article 26(4) and Article 26(5) of the OECD Model Tax Convention.

341. Romanian law does not contain any restrictions on EOI in the absence of a domestic tax interest (see paragraphs 303 et seq.) or exchange of banking information on a reciprocal basis in the absence of a provision

36. DTCs with United States and Zambia.
37. DTC with Zambia.
38. DTC with Uzbekistan.

corresponding to Article 26(5) of the OECD Model Tax Convention. This position is shared by three of its partners: Egypt, the Philippines and the United States. Moreover, during the review period, Romania exchanged banking information with the United States despite the absence of provisions corresponding to Article 26(4) and Article 26(5) of the OECD Model Tax Convention. Therefore, given the interpretation of the parties to the three bilateral instruments, Romania's EOI relationships with Egypt, the Philippines and the United States are in line with the standard.

342. The position of the remaining 12 jurisdictions is not known (as they are yet to be reviewed) or cannot be ascertained (as they are not members of the Global Forum).[39] As such, it is not assured that these EOI relationships are in line with the standard. Romania should ensure that all its EOI relationships are brought in line with the standard (see Annex 1).

C.1.5 and C.1.6. Civil and criminal tax matters

343. The standard requires that exchange of information mechanisms should provide for exchange of information in both civil and criminal tax matters and not apply dual criminality principles to restrict exchange of information.

344. Romania's EOI instruments satisfy both conditions – they provide for exchanges in both civil and criminal tax matters and they do not contain any dual criminality requirements. The Romanian authorities confirmed that the requirements and procedure to respond to EOI requests is the same, regardless of whether they deal with civil or criminal tax matters. During the review period, the 19 EOI requests relating to criminal tax matters were successfully responded to.

C.1.7. Provide information in specific form requested

345. According to the standard, EOI mechanisms should allow for the provision of information in specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent possible under the jurisdiction's domestic laws and practices.

346. A few bilateral instruments explicitly provide that information can be depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts, or writings). For the rest, there are no restrictions in Romania's EOI instruments or laws that would

39. DTCs with Algeria, Bangladesh, Belarus, Democratic Republic of Korea, Ethiopia, Iran, Sri Lanka, Sudan, Syria, Tajikistan, Turkmenistan and Zambia.

prevent Romania from providing information in a specific form, as long as this is consistent with its own administrative practices.

347. No requests were received during the review period which sought information in a specific form. The peer input also did not indicate any issues in this regard.

C.1.8 and C.1.9. Signed agreements should be in force and be given effect through domestic law

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

349. Romania's procedure for ratification and entry into force of instruments remains the same as described in the 2016 Report (see paragraphs 310 et seq., 2016 Report). International treaties are negotiated by the Government and signed by the President (Article 91, Constitution of Romania). They are then presented to the Parliament for ratification through a bill accompanied by an explanatory statement, which is endorsed by all relevant Ministries. Upon adoption by the Parliament, the law of ratification is promulgated by a Presidential Decree and published in the Official Gazette. Romania indicated the process of ratifying a bilateral tax treaty generally takes between six months to one year.

350. At present, Romania has 87 DTCs which cover 88 jurisdictions,[40] and 3 TIEAs. Since the 2016 report, Romania has signed a DTC with Hong Kong, China and the TIEA with Isle of Man has entered into force. Romania re-negotiated seven DTCs,[41] which have all entered into force. Romania also signed Protocols to two DTCs,[42] one of which (with Israel) has not entered into force as confirmation of completion of internal procedures from Israel is awaited.

40. Romania continues to apply the Yugoslavia treaty signed on 16 May 1996 with respect to Montenegro and Serbia.
41. DTCs with Bosnia and Herzegovina, Bulgaria, China, Italy, Norway, Spain and United Arab Emirates.
42. DTCs with Israel and Uzbekistan.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	**160**
In force	156
In line with the standard	143
Not in line with the standard	13
Signed but not in force	4 [a]
In line with the standard	4
Not in line with the standard	0
Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms	**16**
In force	16
In line with the standard	3 [b]
Not in line with the standard	13 [c]
Signed but not in force	0

Notes: a. The Multilateral Convention is not in force in Gabon, Honduras, Madagascar, Togo.

b. DTCs with Egypt, the Philippines and Uzbekistan.

c. DTCs with Algeria, Bangladesh, Belarus, Democratic People's Republic of Korea, Ethiopia, Iran, Sri Lanka, Sudan, Syria, Tajikistan, Turkmenistan, the United States and Zambia. The relationship with the United States will meet the standard when the Multilateral Convention enters into force there.

Other forms of exchange of information

351. Besides EOIR, Romania engages in automatic exchange of financial account information with EU Member States, spontaneous exchange of information under the tax treaties, exchanges under the framework of BEPS Actions 5 and 13, service of documents and simultaneous or joint audits.

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

> The jurisdiction's network of information exchange should cover all relevant partners, meaning those jurisdictions who are interested in entering into an information exchange arrangement.

352. Romania has a large EOI network comprising 160 jurisdictions. Romania indicated that it is also in the process of revising existing DTCs and negotiating new DTCs with certain jurisdictions.

353. No Global Forum members indicated, in the preparation of this report, that Romania refused to negotiate or sign an EOI instrument with it. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering

into such relationship, Romania should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

354. The conclusions are as follows:

Legal and Regulatory Framework: in place

The network of information exchange mechanisms of Romania covers all relevant partners.

Practical Implementation of the Standard: Compliant

The network of information exchange mechanisms of Romania covers all relevant partners.

C.3. Confidentiality

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

355. The 2016 Report concluded that in Romania, confidentiality is ensured in respect of EOI requests, both by law and in practice and rated Romania as Compliant with Element C.3 of the standard.

356. The new EOI instruments adopted since then also contain provisions that ensure the confidentiality of information exchanged and limit the disclosure and use of information received.

357. The confidentiality legal obligations continue to be applied and enforced in practice in compliance with the standard.

358. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms and legislation of Romania concerning confidentiality.

Practical Implementation of the Standard: Compliant

No material deficiencies have been identified and the confidentiality of information exchanged is effective.

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

Exchange of information mechanisms

359. All of Romania's EOI mechanisms, including the DTC with Hong Kong, China, which was signed after the 2016 Report, have confidentiality provisions based on Article 26(2) of the OECD Model Tax Convention requiring that any information received is treated as confidential in the same manner as information received under the domestic laws and is only disclosed to persons authorised by the Convention. Confidentiality of the information received from EOI partners is also stipulated by Article 22 of the Multilateral Convention. Furthermore, as per the Romanian Constitution (Article 11), international treaties ratified by the Parliament become a part of the domestic law; therefore, the confidentiality provisions in the treaties are directly applicable in Romania.

360. The Terms of Reference, as amended in 2016, clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides that the information may be used for such other purposes under the laws of both contracting parties (such as the Multilateral Convention), and the competent authority supplying the information authorises the use of information for purposes other than tax purposes. In the period under review, Romania reported that there were no requests where in the requesting partner sought Romania's consent to utilise the information for non-tax purposes and similarly Romania did not request its partners to use information received for non-tax purposes.

Domestic law

361. The FPC requires NAFA to keep confidential all information that comes to their knowledge as a result of the performance of their duties (Article 11, FPC). All taxpayer data or any information obtained from statements or documents submitted by the taxpayer or third parties is considered to be a "tax secret". Such information may be disclosed to, *inter alia*, the tax authorities of other countries, on a reciprocal basis, on the basis of international legal instruments signed by Romania, which include provisions on administrative co-operation in the field of taxation and/or the recovery of tax debts, and competent judicial authorities. The authority receiving the information is also bound by the obligation to maintain the secrecy of the information it receives. Additionally, tax authorities are required to comply with the EU data protection rules (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016).

362. In accordance with the FPC (Article 11), persons who/which are the subject of an EOI request, their successors, or any applicant with the express and unambiguous consent of the persons about whom information has been requested, may be provided access to the exchanged information. In such cases, Romania would only provide access upon receiving prior consent of the requested jurisdiction. One such case occurred during the period under review where the person who was subject of an EOI request was provided access to the exchanged information, following the agreement of the requesting jurisdiction.

363. Unauthorised disclosure of tax information by persons who know it by virtue of their functions is punishable by imprisonment of a period between three months to three years or by a fine (Article 304(1), Criminal Code). Unauthorised disclosure of tax information by a person who becomes aware of it is also punishable by imprisonment of a period between one month to one year or by a fine (Article 304(1), Criminal Code). Directly or indirectly using confidential information or allowing unauthorised access to such information for the purpose of obtaining money, goods or other improper benefits for oneself or for another is also punishable by imprisonment from one to five years (Article 12, Law 78/2000 for the prevention, detection and sanctioning of acts of corruption). It is also subject to administrative sanctions ranging from a reduction in salary to dismissal from office (Article 492, Government Emergency Ordinance No. 57 of 3 July 2019 on the Administrative Code).

C.3.2. Confidentiality of other information

364. The confidentiality provisions in Romania's EOI agreements do not draw a distinction between information received in response to EOI requests and information forming part of the requests themselves.

Confidentiality in practice

Human Resources

365. The hiring process for government employees includes a verification of the candidate's criminal record. All public servants are required to take an oath of secrecy. Public servants are prohibited from disclosing and using secret information for a period of two years after the termination of employment, except where provided by law, such as the provision in the FPC mentioned above (Article 434, Government Emergency Ordinance No. 57 of 3 July 2019 on the Administrative Code).

366. Romanian authorities informed that each employee has a personal chart that reflects, in accordance with the position occupied, their rights and

obligations with regard to taxpayer information, access to databases and access to EOI information (where applicable).

367. All employees (including those posted in IIEU) undergo trainings conducted by the Ministry of Finance or NAFA, which include trainings on confidentiality of information. A mandatory annual examination on the confidentiality of information is organised by the General Directorate of Integrity (within NAFA) for all NAFA employees. Employees with low scores are selected for targeted training by the General Directorate of Integrity.

368. At the time of departure from the post or from the organisation, all physical and digital access is revoked, and this is required to be certified by the concerned department.

369. Romanian authorities understand the confidentiality obligation under the FPC (see paragraph 361) to imply that employees continue to remain indefinitely obliged to maintain confidentiality of information even after leaving the position or office. In the event of an unauthorised disclosure, former employees would remain liable to criminal sanctions even though administrative measures would no longer be applicable.

370. For external contractors, the Ministry of Finance's revised terms of contract (effective since January 2023) include a requirement for contractors to present the criminal records of the proposed experts for the execution of the contractual activities. Where external contractors have access to confidential information, they are required to sign non-disclosure agreements and are required to abide by the Ministry of Finance's information security policy and any other security measures in place. After the completion of the contract, the contractor and its staff are obligated to provide proof that all data they had access to has been erased. Being a part of the Ministry of Finance, these obligations also apply to external contractors employed by NAFA. As on date, the IIEU does not engage any external contractors and no external contractors have access to EOIR data.

Handling of EOI information

371. Incoming requests for information are generally received by the IIEU in electronic format, through the Common Communication Network (CCN), a digital platform used for EOI among EU Member States, or in encrypted format through the generic EOI email address. In rare instances, requests may be received in paper format through post at the General Directorate of Tax Information, NAFA, from where they are transmitted to the IIEU.

372. The EOI requests are downloaded or scanned, as applicable, and transmitted by the assigned officer of the IIEU to the concerned local EOI Unit through the IIEU's generic email address to the generic email address of the

concerned local EOI Unit, where the head of the local EOI Unit assigns it to a case officer (from within the local EOI Unit). Information gathered by the case officer is similarly transmitted through the generic email addresses to the IIEU, from where the assigned officer transmits it to the requesting jurisdiction through CCN or through the generic EOI email address, as applicable.

373. The downloaded/scanned request and the information sent to the requesting jurisdiction is stored on the (password-protected) laptop/workstation of the assigned IIEU officer. After the final response is sent, the request and the information sent is also archived on a shared folder, which is hosted on the central server (see paragraph 383).

374. As mentioned under Element B.2 (paragraph 313 et seq.), taxpayers are not notified either prior to or post the exchange of information. Where information is only available with the taxpayer/information holder, the purpose of the request is mentioned as "to establish the fiscal status". At no point is it indicated that the information is being requested to respond to an EOI request.

375. A corresponding transmission chain is followed in case of outgoing requests. The emails sent through the IIEU's generic email address contain the confidentiality obligations, however, documents and information received under the EOI instruments sent as attachments are not treaty labelled. Romania should ensure that all documents obtained from EOI exchange partners are clearly identified as being subject to confidentiality provisions under EOI instruments (see Annex 1).

376. EOI information is retained for a period of 10 years after which it may be reviewed for disposal/destruction.

Physical security and access

377. The office of the IIEU is located within the General Directorate of Tax Information, within NAFA. The building is not open to public, is equipped with security cameras, and the access is restricted, with a security guard and through electronic locks accessed by authorised badges. Third persons and even officers from other Directorates are allowed into the building only accompanied by an officer who is posted within the Directorate, and such entry is recorded in a security register. Each office in the building is also electronically locked and access is granted only on a need basis.

378. The office of the IIEU is separate and is shared by all officers of the Unit. Access to the IIEU office is allowed to its officers, and to the Director and Deputy Director of the General Directorate of Tax Information, being the supervisory authorities of the IIEU. EOI information in paper format is stored in secure cabinets kept in the office of the IIEU for the entirety of the retention period.

379. Romanian authorities informed that similar measures relating to physical access and storage of information are adopted across all NAFA offices. The head of the relevant local Unit is required to inspect and ensure compliance with the security measures.

Electronic security

380. Romania does not have a formal Information Security Policy, but certain electronic security measures are in place, which include encrypted access to centralised databases, secured communication and confidentiality obligations of the officers.

381. Incoming EOI requests are generally received electronically. The access to the CCN and the generic EOI email address is only available to the officers posted in the IIEU. Within the CCN portal, each IIEU officer has a designated folder for requests pertaining to the assigned EU Member States (each officer is allocated a set of jurisdictions for handling all EOIR related matters, see paragraph 410). Access to the generic EOI email address is linked through the name-based work email address of each officer and any communication sent through the generic EOI email address also identifies the officer sending it. Work emails cannot be accessed through personal devices.

382. Laptops were provided to the officers of the IIEU as a business continuity arrangement during the pandemic and continue to be used after that. These laptops are password protected and the use of external storage devices is disabled on them.

383. The shared folder for archiving EOI information is hosted on the central server. The access to the shared folder is managed by the National Centre for Financial Information and is granted only to the IIEU officers upon request of the General Directorate of Tax Information. Limited, specialised staff from the National Central for Financial Information have access to the server and each access is logged.

384. However, no information is available on the electronic security measures employed at the local EOI Units. Romania should ensure that the confidentiality of EOI information is maintained at each stage of the request (see Annex 1).

Incident/Breach management

385. Romanian authorities informed that any incident or breach identified by an officer is required to be reported to the supervisor, who in turn reports it to the Disciplinary Commission. However, there are no formal procedures or policy available for management of breaches. Romania should put in

place formal procedures for management of breaches to ensure the protection of exchanged information (see Annex 1).

386. It was further indicated that in case of a breach relating to EOI information received from an EU Member State, the European Commission would be notified to stop access to the CCN. Where the breach relates to EOI information received from a non-EU jurisdiction, the relevant partner or the appropriate co-ordinating body would be notified.

387. In practice, no breach of confidentiality of information received from EOI partner took place during the review period, and peers have not mentioned any issues in this regard.

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

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

388. The standard recognises that the requested jurisdictions should not be 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 or information, the disclosure of which would be contrary to public policy.

389. Romania's EOI mechanisms mirror these limits to exchange of information. Within the domestic law framework, the FPC clarifies that the provision of information can be refused if it would lead to the disclosure of a commercial, industrial or professional secret or a commercial process or some information whose disclosure would be contrary to public order (Article 300(4), FPC) (also see paragraph 312).

390. "Professional secret" is not defined in the DTCs. The FPC enumerates the professions whose activities may result in professional secrets, which can only be disclosed to the tax authority with the consent of the person about whom the information is requested (see paragraph 312). Romanian authorities informed that, in the context, further guidance would be sought from the Commentary to Article 26 of the OECD Model Tax Convention.

391. Romania advised that it did not experience any practical difficulties in responding to EOI requests due to the enforcement of rights and safeguards of taxpayers and third parties. The peers did not raise any concerns in this regard either.

392. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the information exchange mechanisms of Romania in respect of the rights and safeguards of taxpayers and third parties.

Practical Implementation of the Standard: Compliant

No material deficiencies have been identified in respect of the rights and safeguards of taxpayers and third parties.

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

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

393. The 2016 Report noted that Romania has adequate resources and organisational procedures in place to handle EOI requests and it was generally able to respond to requests in a satisfactory manner. However, the timeliness of responses was not optimal, and status updates were not systematically provided in all relevant cases. Therefore, Romania was rated as Largely Compliant with Element C.5 of the standard.

394. During the current review period, the resources and organisational procedures have proven to be adequate, and Romania was able to provide responses to EOI requests in a timely matter. Romania therefore improved its rating for Element C.5 to Compliant.

395. The conclusions are as follows:

Legal and Regulatory Framework

This element involves issues of practice. Accordingly, no determination has been made.

Practical Implementation of the Standard: Compliant

No material deficiencies have been identified in exchange of information in practice.

C.5.1. Timeliness of responses to requests for information

396. The FPC lays down that EOIR requests received from both EU Member States and non-EU jurisdictions must be resolved within three months from the

date of receipt of the request (Article 290, FPC). Where a delay is anticipated, the IIEU must explain the delay to the requesting jurisdiction or provide a partial response, and also indicate the expected date of the final response.

397. Romania received 645 EOI requests during the period under review (1 October 2019 to 30 September 2022). The requests received related to i) legal and beneficial ownership information (373 cases), ii) accounting information (77 cases), iii) banking information (184 cases) and iv) other type of information (448 cases).[43] Information was sought in respect of individuals (356 cases) and companies (290 cases). Romania indicated that its most significant EOI partners were France, Germany, Italy and Belgium.

398. The following table provides an overview of Romania's response times in providing a final response to these requests, together with a summary of other relevant factors affecting the effectiveness of Romania's practice during the period reviewed.

Statistics on response time and other relevant factors

		October 2019 – September 2020		October 2020 – September 2021		October 2021 – September 2022		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E]	211	100	222	100	212	100	645	100
Full response: ≤ 90 days		155	73	190	86	192	91	537	83
≤ 180 days (cumulative)		194	92	217	98	207	98	618	96
≤ 1 year (cumulative)	[A]	208	99	222	100	208	99	638	99
> 1 year	[B]	2	1	0	0	0	0	2	< 1
Declined for valid reasons		0	0	1	< 1	0	0	1	< 1
Requests withdrawn by requesting jurisdiction	[C]	1	< 1	0	0	1	< 1	2	< 1
Failure to obtain and provide information requested	[D]	0	0	0	0	2	1	2	< 1
Requests still pending at date of review	[E]	0	0	0	0	1	< 1	1	< 1
Outstanding cases after 90 days		55		32		19		106	
Out of which, status update provided within 90 days		29	53	12	38	9	47	50	47

Notes: Romania counts each request with multiple taxpayers as one request, i.e. if a partner jurisdiction is requesting information about four persons in one request, Romania counts that as one request. If Romania receives a further request for information that relates to a previous request, with the original request still active, Romania will append the additional request to the original and continue to count it as the same request.[44]

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.

43. Most requests involved multiple types of information.
44. At the time of the 2016 Report, Romania counted requests by the number of the taxpayers involved. The practice has changed since then.

399. Romania provided information in a timely manner. Longest response times during the review period were caused by the complexity of the requests, the volume of information sought or simultaneous receipt of several related requests (required to be handled by the same local EOI Unit). Overall, the timeliness of responses improved compared to the previous review period (July 2012 to June 2015). Romania answered 83% of requests within 90 days (compared to 54% in the previous period) and answered 96% of requests within 180 days (compared to 75%) in the previous period (paragraph 341 of the 2016 Report).

400. One request was declined by Romania as the foreseeable relevance of the requested information was not established. The request related to transfer pricing issues and the taxpayer subject of the request was neither a resident of Romania nor of the requesting jurisdiction. The foreseeable relevance of the requested information was not explained in the request. The requesting jurisdiction also did not respond to Romania's request for clarification.

401. Two requests were withdrawn by the requesting jurisdictions. In one request, Romania had sought certain clarifications as the request form was found to be incomplete. Instead of responding to the clarifications, the requesting jurisdiction sent a fresh request incorporating the necessary clarifications. Therefore, Romania considered the original request as withdrawn. In the second request, the company under investigation did not have any nexus with Romania, hence, the requesting jurisdiction withdrew the request.

402. Apart from the above, Romania sought clarifications in 17 cases mainly due to: i) request form being filled incorrectly, ii) insufficient identification information or iii) inadequate explanation on the foreseeable relevance of the requested information. Information was provided upon receipt of the necessary clarifications.

403. In the peer input received for this review, one peer indicated that while Romania had successfully provided the requested ownership and banking information, it failed to provide complete accounting information in two cases – in one case the taxpayer had been dissolved during the requested period (see paragraph 239); in the other case, the taxpayer was declared inactive, and the legal representative of the taxpayer could not be contacted (see paragraph 249). As the issues pertain to availability of information, they have been considered under Element A.2 on availability of accounting information.

Status updates and communication with partners

404. The 2016 Report recommended Romania to ensure to be able to respond to EOI requests in a timely manner, by providing the information

requested within 90 days of receipt of the request, or if it has been unable to do so, to provide a status update.

405. During the current period under review, Romania was generally able to provide information within 90 days, however, where it was unable to do so, status updates were not systematically provided in all cases. This issue was also highlighted by two peers.

406. Out of the 106 requests that were pending after 90 days, status updates were provided only in 50 cases. Romania explained that out of the 56 cases where status updates were not provided, in 33 cases a status update, a partial response or a final response was provided just after 90 days. Yet, there were 23 cases where no communication was provided to the requesting jurisdiction indicating the status of the request when a final response could not be provided within 90 days. Romania should provide status updates to EOI partners within 90 days in all cases where it is not possible to provide a response within that timeframe (see Annex 1).

C.5.2. Organisational processes and resources

Organisation of the Competent Authority

407. The FPC designates the National Agency for Fiscal Administration (NAFA) as the Competent Authority for EOI purposes in Romania for EU Member States (Article 287) and for non-EU jurisdictions (Article 71) and envisages a Central Liaison Office (to be appointed by the President, NAFA) for co-ordinating exchanges. The President of NAFA, vide Order No. 915 of 12 June 2023,[45] has designated the International Information Exchang e Unit (IIEU), located in the General Directorate of Tax Information, as the Central Liaison Office.

408. The Head of the IIEU is the delegated Competent Authority for EOI purposes (see paragraph 289). The IIEU, located in Bucharest, forms the central EOI Unit and is supported by 50 county-level, local EOI Units. The IIEU's functions involve receiving incoming EOI requests, verifying if the requests are complete and meet the standard of foreseeable relevance, liaising with the local EOI Units, ensuring the information gathered by the local EOI offices is complete and transmitting the responses to the requesting partners. Corresponding functions are performed by the IIEU in respect of outgoing EOI requests. The co-ordination with the information holders and the actual gathering of requested information is entrusted to the local EOI Units.

45. The President of NAFA's Order No. 915 of 12 June 2023 clarifies and supplants Order No. 353 from 19 March 2013 of the Minister of Public Finances, which also designated the IIEU to conduct EOI exchanges.

409. The contact details of the IIEU are readily available on the relevant platforms, including the Global Forum's Competent Authority secure database. When necessary, the IIEU communicates with its partners through email and telephone.

Resources and training

410. The IIEU comprises six officials, three of whom deal with EOIR.[46] This is a reduction from the previous review when the IIEU had eight officials. Nevertheless, the current strength of the IIEU has proved sufficient to manage the volume of incoming EOI requests received by Romania. Each official is allocated a set of jurisdictions for handling all EOIR related matters.

411. To work in the IIEU, officials need to have a degree in economics or law, English language skills and IT skills The current officials have experience ranging from 10 and 20 years in various areas of tax administration. The officials participate in annual trainings on exchange of information, courses and seminars organised by NAFA and also deliver trainings to other tax officials at the regional and county levels. The latest training on exchange of information was organised in December 2023.

412. At the county-level, the number of officers is proportional to the size of the county and the number of taxpayers therein. On average, there are four officers in each office, which deal with all tax matters and also function as the local EOI Units.

413. The Operational Procedure 46.05 on "International exchange of information in the field of direct taxes" (PO-46.05) lays down administrative procedures and timelines for EOI requests to be followed for communication between the IIEU and the local EOI Units and between the IIEU and the foreign jurisdictions in respect of both incoming and outgoing requests. The timelines are derived from the FPC (see paragraph 396) and discussed in the next section on Incoming requests. PO-46.05 serves as an EOI Manual and is available to all tax officials through NAFA's internal portal. The current version of PO-46.05 was issued in July 2019 by the President of NAFA. The current version additionally includes procedures relating to automatic exchange of information and measures to implement the EU General Data Protection Regulation.

46. The six officials of the IIEU are equally distributed between the management of exchange of information on request and automatic exchange of information.

Incoming requests

414. Romania receives EOI requests from both EU Member States and non-EU jurisdictions, which have to be processed in line with PO-46.05.

415. EOI requests from EU Member States are received through the CCN platform while EOI requests from non-EU jurisdictions are generally received on the generic email address for exchange of information. In rare cases, EOI requests are received in paper format at the NAFA's registered office, from where they are transmitted to the IIEU. All further proceedings in respect of the request are carried out by the official responsible for the jurisdiction concerned (see paragraph 410).

416. Each EOI request carries a reference number. The EOI requests from EU Member States have a system-generated reference number and the other requests are allotted a reference number by the IIEU and recorded in the database. The database is an excel sheet which is accessible only by the officials of the IIEU and records the following details for all incoming and outgoing requests: a) requested/requesting jurisdiction, b) reference number, c) taxpayer under investigation, d) local EOI recipient/sender unit; e) date of receipt/transmission, f) date of completion of term, g) date of receipt of reply from the local EOI unit/requested jurisdiction, h) name of the responsible IIEU official, i) types of information requested/transmitted by the requesting/requested jurisdiction, j) status, and k) file in which it was archived electronically. The database does not capture as to whether all information was ultimately provided and only notes (in the status column) whether a partial or a final response has been sent.

417. PO-46.05 stipulates that acknowledgement of receipt of a request must be sent within 7 working days. During the on-site visit, the IIEU officials only indicated acknowledgements in the context of encrypted requests received from non-EU jurisdictions on the generic EOI email address so as to request the password for decryption of the request. One peer highlighted an issue relating to delayed (after seven days) or lack of acknowledgements in respect of some requests. Romania advised that in the case of delay, the acknowledgement was provided after 14 days, while in the cases relating to no acknowledgements, either additional information was sought, or a final response was provided within 12 days. Romania's explanations are reasonable.

418. The request received is verified for completeness and for adherence to the standard of foreseeable relevance. If any information is found missing, clarifications are to be sought from the requesting jurisdiction within one month of the request (paragraph 5.5.2(4), PO-46.05). A request found to be valid and complete is then forwarded within seven days to the local EOI unit where the taxpayer/information holder is located. An immediate

confirmation of the receipt of the request is expected from the local EOI unit (paragraph 5.5.2(7), PO-46.05).

419. All requested information is gathered by the local EOI unit (using the access powers discussed under Element B.1, see paragraphs 291 et seq.) and transmitted to the IIEU.

420. The information received from the local EOI units is verified by the IIEU for completeness and, where applicable, cross-checked with the information held in government databases/registers (see paragraphs 298 et seq.). In case of a discrepancy, the local EOI Unit is asked to reconcile the information. Once verified, the information is transmitted to the requesting jurisdiction.

421. It is not standard practice to seek feedback from the requesting jurisdiction. Feedback was requested only in 14 cases.

Outgoing requests

422. The procedures for processing outgoing requests are guided by PO-46.05, the Global Forum Model Manual on Exchange of Information for Tax Purposes and the Direct Tax E-forms User Manual agreed by the European Commission.

423. Outgoing EOI requests originate in the local tax offices, from where they are sent to the local EOI unit. At the local EOI unit, the request is checked from a legal and formal point of view. If the request is found to satisfy the legal and formal requirements, it is forwarded to the IIEU. The IIEU performs similar checks before the request is transmitted to the requested jurisdiction.

424. Requests are prepared using either the e-FCA (e-Forms Central Application), a web-based application for exchanges between EU Member States or the template available in the Global Forum Model Manual on Exchange of Information for Tax Purposes. Romania does not usually check with requested jurisdictions if they have their own template.

425. The table below provides an overview of the requests sent by Romania during the review period.

	October 2019 – September 2020	October 2020 – September 2021	October 2021 – September 2022	Total
Total requests sent	128	206	90	424
Clarifications sought	10	23	6	39

426. The peers were generally satisfied with the requests received from Romania. Romania indicated that clarifications sought mainly related to additional identification information and in a limited number of cases, to additional background information. Although there are no specified timelines for responding to clarifications, clarifications sought by requested jurisdictions during the review period were generally responded to in a timely manner (within an average of 16 days), which is confirmed by peers. One peer indicated that clarifications sought in five cases caused certain delays. Romania clarified that out of the five cases, delays occurred only in two cases due to the time taken to provide additional information to support the peer's administrative processes. In view of the proportion of requests under consideration (<1%) and the explanations provided by Romania, no adverse inference is drawn in this regard.

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

427. There are no factors or issues in Romania, that could unreasonably, disproportionately or unduly restrict effective EOI.

Annex 1. List of in-text recommendations

The Global Forum may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, the circumstances may change, and the relevance of the issue may increase. In these cases, a recommendation may be made; however, it should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be stated in the text of the report. A list of such recommendations is reproduced below for convenience.

- **Element A.1.1:** Romania should monitor compliance of foreign companies with a place of effective management in Romania with the obligation to report changes in legal ownership information in a timely manner to the tax authorities. (Paragraph 87)
- **Elements A.1 and A.3**: Romania should clarify in guidance the aspects of indirect ownership without any foreign participation and "joint" ownership or control. (Paragraphs 119, 175 and 270)
- **Elements A.1 and A.3:** Romania should clarify these illustrations of control through "other means" contained in the BO guidance to enable their application in practice. (Paragraphs 121 and 271)
- **Element A.3**: Romania should clarify the rules in the legal and regulatory framework for updating the information obtained during the CDD process. (Paragraph 274)
- **Element B.1.1**: Romania should ensure that legal ownership information of SAs and SCAs is obtained from the companies themselves for responding to EOI requests. (Paragraph 299)
- **Element B.1.5**: Romania should ensure that the requirement for consent (to waive professional secrecy in certain circumstances) does not lead to delays in or becomes an impediment for access to information. (Paragraph 312)
- **Element C.1.1**: Romania should ensure that group requests are processed in line with the standard. (Paragraph 333)

- **Element C.1.2:** Romania should ensure that its relationships with the United States and Zambia are brought in line with the standard. (Paragraph 336)
- **Element C.1.3 and C.1.4**: Romania should ensure that its EOI relationships with Algeria, Bangladesh, Belarus, Democratic Republic of Korea, Ethiopia, Iran, Sri Lanka, Sudan, Syria, Tajikistan, Turkmenistan and Zambia are brought in line with the standard. (Paragraph 342)
- **Element C.2**: Romania should continue to conclude EOI agreements with any new relevant partner who would so require. (Paragraph 353)
- **Element C.3**: Romania should ensure that all documents obtained from EOI exchange partners are clearly identified as being subject to confidentiality provisions under EOI instruments. (Paragraph 375)
- **Element C.3**: Romania should ensure that the confidentiality of EOI information is maintained at each stage of the request. (Paragraph 384)
- **Element C.3**: Romania should put in place formal procedures for management of breaches to ensure the protection of exchanged information. (Paragraph 385)
- **Element C.5**: Romania should provide status updates to EOI partners within 90 days in all cases where it is not possible to provide a response within that timeframe. (Paragraph 406)

Annex 2. List of Romania's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Albania	DTC	11-May-94	20-Oct-95
2	Algeria	DTC	28-Jun-94	11-Jul-96
3	Armenia	DTC	25-Mar-96	24-Aug-97
4	Australia	DTC	02-Feb-00	11-Apr-01
5	Austria	DTC	30-Mar-05	01-Feb-06
6	Azerbaijan	DTC	29-Oct-02	29-Jan-04
7	Bangladesh	DTC	13-Mar-87	21-Aug-88
8	Belarus	DTC	22-Jul-97	15-Jul-98
9	Belgium	DTC	04-Mar-96	17-Oct-98
10	Bosnia and Herzegovina	DTC (revised)	06-Dec-16	18-May-18
11	Bulgaria	DTC (revised)	24-May-15	29-Mar-16
12	Canada	DTC	08-Apr-04	31-Dec-04
13	China (People's Republic of)	DTC (revised)	04-Jul-16	17-Jun-17
14	Croatia	DTC	25-Jan-96	28-Nov-96
15	Cyprus[47]	DTC	16-Nov-81	08-Nov-82

47. Note by Türkiye: 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. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the "Cyprus issue".

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

	EOI partner	Type of agreement	Signature	Entry into force
16	Czechia	DTC	08-Nov-93	10-Aug-94
17	Democratic People's Republic of Korea	DTC	23-Jan-98	25-Aug-00
18	Denmark	DTC	13-Dec-76	28-Dec-77
19	Ecuador	DTC	24-Apr-92	22-Jan-96
20	Egypt	DTC	13-Jul-79	05-Jan-81
21	Estonia	DTC	23-Oct-03	29-Nov-05
22	Ethiopia	DTC	06-Nov-03	09-May-09
23	Finland	DTC	27-Oct-98	04-Feb-00
24	France	DTC	27-Sep-74	27-Sep-75
25	Georgia	DTC	11-Dec-97	15-May-99
26	Germany	DTC	04-Jul-01	17-Dec-03
27	Greece	DTC	17-Sep-91	07-Apr-95
28	Guernsey	TIEA	12-Jan-11 17-Jan-11	22-Jan-12
29	Hong Kong, China	DTC	18-Nov-15	21-Nov-16
30	Hungary	DTC	16-Sep-93	14-Dec-95
31	Iceland	DTC	19-Sep-07	21-Sep-08
32	India	DTC	08-Mar-13	16-Dec-13
33	Indonesia	DTC	03-Jul-96	13-Jan-99
34	Iran	DTC	03-Oct-01	30-Oct-07
35	Ireland	DTC	21-Oct-99	29-Dec-00
36	Isle of Man	TIEA	04-Nov-15	08-Sep-16
37	Israel	DTC	15-Jun-97	21-Jun-98
		Protocol	03-Nov-20	Not yet in force
38	Italy	DTC (revised)	25-Apr-15	25-Sep-17
39	Japan	DTC	12-Feb-76	09-Apr-78
40	Jersey	TIEA	01-Dec-14	05-Feb-16
41	Jordan	DTC	01-Dec-14	05-Feb-16
42	Kazakhstan	DTC	21-Sep-98	21-Apr-00
43	Korea	DTC	11-Oct-93	06-Oct-94
44	Kuwait	DTC	25-Jul-92	05-Oct-94
45	Latvia	DTC	25-Mar-02	28-Nov-02
46	Lebanon	DTC	28-Jun-95	06-Apr-97
47	Lithuania	DTC	26-Nov-01	15-Jul-02

	EOI partner	Type of agreement	Signature	Entry into force
48	Luxembourg	DTC	14-Dec-93	08-Dec-95
49	Malaysia	DTC	26-Nov-82	07-Apr-84
50	Malta	DTC	30-Nov-95	16-Aug-96
51	Mexico	DTC	20-Jul-00	15-Aug-01
52	Moldova	DTC	21-Feb-95	10-Apr-96
53	Montenegro [a]	DTC	16-May-96	01-Jan-98
54	Morocco	DTC	02-Jul-03	17-Aug-06
55	Namibia	DTC	25-Feb-98	05-Aug-99
56	Netherlands	DTC	05-Mar-98	29-Jul-99
57	Nigeria	DTC	21-Jul-92	18-Apr-93
58	North Macedonia	DTC	12-Jul-00	16-Aug-02
59	Norway	DTC (revised)	27-Apr-15	01-Apr-16
60	Pakistan	DTC	27-Jul-99	13-Jan-01
61	Philippines	DTC	18-May-94	27-Nov-97
62	Poland	DTC	23-Jun-94	15-Sep-95
63	Portugal	DTC	16-Sep-97	14-Jul-99
64	Qatar	DTC	24-Oct-99	06-Jul-03
65	Russia	DTC	27-Sep-93	11-Aug-95
66	San Marino	DTC	23-May-07	11-Feb-08
67	Saudi Arabia	DTC	06-Apr-11	01-Jul-12
68	Serbia[48]	DTC	16-May-96	01-Jan-98
69	Singapore	DTC	21-Feb-02	28-Nov-02
70	Slovak Republic	DTC	03-Mar-94	29-Dec-95
71	Slovenia	DTC	08-Jul-02	28-Mar-03
72	South Africa	DTC	12-Nov-93	29-Oct-95
73	Spain	DTC (revised)	18-Oct-17	14-Jan-21
74	Sri Lanka	DTC	19-Oct-84	28-Feb-86
75	Sudan	DTC	31-May-07	14-Nov-09
76	Sweden	DTC	22-Dec-76	08-Dec-78
77	Switzerland	DTC	25-Oct-93	27-Dec-94
		Protocol to DTC	28-Feb-11	16-Jul-12

48. Romania continues to apply the Yugoslavia treaty signed on 16 May 1996 with respect to Montenegro and Serbia.

	EOI partner	Type of agreement	Signature	Entry into force
78	Syrian Arab Republic	DTC	24-Jun-08	04-Jun-09
79	Tajikistan	DTC	06-Dec-07	02-Mar-09
80	Thailand	DTC	26-Jun-96	03-Apr-97
81	Tunisia	DTC	23-Sep-87	19-Jan-89
82	Türkiye	DTC	01-Jul-86	15-Sep-88
83	Turkmenistan	DTC	16-Jul-08	21-Aug-09
84	Ukraine	DTC	29-Mar-96	17-Nov-97
85	United Arab Emirates	DTC (revised)	04-May-15	11-Dec-16
86	United Kingdom	DTC	18-Sep-75	22-Nov-76
87	United States	DTC	04-Dec-73	26-Feb-76
88	Uruguay	DTC	14-Sep-12	22-Oct-14
89	Uzbekistan	DTC	06-Jun-96	17-Oct-97
		Protocol	04-Jun-16	01-Jan-18
90	Viet Nam	DTC	08-Jul-95	24-Apr-96
91	Zambia	DTC	21-Jul-83	29-Oct-92

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

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[49] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

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

The Multilateral Convention was signed by Romania on 15 October 2012 and entered into force on 1 November 2014 in Romania. Romania can exchange information with all other Parties to the Multilateral Convention.

The Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Armenia, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Benin, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Burkina Faso, Cabo Verde, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus, Czechia, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Eswatini, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Jordan, Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), North Macedonia, Malaysia, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Namibia, Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Qatar, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Türkiye, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Vanuatu and Viet Nam.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Gabon, Honduras, Madagascar, Philippines, Togo, and United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

EU Directive on Mutual Administrative Assistance in Tax Matters

Romania can exchange information relevant for direct taxes upon request with EU member states under the EU Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation (as amended). The Directive came into force on 1 January 2013. All EU members were required to transpose it into their domestic legislation by 1 January 2013, i.e. Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain and Sweden. The United Kingdom left the EU on 31 January 2020 and hence this directive is no longer binding on the United Kingdom.

Annex 3. Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews and the Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective on 8 December 2023, Romania's EOIR practice in respect of EOI requests made and received during the three year period from 1 October 2019 to 30 September 2022, Romania's responses to the EOIR questionnaire, inputs from partner jurisdictions, as well as information provided by Romania's authorities during the on-site visit that took place on 20 – 22 June 2023 in Bucharest, Romania.

List of laws, regulations and other materials received

Constitution

Law No. 287 of 17 July 2009 on the Civil Code

Law No. 286 of 17 July 2009 on the Criminal Code

Law No. 26 of 7 November 1990 on the trade register in force until 25 November 2022, superseded by Law no. 265 of 2022 regarding the trade register and for the modification and completion of other normative acts affecting registration in the trade register, starting from 26 November 2022

Law No. 31 of 16 November 1990 on Companies, as subsequently amended and supplemented

Law No. 82 of 24 December 1991 on Accountancy, republished, as subsequently amended and supplemented

Law No. 16 of 2 April 1996 regarding the National Archives

European Commission's Regulation No. 2157/2001 on the Statute for a European Company and Directive 2001/86/EC supplementing the

Statute for a European Company with regard to the involvement of employees

Law No. 161 of 19 April 2003 on certain measures to ensure transparency in the exercise of public dignities, public functions and the business environment, prevention and sanctioning of corruption

Law No. 304 of 28 June 2004 on judicial organisation

Law No. 1 of 21 February 2005 on the organisation and functioning of co-operatives

Law No. 566 of 22 December 2004 on agricultural co-operatives, as amended and supplemented by Law No. 164 of 22 July 2016

Law No. 85 of 2006 on the Insolvency Procedure and Law No. 85 of 25 June 2014 on insolvency prevention and insolvency proceedings replaced by Law No. 85 of 25 June2014 regarding Insolvency Prevention and Insolvency Procedures

Law No. 227/2015 on the Fiscal Code

Law No. 207/2015 on the Fiscal Procedure Code

Law No. 182 of 17 October 2016 regarding the conduct of economic activities by authorised natural persons, individual businesses and family businesses Law No. 70 of 2 April 2015 to strengthen financial discipline on cash receipts and payments operations and to amend and supplement Government Emergency Ordinance No. 193/2002 on the introduction of modern payment systems

Law No. 129 of 11 July 2019 on preventing and combating money laundering and terrorist financing, as subsequently amended and supplemented

Law No. 78 of 8 May 2000 on preventing, discovering and sanctioning corruption offences

Law no. 84/1992 on the regime free zones, amended and supplemented by Law no. 244/2004

Government Ordinance No. 26/2000 on associations and foundations

Emergency Ordinance No. 99 of 6 December 2006 on Credit Institutions and Capital Adequacy (Credit Institutions Ordinance)

Government Emergency Ordinance No. 57 of 3 July 2019 on the Administrative Code

NBR Regulation No. 2/2019

NAFA President's Orders No. 1985/2012, 3770/2015, 2759/2016, 3076/2017, 816/2020, 1193/2021 and 915/2023

Order No. 37 of 2 March 2021 approving the Implementing Rules for Law No. 129/2019 on preventing and combating money laundering and terrorist financing, as well as amending and supplementing some legal acts, for reporting entities supervised and controlled by the National Office for Prevention and Control of Money Laundering.

Operational Procedure 46.05 on "International exchange of information in the field of direct taxes"

Operational Procedure 46.07 on "Resolving requests for information received from other states"

Participants in the on-site visit

National Agency for Fiscal Administration

- EOI Competent Authority

Ministry of Justice

National Bank of Romania

Private sector

- Representatives from Commercial Bank of Romania and Bank of Transylvania
- Representatives from auditors, accountants, lawyers and notaries

Current and previous reviews

In Round 1, the Phase 1 review assessed Romania's legal and regulatory framework for exchange of information as of 7 August 2015 and the Phase 2 review assessed the practical implementation of this framework during a three-year period (1 July 2012 to 30 June 2015) while taking into consideration any changes that took place in the legal framework since the Phase 1 report until August 2016. The integrated Phase 1 and Phase 2 assessments resulted in Romania being rated as Largely Compliant with the requirements of the standard on a global consideration of the ratings for individual elements.

Summary of reviews

Review	Assessment team	Period under review	Legal Framework as on	Date of adoption by Global Forum
Round 1 Phase 1	Ms Maria da Graça Pires (Portugal), Mrs Rhondalee Braithwaite-Knowles (the Turks and Caicos Islands) and Ms Séverine Baranger and Ms Kanae Hana (Global Forum Secretariat)	not applicable	7 August 2015	October 2015
Round 1 Phase 2	Ms Maria da Graça Pires (Portugal), Mrs Rhondalee Braithwaite-Knowles (the Turks and Caicos Islands) and Ms Séverine Baranger and Ms Kanae Hana (Global Forum Secretariat)	1 July 2012 to 30 June 2015	August 2016	November 2016
Round 2 Combined Phase 1 and Phase 2	Ms Filiz Oz Bulgurcu (Türkiye), Mr Alfred Mkinga (Tanzania) and Ms Amrita Singh Ahuja (Global Forum Secretariat)	1 October 2019 to 30 September 2022	8 December 2023	26 March 2024

Annex 4. Romania's response to the review report[50]

We would like to express our gratitude to the Global Forum Secretariat for their excellent work in addressing issues such as tax evasion, aggressive tax planning and money laundering, our special thanks to the evaluation team for their extraordinary level of involvement in the assessment and to the PRG members for giving their time and providing valuable input that allowed us to submit this Peer Review report.

Romania fully supports the work of the Global Forum and therefore we have put transparency and the exchange of information for tax purposes at the top of our agenda for the coming years.

As such, Romania will continue to expand its tax treaty network and continue to update tax treaties with our existing partners.

International co-operation and co-ordination are vital in creating a global legal and regulatory framework that is effective in addressing the abuse of legal persons and legal arrangements.

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

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request ROMANIA 2024 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 160 jurisdictions participate on an equal footing.

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

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

This peer review report analyses the practical implementation of the standard of transparency and exchange of information on request in Romania, as part of the second round of reviews conducted by the Global Forum on Transparency and Exchange of Information for Tax Purposes since 2016.

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