GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard in Practice

ROMANIA

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Romania 2016

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

November 2016
(reflecting the legal and regulatory framework
as at August 2016)

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 130 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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

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

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

Abbreviations

AML/CFT	Anti-Money Laundering and Countering the Financing of Terrorism
AML/CFT Law	Anti-Money Laundering and Countering the Financing of Terrorism Law
CDD	Customer Due Diligence
DTC	Double Tax Convention
EEIG	European Economic Interest Groupings
EIG	European Interest Group
EUID	European Unique Identifier
EOI	Exchange of Information
EOIR	Exchange of Information on request
KYC	Know your customer
NAFA	National Agency for Fiscal Administration
NOPCML	National Office for Prevention and Combating of Money Laundering
NBR	National Bank of Romania
NTRO	National Trade Register Office
SA	Joint-Stock Company
SE	European Company
SRL	Limited Liability Company
SCA	Partnership limited by shares
TIEA	Tax Information Exchange Agreement
TIN	Tax Identification Number
SCS	Limited Partnership
SNC	General Partnership

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Romania as well as the practical implementation of that framework. The assessment of effectiveness in practice has been performed in relation to a three-year period (1 July 2012 to 30 June 2015).

2. The international standard which is set out in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and whether that information can be effectively exchanged with its exchange of information (EOI) partners.

3. Romania is a republic located in South Eastern-Central Europe. Bucharest is Romania's capital and the largest city. Romanian is the official language. Romania is part of the European Union since 1 January 2007.

4. Romania has a well-developed and robust framework for exchange of information for tax purposes. As at 5 August 2016, it has signed 86 DTCs (covering 87 EOI partners), all of which are in force and three TIEAs, two of which are in force. Most of these DTCs contain exchange of information articles that meet the international standard. In addition, Romania is a signatory of Convention on Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention), which is in effect in Romania since 1 November 2014, increasing its EOI relationships to 127 jurisdictions.

5. Comprehensive registration requirements exist for entities in Romania, which must register with the Trade Register and the tax administration. Full ownership information on limited liability companies (SRL) and partnerships is available in the Trade Register, and with the tax authorities. Failure to register the incorporation of a SRL and any transfer of SRL and partnership interests in the Trade Register is subject to a fine. In respect of joint-stock companies (SAs) and partnerships limited by shares (SCAs), up-to-date information on the owners of registered shares issued is available at the level of the entity. However, no effective sanctions apply for failure to maintain a register of their shareholders/partners. In practice, though there

are some mechanisms in place to push companies and shareholders to keep an up-to-date shareholder register, Romania should introduce appropriate enforcement measures to address the risk of SAs and SCAs not complying with the specific requirement to maintain a register of their shareholders and members.

6. SAs and SCAs can issue bearer shares. Although SAs and SCAs that can issue bearer shares only represent 0.03% of the total number of companies in Romania, Romania does not have mechanisms in place to ensure the availability of ownership information in respect of bearer shares issued by these companies. Romania should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.

7. Though foreign companies have to register with the Trade Register upon incorporation of a branch in Romania with relevant documents such as up-dated articles of association and the annual financial statements, ownership information on foreign companies having their place of effective management in Romania is not available in all cases.

8. The Fiscal Procedure Code provides for the use of domestic powers to access information for EOI purposes with other EU member States, including for banking information. In addition, Romania introduced a clear legal basis for Romania to provide information in response to EOI requests from non-EU member States. In practice, Romania has access to information in all cases, regardless of the origin of the EOI request.

9. Romania has an EOI unit and organisational procedures in place to handle EOI requests. During the peer review period, the EOI Unit received almost 500 requests, to which it replied generally in a satisfactory manner. However, the EOI Unit was not able to answer within 90 days in about 45% of the cases, and did not systematically provide a status update to its EOI partners.

10. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Romania's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Romania has been assigned the following ratings: Compliant for elements A.2, A.3, B.1, B.2, C.1, C.2, C.3 and C.4, Largely Compliant for elements C.5 and Partially Compliant for element A.1. In view of the ratings for each of the essential elements taken in their entirety, Romania is rated overall Largely Compliant with the international EOIR standard of exchange of information.

Introduction

Information and methodology used for the peer review of Romania

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

12. The assessment has been conducted in two stages: the Phase 1 review assessed Romania's legal and regulatory framework for the exchange of information as at 7 August 2015 (the report was adopted and published by the Global Forum in October 2015), while the Phase 2 review assessed the practical implementation of this framework during a three year period (July 2012 through June 2015) while taking into consideration any changes that took place in the legal framework since the Phase 1 report until August 2016. The following analysis reflects the integrated Phase 1 and Phase 2 assessments.

13. The Terms of Reference breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Romania's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: *(i)* the element is in place; *(ii)* the element is in place, but certain aspects of the legal implementation of the element need improvement; or *(iii)* the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Romania's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. As outlined in the Note on Assessment Criteria, an overall "rating" is applied to reflect the jurisdiction's level of

compliance with the standards. A summary of findings against those elements is set out at the end of this report.

14. Both the Phase 1 and the Phase 2 assessment were conducted by a team which comprised two expert assessors: Ms. Maria da Graça Pires, Tax Advisor, Tax and Customs Authority, Ministry of Finance of Portugal and Mrs. Rhondalee Braithwaite-Knowles, Attorney General, Attorney General's Chambers, the Turks and Caicos Islands; and two representatives of the Global Forum Secretariat, Ms. Séverine Baranger and Ms. Kanae Hana.

Overview of Romania

15. Romania is a republic located in South Eastern-Central Europe, bordering the Black Sea, between Bulgaria and Ukraine, with a population of 19.32 million inhabitants (2015). It also borders Hungary, Serbia, and Moldova. Bucharest is Romania's capital and the largest city. Romanian is the official language. Romania is part of the European Union since 1 January 2007.

16. Romania has a diversified economy with one of the fastest growth rates in the European Union. In the fiscal year ending in 2015, Romania's gross domestic product was approximately USD 178.0 billion and the per capita GDP was approximately USD 8 973.[1]

17. The service sector constitutes the largest component of GDP (53.9%), followed by industry (41.3%) and agriculture (4.8%).[2] Romania's government has also implemented a number of fiscal and business sector reforms to make the country more attractive to foreign investments. Foreign direct investment is mainly from other European countries and is in the following sectors: industry; banking and insurance; wholesale and retail trade; production of electricity, gas and water; transport and telecommunications.

18. Romania joined the European Union in 2007. It is also a member of the United Nations, NATO, the World Trade Organisation, the Council of Europe and the Intra-European Organisation of Tax Administrations (IOTA).

Governance and legal system

19. Romania is a parliamentary democratic republic with a multi-party system. Formally, the Romanian head of state is the President, elected by direct popular vote for a five-year term. Most executive power lies with

1. The World Bank – Romania: http://blogs.worldbank.org/opendata/ retrieved on 20 July 2016.
2. CIA, The World Factbook – Romania: https://www.cia.gov/library/publications/the-world-factbook/geos/ro.html, retrieved on 20 July 2016.

the Prime Minister, who is the head of government and is appointed by the President on the basis of the general election results. The remainder of the cabinet is appointed by the President on the recommendation of the Prime Minister; the complete Government is mandatorily approved by the Parliament within 30 days. The legislative branch of the government, collectively known as the Parliament, consists of two chambers (Senate and Chamber of Deputies) whose members are elected every four years by simple plurality.

20. Romania is subdivided into 41 counties together with the municipality of Bucharest which has a special administrative status. Each county is administered by a county council, responsible for local affairs, as well as a prefect responsible for the administration of national affairs at the county level. The prefect is appointed by the central government but cannot be a member of any political party. Each county is further subdivided into cities and communes, which have their own mayor and local council.

21. Romania's legal system is based on civil law. In terms of hierarchy, the Romanian Constitution and constitutional laws are on top in the hierarchy of legal norms. All other laws must be consistent with them. International agreements must be ratified by the Parliament based on a domestic law and are then placed at the same level as other laws. However, in respect of international tax agreements, the Fiscal Code gives precedence to international tax agreements over the rules set out in the Fiscal Code. Organic law are adopted by the Parliament by qualified majority; and ordinary laws are adopted by a simple majority. An ordinary law cannot amend or modify organic laws or the Constitution. The executive power is implemented through government ordinances and decisions.

22. The justice system is independent of the other branches of government, and is made up of a hierarchical system of courts culminating in the High Court of Cassation and Justice, which is the supreme court of Romania. There are also courts of appeal, county courts and local courts. The Romanian judicial system is strongly influenced by the French model, considering that it is based on civil law and Continental European law. The Constitutional Court (*Curtea Constituțională*) is responsible for judging the compliance of laws and other state regulations to the Constitution, which is the fundamental law of the country and can only be amended through a public referendum.

23. International treaties are concluded by the President of Romania (Art. 91 (1) Constitution), and ratified by the Parliament (Art. 91(1) Constitution). If a treaty includes some provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution (Art. 11(3) Constitution).

24. A complete list of relevant legislation and regulations is set out in Annex 3.

Tax system

25. Taxes in Romania are set out in the Fiscal Code[3]. The tax system includes both direct taxation – corporate income tax, simplified tax regime for micro-enterprises, personal income tax – and indirect taxation – goods and service tax (VAT) and excises duties. The fiscal year is the calendar year.

26. A flat income tax rate of 16% applies to taxable income derived by individuals, regardless of the types of income (with a few exceptions for gambling, real estate income and dividends). The same 16% flat tax rate applies to business income derived by legal entities carrying out a business in Romania, with the exception of micro-enterprises which are subject to specific rules.

27. A company is considered tax resident in Romania if *(i)* it is incorporated under Romanian law, *(ii)* it is effectively managed in Romania, or *(iii)* if it is set up in accordance with European legislation with the registered head office in Romania. Most passive income (royalties and interest) are subject to a domestic withholding tax at a rate of 16% and 5% for dividends. As a general rule, foreign entities are subject to Romanian tax on Romanian-source income.

Romania's commercial laws and financial sector

28. The Romanian financial market comprises four sectors – banking (primarily represented by banks and branches of foreign banks), capital market (mainly securities dealers, asset management companies, the stock exchange and the central securities depository), insurance (mainly insurance companies and branches of foreign insurance companies) and pension savings (mainly pension fund management companies and supplementary pension companies/pension insurance companies). The banking sector is the most important component of the financial sector. The National Bank of Romania is the competent authority for the licensing and prudential supervision of credit institutions (commercial banks, credit co-operative organisations, saving banks for housing, mortgage banks). On 31 May 2016, there were 36 commercial banks, savings banks, branch offices of foreign banks and one credit co-operative network operating in Romania. The National Bank of Romania also authorises and supervises payments institutions and electronic money institutions and monitors/supervises the activity of non-banking financial institutions.

3. Law No. 227 of 8 September 2015 and Decision No. 1 of 6 January 2016 for the approval of the Methodological Norms for the application of Law No. 227/2015.

29. Romania's financial sector includes total banking net assets of about EUR 83.4 billion as of 31 May 2016. It is dominated by foreign owned institutions.[4]

30. With reference to professional service providers, on 29 October 2014 there were 2 592 notaries public in Romania (according to Order of the Ministry of Justice no 3933/C/2014). According to the information available on The National Association of Romanian Bars website in July 2015, there were 31 225 lawyers authorised to practice law out of which 2 527 were trainees lawyers. Notaries, lawyers and auditors are regulated by specific laws. These entire professional are subject to the provisions/requirements of Romania's Anti-money laundering and combating the financing of terrorism (AML/CFT) laws.

31. Romania's AML/CFT legislation is included in Law no. 656/2002, republished in 2012, as amended, for the prevention and control of money laundering and the establishment of measures to prevent and combat financing of terrorism. This law established the National Office for Prevention and Combating of Money Laundering (NOPCML), whose purpose is to prevent and combat money laundering and financing of terrorism. Romanian's AML/CFT legislation is based on EU AML/CFT legislation.

32. Under Romanian's AML/CFT laws, obliged entities are required to undertake customer due diligence (Art. 11 of Law 656/2002 (r)). Obligated entities include banks and other financial and non-financial institutions, as well as auditors, accountants, tax advisers, notaries, lawyers and other professional service providers for companies and other entities or legal constructions.

33. The central authority in Romania in the area of the prevention and detection of money laundering and terrorist financing is the NOPCML. However, NOPCML is not the only authority responsible for anti-money laundering matters. The other authorities involved include the General Prosecutor's Office of Romania, the Ministry of Justice of Romania, the Ministry of Public Finance, the National Bank of Romania and the Financial Supervision Authority.

Exchange of information for tax purposes

34. Romania provides international co-operation in tax matters based on international bilateral and multilateral instruments and EU law. The relevant EU legislation includes the EU Council Directive 2011/16/EU on Administrative Cooperation in the Field of Taxation, the EU Savings Directive 2003/48/EC

4. Source: IMF www.imf.org/external/pubs/ft/scr/2011/cr11122.pdf, retrieved 7 November 2011.

(EU-SD), which was repealed for all Member States, except for Austria for which it will continue to apply until 31 December 2016, Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, Council Regulation (EU) No. 904/2010 on administrative co-operation and combating fraud in the field of value added tax and Council Regulation (EC) 2073/2004 on administrative co-operation in the field of excise duties. These co-operation mechanisms involve spontaneous exchange of information; automatic exchange of information, multilateral controls and recovery assistance.

35. Romania has a broad EOI network, which has 87 exchange of information partners covered by 86 double tax conventions (DTCs) and three TIEAs, all of which are in force, except for one TIEA. The Multilateral Convention has expanded its EOI relationship to cover 127 jurisdictions.

Recent developments

36. Romania has endorsed the Standard for Automatic Exchange of Financial Account Information in Tax Matters (the AEOI standard). It has joined a Multilateral Competent Authority Agreement and is an "early adopter" of the CRS with reporting in 2017. In order to implement AEOI to the CRS, the Council Directive 2014/107/EU replacing Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments has been transposed in the national legislation in Romania (FPC, Art. 291). The EU Directive on Savings remained in force only for the EOI with Austria, for the reportable year 2016.

37. Romania is in the process of amending its primary and secondary legislation with regard to ownership information on foreign companies with sufficient nexus in Romania. The foreign companies caught by this draft legislation are those establishing a branch in Romania to carry out their activities. The revision will oblige relevant foreign companies to furnish ownership information upon registration through an annex to the registration form containing the owner information such as name, address/registered office, date of birth (for natural persons), Tax Identification Number (TIN) and percentage of shares held. According to the proposal, the legal entity will have to submit the annex to the tax authority to reflect updated ownership information. Such a mechanism should enable NAFA to avail of ownership information on foreign companies with sufficient nexus in Romania.

Compliance with the Standards

A. Availability of information

Overview

38. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority[5] may not be able to obtain and provide it when requested. This section of the report describes and assesses Romania's legal and regulatory framework for availability of information.

39. Companies incorporated in Romania must register with the Trade Register. Full ownership information on limited liability companies and on the founders of joint-stock companies and partnerships limited by shares is available in this register. In respect of joint-stock company and partnerships limited by shares, up-to-date information on the owners of registered shares issued is available at the level of the entity. Foreign companies and partnerships must also be registered when establishing a branch in Romania with relevant documents including updated articles of association. However,

5. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or tax information exchange agreement.

ownership information may not to be provided upon registration as it may not be included in the articles of association of the foreign companies. When it is included in the articles of association, there is no requirement that such ownership information be updated. Nominee shareholders acting by way of business must identify the person for whom they act as a legal owner under AML/CFT legislation and the Act of Trading in Financial Instruments. Although there are specific mechanisms in place to ensure compliance by companies, no direct sanctions apply to joint-stock companies and partnerships limited by shares which fail to maintain a register of their shareholders/members.

40. Joint-stock companies and partnerships limited by shares can issue bearer shares. Although joint-stock companies (SAs) and partnerships limited by shares (SCAs) that can issue bearer shares pursuant to their articles of association only represent 0.03% of the total number of companies in Romania, Romania does not have mechanisms in place to ensure that all ownership information on the holder of bearer shares is available to the authority in all instances. Romania is therefore recommended to introduce mechanisms enabling the identification of holders of bearer shares.

41. Partnerships (general and limited partnerships) formed in Romania must register with the Trade Register. Updated information on the partners of partnerships is available to the authorities as partnerships need to provide the Trade Register with updated ownership information. Furthermore, the lack of registration of any transfer of partnership interests in the Trade Register is subject to a fine. In addition, all types of domestic partnerships and foreign partnerships carrying on business in Romania need to register for tax purposes.

42. The Fiduciary agreement was introduced in Romania by Law 287/2009, which entered into force on 1 October 2011. Romanian legislation regarding fiducia ensures the availability of information regarding the fiduciaries, the settlor(s), beneficiaries and assets held in the fiducia with the tax authorities, with the AML/CFT-obligated fiduciaries and with the Electronic Archive of Security Interests in Real Property. In addition, while trustees resident in Romania are not subject to specific obligations to keep identity information regarding settlors and beneficiaries of express trusts, the anti-money laundering obligations, together with the obligation to submit information to the tax authorities, permit the availability of such information.

43. 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. In the case of fiducial arrangements, the fiduciary keeps separate accounting records (Art. 30(b)) of the Fiscal Code). However, no accounting requirements apply to foreign trusts which have Romanian-resident administrators or trustees.

44. The AML/CFT legislation ensures that all records pertaining to the accounts as well as to related financial and transactional information is required to be kept by all banks operating in Romania.

45. Ownership, accounting and banking information is available in practice. During the peer review period, Romania's competent authority was able to answer 282 requests regarding ownership information.

A.1. Ownership and identity information

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

Companies (ToR ***6*** *A.1.1)*

46. The Law on companies No 31 of 16 November 1990 (Law 31/1990) regulates entrepreneurial activities in Romania (Law 31/1990, Art. 1 (1)).

Types of Companies and Requirements to Maintain Information

47. Pursuant to Article 2 of the Law 31/1990, companies can be established under the following legal forms:

- **Joint-stock company** (*societate pe actiuni*, ***SA***). A SA is a company that the capital of which is divided into equal shares in value (Law 31/1990 Art. 94). The minimum capital requirement is RON 90 000 (EUR 20 134)[7]. The shares can be registered shares or bearer shares (Law 31/1990 Art. 91). The shareholder's liability is limited to the value of the subscribed capital. A SA must be established by at least two shareholders (Law 31/1990 Art. 10), being either individuals or legal entities.
- **Limited liability Company** (*societate cu raspundere limitata*, ***SRL*****)**. The liability of SRL shareholders is limited to their subscribed registered capital (Law 31/1990, Art. 3). The capital of SRL shall be divided into equal registered shares (Law 31/1990, Art. 11). The minimum capital requirement is RON 200 (EUR 45) (Law 31/1990, Art. 11). The number of the shareholders cannot be higher than 50 (Law 31/1990, Art. 12).

6. Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.
7. On 21 July 2016, EUR 1= RON 4.47.

- **Partnership limited by shares** (*societate in comandita pe actiuni, **SCA***). A SCA is formed by one or more managing (active) partners, who are traders and are indefinitely and jointly liable for the partnership's debts, and limited (sleeping) partners who are shareholders and liable for losses only up to the amount of their contributions. Most of the rules applicable to SAs, except those related to the dualist system of management in SAs, also apply to SCAs (Art. 187 of Law 31/1990).
- **The European Company *(SE)*** and **the European Cooperative Company *(SCE)*** are companies with a European dimension, and do not strictly fall under the territorial scope of the legislation relating to domestic companies in force in the country where it has been incorporated. European companies are regulated by Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company and Council Regulation No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative company. Pursuant to Article 10 of the EU Regulation, the laws that apply to SEs are those that apply to public limited companies (SAs). No SE and SCE were registered in Romania as at 19 July 2016.

48. The table below shows the number of companies in Romania as at 19 April 2016.

Table 1. **Number of companies registered in Romania, distributed by given categories**

Type of Company	Active companies	Liquidation procedure	Dissolution procedure	Temporary inactivity (3 years period)	Insolvency procedure
SRL	771 163	50 029	28 380	115 441	9 009
SA	6 844	822	477	223	848
SCA	0	2	0	0	0

49. Companies registered at the National Trade Register Office (NTRO) which are not in the dissolution/liquidation procedure can opt for temporary inactivity. The definition and procedure for temporarily inactive companies are strictly regulated by the Methodological Norm. When a company applies for being temporary inactivity, it must submit the decision of the general assembly, an affidavit stating that the company will not carry out its regular business activities and proof of payment required to register the temporary inactivity. Temporary inactivity of a company cannot exceed three years in length from the moment the request has been registered with the NTRO and the period of inactivity is well monitored. A public registry of all companies which have opted for temporary inactivity is published on NTRO's official website. As it is publicly available, the list of companies which are

temporarily inactive can be consulted by any person with an interest in the business, including potential business partners.

50. Romanian companies are required to maintain information regarding their legal owners under both commercial and tax law requirements, except for bearer shares issued by SAs and SCAs the ownership information of bearer shares is available under certain circumstances discussed below A.1.2. In addition, AML/CFT obligated service providers maybe involved in the formation of companies in Romania. If that is the case, these service providers must identify the owners of their clients.

Information held by the authorities

51. Information on the founders of SAs, SCAs and SRLs is available with the Trade Register and the tax authorities. However, updated shareholder's information is only available in the shareholder's register of SAs and SCAs, whereas it is also available in the Trade Register for SRLs.

Information with the Trade Register

52. Upon conclusion of the articles of association, all types of companies must register, for incorporation, with the Trade Register before starting their economic activity pursuant to Art. 1 of the Law no. 26/1990 of November 1990 on the Trade Register (Law 26/1990). The Trade Register is kept by NTRO, which is a public institution organised under the authority of the Ministry of Justice (Art. 2 of Law 26/1990).

53. The articles of association of SAs, SCAs and SRLs must be submitted to the Trade Register within 15 days to complete the incorporation (Law 31/1990 Art. 36). The constitutive acts with the NTRO must contain, among others: the identification details of the founders, the legal form of the company, the denomination, the number of the shares issued. With respect to SAs and SCAs, the number and nominal value of the shares issued shall be provided with a specification of whether they are in a registered or a bearer form (Art. 8 of Law 31/1990).

54. Transfer of SRL shares must be registered with the Trade Register (Art. 203 of Law no. 31-1990). Without such registration, share transfers are not recognised legally by the third party. In order for the transfer to have effect towards third parties, the transfer must be registered in the Trade Register.

55. In contrast, information on new shareholders following the transfer of SA shares and shares held by SCA's limited partners is not registered with the Trade Register, but is recorded in the shareholder's register maintained by SAs or SCAs (see *Information held by companies*).

Registration in practice

56. The registration of companies in Romania is organised and monitored efficiently by the NTRO.

57. The Romanian registration system is organised on a local basis. There are 42 local Trade Registers managed by the local courts of Justice. At a national level, the NTRO is maintained by the Ministry of Justice and gathers information from the local Trade Registers, making it publicly available.

58. Before starting any business activity, all legal entities must register with the local NTRO and the tax authorities. The relevant information and underlying documents are automatically forwarded by the NTRO in electronic format to the Ministry of Public Finance for the registration of the entity for tax purposes. The tax registration leads to the issuance of a TIN.

59. For each registration, the NTRO checks the availability and the name to prevent duplications. During the incorporation process, the founders can seek legal advice from the specialised units organised inside the local Trade Registers or can contact the services of a lawyer/notary. There is generally no involvement of notaries in the registration process, as the articles of association no longer need to be notarised since 1999.

60. The NTRO indicated that it takes generally three working days in practice for a company to be registered. The NTRO first carefully reviews the completeness and conformity of the documents received. If the application is not complete, the NTRO grants 15 days for the applicant to complete the registration. If after this period the documents are not provided, then the company is not incorporated. It is possible to register electronically but the NTRO has indicated that the electronic registration is seldom used.

61. The founder/associate/administrator/member of the management board or by his/her representative, or by any other person with an interest in the business, is responsible for the filing of the registration form and submitting it to the nearest local Trade Register. The above mentioned persons can delegate a proxy with a notarised power of attorney offer a mandate to a legal counsellor to carry out the registration proceedings on their behalf (a proxy is serving solely for registration purposes).

62. Upon successful registration, a registration certificate is issued to the applicants, containing Trade Register order number, a TIN from the Ministry of Public Finance and, if applicable, a European Unique Identifier (EUID), regulation will come into force as of 1 January 2017). The registration certificate constitutes proof that the company was added into NTRO's and NAFA's databases.

63. Following the successful registration of the legal persons, an extract of the resolution containing the details of registration must be published in the Official Gazette of Romania within 21 working days from the time the registration form was submitted to the Trade Register. The extract of the resolution will include amongst other the names and addresses of the founders and administrators. It will also contain details regarding the unique Trade Register order number, the TIN and, where applicable EUID.

64. In the case of all legal entities, NTRO does not possess the instruments to start investigations regarding the compliance with the obligation to register. Therefore, the Trade Register can only identify cases of delayed registration and failure to register after the company files an application for registration (i.e. *post factum*).

Update of Ownership information

65. Under Romanian law, the partners of an SRL are considered as such only if they are registered as partners with the NTRO. For shareholders of a SA or a SCA, they must be registered as such in the shareholder register. Regarding the change of partners and shareholders, it is in the personal interest of the new partners or shareholders to register the change of ownership; otherwise it is not possible to assert their legal ownership to third party. The NTRO does not carry out monitoring activities in respect of ownership updates. Any change in the NTRO's database goes to the NAFA's database electronically.

Information held by the tax authorities

66. From a tax perspective, the ownership information regarding SAs and SCAs is available provided such companies are liable to VAT or have updated their ownership information to the Trade Register, as described in this section.

67. In addition to the obligation to register upon incorporation with the NTRO, SAs, SCAs and SRLs must register with the Romanian tax authorities pursuant to Article 82 of the Fiscal Procedure Code (FPC). As a general principle, the registration requirement applies to any person or entity that is liable to tax. For example, SAs and SRLs are liable to tax and subject to tax registration by reason of their incorporation. Such taxpayers receive a fiscal identification code. For non-resident taxpayers that are only subject to withholding tax at source, the assignment of the tax identification code can be made by the tax authorities, at the request of the payer of income.

68. The fiscal registration statement shall be submitted within 30 days as of:

a. the date of establishment according to the law, in case of legal persons, associations and other entities without legal personality.

b. the date of issuing of the legal act of operation, the date of beginning of activity, the date of obtaining the first income or acquiring the capacity of employer, as applicable, in case of natural persons.

c. In case of non-resident taxpayers engaged in activities on the Romanian territory through one or more permanent establishment, at the same time with the submission of the tax registration statement.

69. The following information must be provided upon registration: the taxpayer's identification data, the categories of payment obligations due according to the Fiscal Code, data about the secondary offices, identification data of the empowered person, data regarding the taxpayer's legal status as well as any information necessary for the administration of taxes, duties, contributions and other amounts owed to the general consolidated budget (Art. 86(2) FPC).

70. The tax authorities have direct access to ownership information on the founders of SAs, and for SRLs, on founders and on current shareholders, which are recorded in the Trade Register by the NTRO. This direct access stems from two Cooperation Protocols concluded in 2006 and in 2010[8]. The tax authorities have access to company's information by means of a database mirroring that of the Trade Register database through the internal portal of the NAFA.

Tax registration in practice

71. Ownership information is made available to NAFA as part of the registration procedure. All legal entities must submit, upon registration in the Trade Register, the required documents for fiscal registration. NTRO automatically submits, in electronic form, the registration documents to NAFA. On this occasion, access to the Articles of Association is granted for the tax authority.

72. The TIN is assigned by NAFA to all legal entities involved in professional and business activities.

73. Legal entities and arrangements registering for VAT-purposes in Romania must fill in form 088, which contains information concerning the

8. Co-operation Protocol No. 320746/15.06.2006 concluded between the Ministry of Public Finances and the Ministry of Justice (hereby acting on behalf of the Romanian Trade Register – ONRC) and Co-operation Protocol No. 149256 concluded between the General Directorate for Tax Information (Directorate within NAFA) with the NTRO.

administrators and shareholders of the company. The registered company is required to report any subsequent changes in the provided information. For legal entities which are not registered for VAT-purposes in Romania, the tax authorities have the power to request ownership information if the need arises.

74. In practice, NAFA has a dedicated department for the registration of natural and legal persons inside each local tax administration. This dedicated department is in charge of monitoring compliance with the obligations to register. If NAFA notices through its investigation that a taxpayer has failed to register with NAFA, the NAFA notifies the taxpayer of his/her obligation to register and levies fines for late registrations (see *A.1.6 Enforcement provisions to ensure the availability of Ownership Information*.)

75. NAFA can extract a form from the NTRO database on any entity that has the legal obligation to register with the Trade Register. For companies, the form includes the name of shareholders, the shareholding percentage, the number of bearer shares or nominative shares issued, the date of the last change in the articles of association, the details regarding the directors of the company, mandate period, and the signature specimen.

Information held by companies

76. SAs, SCAs and SRLs must maintain an updated register of shareholders (Law 31/1990, Art. 177 and Art. 198, respectively). The shareholders' register must include, as the case may be, the surname and first name, personal code number, denomination, domicile or registered office of shareholders holding registered shares, as well as amounts paid for the shares.

77. Pursuant to Article 98 of Law 31/1990, the transfer of shares in SAs is only valid through a recording in the shareholder's register with the signature of the assignor and the assignee or by their proxies. The property right over registered shares issued in a dematerialised form shall be transferred by the statement made in the shareholders' register, signed by the assignor and the assignee or by their proxies. Other modalities to transfer the property right over registered shares can also be prescribed by the constitutive act. The Company Law does not provide any requirements for the transfer of shares to be notarised; except in the case of donations.

78. The register of shareholders may be kept by an authorised independent registered company, in which case it is mandatory to mention the name of that independent register company and its registered address in the Trade Register (Art. 180 of Law 31/1990). There is no restriction on the location of the independent registered company.

79. It is the responsibility of the boards of directors of SAs, SCAs and the managers of SRLs to keep the shareholder's register accurately and up-to-date (Arts. 177 (2) and 198 of Law 31/1990).

80. The Romanian authorities have indicated that in practice ownership information was available in all the 282 requests received regarding companies.

Ownership information required under accounting law

81. The implementation of Directive 2013/34/EU into the national accounting law provisions for the existence of a section named "Notes to the Financial Statement". For the peer review period, up to 30 June 2015, there was an accounting requirement to provide the list of the main shareholders in one of the "Notes to the Financial Statement". In addition to the name of the shareholder, the Notes shall include the number of shares, the nominal value of shares and the percentage of shares held. As of 1 January 2016, Romania has narrowed down the scope of this reporting requirement which provide that the list of shareholder in the financial accounts apply to medium-sized and large taxpayers with revenues of over 7.9 million Euros. This new legislation is set out in the Order of the Ministry of Finance no. 1802/2014 and Order no. 123/2016 issued by the Ministry of Finance and implements Article 27 of Directive 2013/34/EU.

Foreign companies

82. Under the Terms of Reference, jurisdictions should ensure that information is available to their competent authorities that identify the owners of foreign companies, where these foreign companies have a sufficient nexus with that jurisdiction; e.g. where the foreign companies are resident there for tax purposes. Romanian commercial and tax laws do not clearly prescribe for a requirement on foreign companies with a sufficient nexus with Romania to provide ownership information on their owners.

Tax law requirements

83. Article 7(37) of the Tax Code defines residents as:

- any legal person incorporated in Romania; and
- any foreign legal person with its place of effective management in Romania, any legal person with a registered head office in Romania, which has been established according to the European regulations, and
- any natural person resident in Romania.

84. Accordingly, foreign companies with their effective place of management or with a registered head office in Romania are liable to Romanian corporate income tax on their worldwide income. In contrast, foreign companies carrying on a business activity through a permanent establishment in Romania are subject to Romanian corporate income tax on the taxable profit which is attributable to that permanent establishment (Arts. 14(b), 31, 36 and 37 Tax Code). In both cases (companies with their effective place of management in Romania and foreign companies carrying on a business activity through a permanent establishment in Romania) have the obligation to register for tax purposes according to Article 82) FPC. The Romanian authorities have confirmed to date that there were no reported cases of foreign companies with a place of effective management in Romania following a tax inspection, while there was a large amount of permanent establishments subject to corporate tax in Romania.

Commercial law requirements

85. Romanian commercial law allows the establishment of a branch by foreign companies (Art. 44 of Law 31/1990). However, it does not require foreign entities that are considered tax resident in Romania due to having their place of effective management there, to register with the Trade Register. Accordingly, ownership information on foreign companies, which are tax residents in Romania, is not generally available with the Trade Register.

86. However, the foreign company has to register with the NTRO upon incorporation of the branch based on the Law on Trade Register (Art. 24, Law no. 26/1990). For the registration, the updated articles of association must be submitted and filed annually together with other relevant documents (e.g. the annual financial statements and the foreign trade register where the foreign company is incorporated etc.). After 7 July 2017, it will be possible to obtain information on ownership (as any other information registered in the trade register) through the European interconnected system of national trade registers, if the data is available in the trade register of the European Union Member State where the foreign company is incorporated (Directive 2012/17/EU of 13 June amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers).

AML/CFT requirements

87. To the extent that a foreign company engages the services of AML/CFT obligated persons (such as banks with which the foreign company maintains an account), some ownership information would be collected with respect to the foreign company, by virtue of Customer Due Diligence (CDD) conducted

by that AML/CFT obligated person. However, since not all companies must engage with AML/CFT obligated persons in Romania, the CDD requirements cannot ensure that ownership information is available in all instances.

Foreign companies in practice

88. According to the data provided by the NAFA, as of 1 April 2016, there were 1 289 branches of foreign companies registered in Romania. The competent authorities indicated that they did not receive requests on ownership information regarding foreign companies with a sufficient nexus in Romania.

Conclusion

89. Companies formed outside of Romania are generally not required to maintain or provide information identifying their owners if they are tax resident in Romania because they are effectively managed therein. Though foreign companies have to register with the Trade Register upon incorporation of the branch in Romania with relevant documents such as updated articles of association, obligation to maintain updated ownership information is not clearly set out in the tax or commercial laws. Therefore, the availability of information that identifies the owners of foreign companies with sufficient nexus with Romania will generally depend on the law of the jurisdiction in which the company is formed and it may not be available to Romanian competent authorities in all cases. Hence, Romania should require foreign companies having their place of effective management in Romania to maintain information on their ownership in all cases.

Nominees

90. Romanian civil law does not recognise the concept of nominee ownership found in many common law jurisdictions, but this activity is not prohibited. Articles 2039 to 2043 of the Civil Code provides for the “mandate without representation”, which is defined as the contract under which a person, called the “mandatary”, carries out legal acts in its own name, but for the account of the other party, called “principal”, and is liable towards third parties to the obligations pertaining to these legal acts, even if third parties would have known about the mandate. Under the mandate without representation, third parties have no legal relationship with the principal. This mandate must be recorded in the Trade Register to be opposable to third parties, in which case the identity of the principal is available in the Trade Register. In general, this legal concept is usually used for commission arrangements, shipping and consignment, rather than being used under corporate law. However, should it be used under corporate law, a mandatary would be registered as associate/shareholder of the company and not as

mandatary of an individual shareholder. In any case, the information would be available in the Trade Register upon registration of the mandate contract.

91. Under corporate law, the shareholders whose names are entered into the company's records or in records sent to the company by the independent private register of the shareholders can be entitled to cash dividends or to exercise any other rights (Law 31/1990, Art. 123). To date, Romanian authorities confirmed that they have had no experience with nominees or "mandataries" under the mandate without representation.

92. Although the concept of nominee shareholding as such is not recognised in Romanian civil and commercial law, its AML/CFT legislation establishes an obligation applicable to service providers acting as nominee to identity their customer. The definition of service providers includes any natural or legal person which by way of business, provides the service of "acting as or arranging for another person to act as a shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards" (AML/CFT Law, Art. 2k). These service providers are obliged to conduct CDD on a risk base and are thus obliged to identify the beneficial owners, that is to say any customer for whom they act as nominees (AML/CFT Law, Art. 11).

93. A beneficial owner is defined as "the natural person who ultimately owns or controls the customer and/or the natural person on whose behalf or interest a transaction or activity is being conducted, directly or indirectly (AML/CFT Law, Art. 4). This definition includes, inter alia, the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership over a sufficient percentage of the shares or voting rights sufficient to ensure control in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards. For the purpose of this definition, a percentage of 25% plus one share is deemed sufficient to meet this criterion.

94. To conclude, the common law concept of nominee does not exist under Romanian civil and commercial laws. The activities of nominee are however covered under AML/CFT laws, such that service providers acting as nominee must know the beneficial owners of their customers. In practice, the Romanian authorities have never encountered instances of nominees.

Bearer shares *(ToR A.1.2)*

95. SAs are allowed to issue bearer shares in Romania (Arts. 91 and 187 of Law 31/1990). The rules on bearer shares applicable to SAs also apply to SCAs (Art. 187 of Law 31/1990), such that SCAs are also allowed to issue

bearer shares. Issuers whose shares are traded on the capital market cannot issue bearer shares. These shares must be in dematerialised form (Arts. 91 and 98 of Law 31/1990).

96. Upon registration with the Registrar, the articles of association must include the number and the nominal value of all registered shares (Law 31/1990, Arts. 7 and 8), and the board of directors is personally liable for maintaining an updated shareholder's register of all registered shares. However, SAs do not have to register ownership information on bearer shares in the register of shareholders. In addition, the registered shares can be converted into bearer shares by the decision of the extraordinary general assembly of shareholders (Law 31/1990, Art. 92).

97. Romania does not have mechanisms in place to identify the owners of bearer shares. However, under company law, information on the owner of the bearer shares could be available when the bearer shares holder participates in a general meeting, as well as when the owner exercises the rights to receive the dividends, but not in any other cases. Bearer shareholders may only vote at the general assembly of shareholders if they deposit their bearer shares in the places indicated in the articles of associations or by the convening notice, at least five days prior to the assemble (Law 31/1990, Art. 123). The shares shall remain deposited until after the general assembly, but not more than five days from the date of the assembly. With regard to the dividends, companies which issued bearer shares and paid dividends must fill out Form 205, which contains identification data of the shareholders receiving dividends and submit this Form to a tax authority based on source taxation principles.

98. It would appear that the tax legislation provides that the capital gains from the transfer of securities creates 16% tax obligation (Law no. 227/2015 regarding the Fiscal Code, Art. 17 and 64). According to provisions of the Fiscal Code in force starting with 1 January 2016 (Law no. 227/2015 regarding the Fiscal Code, as amended and completed), the gains obtained from the alienation of shares must be declared by each individual in the year following that of obtaining the income by filling income tax declaration. The tax declaration must be filled in and submitted with the competent tax authority until 25 May of the year following the one when the annual net gain/annual net loss is earned/incurred.

99. With respect to bearer shares, changes in ownership information can be identified in two scenarios: *(i)* when the bearer shares holder participates in a general meeting or *(ii)* when the owner exercises the right to receive the dividends. Only through the exercise of these rights the company can collect ownership information and track the identity of the transferor and transferee if there has been a change in ownership. Upon an audit of the issuing company, it may therefore be possible to track the change in the bearer

shareholders if dividends have been distributed on a regular basis. In practice, the Romanian authorities have not yet applied this tool to reassess non-compliant reporting by sellers of nominative or bearer shares.

Bearer shares in practice

100. The NTRO keeps track of the number of bearer shares issued by SAs, and those who can issue bearer shares based on their articles of association. The NTRO statistics indicate as of 29 April 2016, 334 SAs are entitled issue bearer shares pursuant to their articles of association. This represents roughly 0.03% of the total number of companies registered in Romania, indicating that the materiality of the bearer share issue remains limited. Moreover, Trade Register reported that the number of bearer shares issued by SAs in circulation is 426 million, which was dropped from 483 million as of September 2015, out of the number of registered SA shares in circulation is 286 billion. Therefore, bearer shares represent 0.15% of the total number of shares issued by SAs in circulation in Romania.

101. Companies trading shares on the stock market cannot issue bearer shares. Moreover, insurance and reinsurance companies cannot deal in bearer shares. In addition to that, larger SAs[9] and SAs under a dual system of administration are required to have an internal auditor. Under AML/CFT Law no. 656/2002, auditors are required to apply CDD rules and help identify the beneficial owner (art. 11). This implies that transfers of bearer shares must be properly documented and suspicious transactions are to be reported to NOPCML by the internal auditors.

102. For the peer review period, no EOI request has been received where information regarding bearer shares and transactions of bearer shares has been sought. If such request is made, the Romanian authorities indicated that they are able to launch an investigation in order to obtain the necessary information, based on the fact that the original owner and the latest beneficiaries of dividends derived from the bearer shares are known.

Conclusion

103. Although, there are no mechanisms in place to ensure the identification of owners of bearer shares issued by SAs and SCAs in all cases, the materiality of the deficiency appears currently rather limited. However, Romania is recommended to amend its legislation to ensure that owners of bearer shares be identified in all cases.

9. Which meet two of the following 3 conditions: *(i)* reported a net revenue of over 7.3 mln. Euros; *(ii)* hold assets worth more than 3.65 mln. Euros and have an average employee number of over 50.

Partnerships *(ToR A.1.3)*

104. A partnership is a corporate form to which each member agrees to participate taking into consideration each other member in their personal capacity (*intuitu personae*). As a result, each member's share can be transferred only with the other members' consent. The articles of association must be amended when a transfer occurs. There are four types of commercial partnership in Romanian law.

- A general partnership (*societate in nume colectiv*, SNC) is a commercial entity with at least two members who are jointly and severally liable for the partnership's debts (Arts. 3 and 5 of Law 31/1990).
- A limited partnership (*societate in comandita simpla*, SCS) is a commercial entity that only partly fulfils the criteria for unlimited liability entities since it comprises two classes of members: managing partners, who are jointly and severally liable for the partnership's debts, and limited partners, who basically incur no liability for the partnership's debts and whose risk is limited to the amount of their contribution (they are essentially financial backers). The minimum required capital is RON 90 000 (EUR 20 134). Limited partners may be given a special power of attorney for certain or specific operations, in this case the mandate must be registered in the Trade Register; otherwise the limited partners shall be held jointly and severally liable for all the company's obligations. The rules relating to SNC apply to SCS (Art. 90 of Law 31/1990). There were 4 186 SNCs as at 19 April 2015.
- Under Romanian law, the European Interest Group (EIG) is defined as "*an association between two or more individuals or legal persons, constituted for a fixed period, in order to facilitate or develop the economic activity of its members and to improve their performance*." The EIG is a profit-based legal person (registered with the Trade Register), which may act as a trader or not, but the group can only have just one auxiliary activity besides the economic activity of its members. There were 57 EIGs in Romania as at 19 April 2015.
- European Economic Interest Groupings (EEIGs): The EEIG is a European form of partnership in which companies or partnerships from different European countries (the partners in the EEIG) can co-operate. It must be registered in the EU State in which it has its official address. EEIGs are regulated under Council Regulation (EEC) No. 2137/85 of 25 July 1985 on the European Economic Interest Grouping. EEIGs are subject to the same requirements as general partnerships (Council Regulation (EEC) No. 2137/85 of 25 July 1985 on the European Economic Interest Grouping). There were 9 EEIGs in Romania as at 19 April 2015.

105. Ownership information on the partners of the SNCs and SCSs are available with the Trade Register, the tax authorities and the partnerships.

Information with the Trade Register

106. As mentioned in A.1.1 *Information on Companies*, all types of legal persons, as well as sole and family partnerships, must register with the Trade Register before starting their economic activity pursuant to Article 1 of Law no. 26/1990. This information includes the ownership information of the founders.

107. The transfer of interests in a SNC (between associates/to a third party) represents a modification of the constitutive act which must be agreed by all partners and must be registered in the Trade Register (Art. 87 of Law no. 31/1990). The same applies regarding SCS, although they are subject to the provisions of the Civil Code on simple partnership (Art. 1901 and 1910 (4)) for matters which are not expressly regulated in the Company Law).

108. In practice, as it is applicable to SRLs, Romanian partnerships must record in their registers and subsequently report to the Trade Register all changes in the ownership structure. Should the new partners not be registered with the Trade Register, they would not be considered legally partner of the partnership, and would not be able to oppose their title to third parties. Therefore, there is an intrinsic incentive for new partners to report their ownership to the Trade Register, and for former partners to make sure they are no longer legally considered as partners of the partnership.

Information with the Tax authorities

109. Under Romanian tax law, partnerships, i.e. general partnerships and limited partnerships, are treated as companies for tax purposes. Pursuant to an agreement with the NTRO signed on 1 February 2012 between the Ministry of Public Finance – Romanian Tax Administration and the NTRO, the tax authorities have direct access to ownership information on the members of SCSs and SNSs, as well as any traders which are recorded in the Trade Register by the NTRO.

110. However, as it is the case for foreign companies (see A.1.1. *Companies*) identity information on partners of foreign partnerships, which would have a sufficient nexus in Romania (i.e. their tax residence therein) may not be available with the tax authorities in certain limited cases. A distinction should be made between the types of foreign partnerships:

- Foreign partnerships that do not have a legal personality are considered tax transparent entities for Romanian tax purposes. Accordingly, they are not considered to be tax resident in Romania. However, any fiscally

transparent entity without legal personality operating in Romania has the obligation to register one of the partners/associates to carry out the reporting on behalf of all the partners/associates. The designated person must obtain a TIN for each of the partners/associates in case they do not already possess one, carry out accounting, archive underlying documents, and keeps the tax records for the fiscally transparent entity (Arts. 233 and 234, Fiscal Code). Should tax registration of the partnership be required because they carry out an activity in Romania, quarterly income tax declarations (Form 104 Statement regarding allocations of income and expenses between partners) must contain information on the name of the partners, the fiscal identification number, their address, their interests in the partnership.

- Foreign partnerships with a legal personality carrying out an activity through a branch in Romania have to register with the NTRO. In this case, the identity of the founding partners would generally be available in the articles of association of the foreign partnership which must be filed with the NTRO, as well as the identity of the current partners if it is required under foreign law to amend the articles of association in case of a change of partners. Accordingly, the identity of the foreign partners would not be available in limited cases.

111. The Romanian authorities have indicated that in practice ownership information on Romanian partnerships comes from the NTRO and is accurate and up-to-date. The Romanian authorities indicated that the case of a foreign partnership having its place of effective management in Romania never took place in practice. During the peer review period, the Romanian competent authorities answered three requests on ownership information of Romanian partnerships. Ownership information was available in all cases.

Information with service providers

112. To the extent that any partnership engages the services of an AML/CFT obligated person, such as a bank, or auditor, the beneficial owners of the partnership (i.e. partners that own or control more than a 25% stake in the partnership) would be identified through CDD (see A.1.1).

Conclusion

113. The legal and regulatory framework in Romania ensures that ownership information regarding partnerships is available; except with respect to foreign partnerships having a legal personality with a sufficient nexus with Romania under limited cases. Partnerships are required to submit information on all their partners to the Trade Registry and report any subsequent changes thereof. In practice, ownership information on partnership is available in Romania.

Trusts and Romanian Fiducia *(ToR A.1.4)*

114. Romania does not recognise the common law concept of trust and Romania is not a Party to the Hague Convention on the Law Applicable to Trusts and on their Recognition. However, there are no restrictions for a resident of Romania to act as trustee, protector or administrator of a trust formed under foreign law (see *Foreign Trusts* below). In addition, Romania introduced in 2009 the concept of *fiducia* (fiducie), which is a structure similar but not identical to trusts, governed by Articles 773 to 791 of the Civil Code.

Romanian Fiducia

115. The Civil Code provides rules on applicable law to *fiducias*, similar to correspondent rules provided in Hague Convention on the Law Applicable to Trusts and on their Recognition. The Civil Code rules on *fiducia* are similar to those applicable in other continental countries. Article 773 of the Civil Code defines the 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."

116. The fiduciary contract must mention, under the sanction of absolute nullity the following information (Art. 779 of the Civil Code):

- real rights, claims rights, guarantees and other transferred patrimonial rights;
- duration of transfer, which cannot be longer than 33 years since the date of its signature;
- identity of settler/settlers;
- identity of fiduciary/fiduciaries;
- identity of beneficiary/beneficiaries or at least the rules allowing to determine it;
- purpose of fiducia and extent of the powers of administration and disposition of the fiduciary/fiduciaries.

117. The fiducia is subject to registration in the Electronic Archive of Security Interests in Real Property, which ensures opposability against third parties for the fiducia agreement (Art. 781 Civil Code). This database can be accessed by the tax administration, but also by the public. Immovable property held in fiducia must be registered with the Land Register. Any modification of beneficiaries and fiduciaries and the termination of the fiducial

contract must be registered with the competent tax authorities by the fiduciary within a month since the date of their conclusion (Civil Code, Art. 780(1)).

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

119. According to the data provided by the NAFA, as of 1 April 2016, there were 42 Fiducia in Romania.

Information held by the tax authorities

120. The fiducia agreement is subject to mandatory registration with the tax authorities in electronic form within one month from the conclusion of the agreement. The Register of fiducia agreements is managed by the General Directorate of Information Technology of the National Agency for Fiscal Administration (Order of the NAFA no. 1985/2012). The sanction for failure to register the agreement is the fiducia's absolute nullity (Art. 780 Civil Code).

121. Any modification of beneficiaries and fiduciaries and the termination of the fiducial contract must be registered by the fiduciary with the tax administration within 30 days. The fiduciary is subject to tax for the account of the fiducia. The statement and the documents submitted by the fiduciary are archived in his/her fiscal file. At the tax administration level, the registration in the Registry of fiducial contracts is effectuated in maximum five days from the date when the contracts are submitted.

122. The registration of the fiducial agreement and its subsequent modifications ensures that information regarding the fiduciary, the beneficiaries, the settlor(s) and the assets held in fiducia is available directly with the tax authorities.

123. In practice, the fiduciary contract is communicated to the tax authorities. It is concluded in notarised form, and must include identifying details related to the settlor/fiduciant (i.e. the beneficial owner). In conclusion, the fiduciary is obliged to disclose information on the identity of all parties involved in a fiduciary relationship and to keep track of changes in ownership (e.g. for real estate property transfers).

Information held by the fiduciaries

124. The functions of fiduciaries 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, irrespective of the form of exercise of their profession. Accordingly, fiduciaries can only be AML/CFT-obligated persons, which are subject to CDD requirements (see

A.1.1 *Information held by Service Providers*). Fiduciaries are subject to controls from the National Bank and the Financial Supervisory Authority, which mitigates the risk of performance of illicit operations through the fiducia.

125. In practice, the following entities can be fiduciaries: credit institutions, financial investment companies and Investment Management Undertakings, financial investments services companies, insurance and reinsurance companies, public notaries and lawyers (Art. 776, par. 2). All such entities are regulated by the national AML/CFT law, being obliged to report any suspicious transactions to the Financial Intelligence Unit (Law no. 656/2002, Art. 10, Par. a), b) and f)). As the fiduciaries are strictly supervised under the AML/CFT provisions, information on the beneficiary owner must be made available on request. It is worth noting that under the penalty of absolute voidance, the fiduciary agreement and any amendment thereto shall have to be registered within one month as of their execution date, upon the trustee/fiduciary's request, with the tax administration competent to assess the tax liability.

Foreign trusts having a link with Romania

126. The common law concept of trust does not exist in the Romanian legal system. Romania is not a signatory of the Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition. There is, however, no obstacle in Romanian domestic law that prevents a Romanian tax resident from acting as a trustee or for a foreign trust to own assets in Romania.

127. As regards the availability of information regarding settlors, trustees and beneficiaries of trusts, the Romanian law does not require the registration of foreign trusts in the Register of *Fiducies* or to disclose immediately this information. However, if real estate is concerned, the previous and new owners must be disclosed to the notary public.

Tax obligations

128. The Romanian tax administration maintains some information if the professional trustee is resident in Romania, the trust is administered in Romania or some assets are located in Romania.

129. From a general perspective, if information is considered necessary for Romanian tax assessment purposes, the taxpayer has an obligation to disclose such information to the tax authorities. Income of a foreign trust could be taxable in Romania in the hands of a Romanian resident trustee if the income would be derived by the Romanian resident trustee itself (depending of the provision of the trust statute). Furthermore, trustees resident in Romania are subject to record-keeping requirements for the determination of their own income. Thus, all records that are necessary for determining

whether the trust income is taxable in the hands of the trustee must be kept. This includes the names of the settlors and named beneficiaries of the trust and the nature of the assets in the trust that have generated the income.

130. Therefore, because general tax requirements in Romania require that all taxpayers be able to provide information to the tax authorities whenever taxable income must be determined, a trustee resident in Romania should be able to provide the tax authorities with information on the settlors and beneficiaries of trusts that he/she administers.

Money laundering

131. Lawyers and accountants acting as trustee, as well as trust service providers such as financial institutions, are subject to anti-money laundering requirements. Service providers "acting as or arranging for another person to act as a trustee of an express trust activity or a similar legal operation" are expressly covered under the AML/CFT Law (Art. 2 k). They must identify and, where relevant and taking into account the money laundering risks, verify the identity of their clients and the beneficial owner of the business relationship.

132. The situation where a trustee in Romania is not acting in a professional capacity would not be covered under anti-money laundering rules. Although providing such services could generate taxable income depending on the wording of the trust agreement and trigger an obligation to keep information substantiating the tax position of the person concerned, information on the settlor and beneficiaries of the foreign trust might not be kept by such trustee in all instances. It is considered that this situation is likely to be rare and not likely to prevent effective EOI. There has been no case encountered in practice where a Romanian person acted as a trustee.

Conclusion

133. Romanian legislation regarding *fiducia* ensures the availability of information regarding the fiduciaries, the settlor(s), beneficiaries and assets held in the fiducia with the tax authorities, with the AML/CFT-obligated fiduciaries and with the Electronic Archive of Security Interests in Real Property.

134. In addition, while trustees resident in Romania are not subject to specific tax obligations to keep identity information regarding settlors and beneficiaries of express trusts, the anti-money laundering obligations, together with the obligation to submit information to the tax authorities, where applicable, should permit the availability of such information. There is no experience in practice in respect of availability of the relevant information on foreign trusts in Romania.

Foundations *(ToR A.1.5)*

135. There is no provision for private-interest foundations in Romanian Law, which only authorises the creation of not-for-profit foundations and associations (Government Ordinance no. 26/2000 on associations and foundations). These are defined as follows:

- the association is the legal person made up of three or more persons who, based on an understanding, place together and with no right of return their contribution in money, knowledge or labour for the performance of an activity for general interest, for the interest of a collectivity or, as applicable, for their personal non-patrimonial interest. As of 1 April 2016, there were 74 981 associations.
- the foundation is the legal person made up of one or several persons who, based on a judicial act concluded *inter vivos* or *mortis causa*, create a patrimony to be used on a permanent and irrevocable basis for the achievement of a purpose of general interest or, as applicable, in the interest of certain collectivities. As of 1 April 2016, there were 17 182 foundations.

136. It shall be noted that non-profit foreign legal entities are recognised in Romania, if their statutory purpose does not contravene Romanian legislation.

137. Associations and foundations acquire legal personality through their registration in the Register of associations and foundations, which is kept by the registrar's office of the district court in whose jurisdiction they are seated. The following information is to be included in the aforementioned Registers: the name or, as applicable, the denomination of the associations/foundations, as well as the nominal composition of the board of directors or management body thereof, as well as of the person or persons appointed to represent the association/foundation. In the case of foreign legal entities, the name or, as applicable, the denomination of the shareholders or founders of the foreign legal entity will be mentioned, as well as the name of the persons who represent the foreign legal entity.

138. As Romanian foundations are non-profit entities established exclusively for public-interest purposes and are strictly regulated because they may receive public subsidies, they are not considered to be relevant entities under the Terms of Reference.

Other type of entities

139. The Civil Code provides that companies can be incorporated with or without legal personality and they can be of several types: simple, joint ventures, general partnerships, limited partnerships, limited liability, limited

partnerships by shares, co-operative or of any other type regulated by law. Entities without legal personality are regulated in general by the Civil Code.

140. A professional limited liability company (SPRL) is one of the specific forms of exercising a profession as a lawyer or insolvency practitioner. These companies shall obtain the legal personality on the date of their registration at the professional organisation that is required to keep a register. The articles of incorporation and statute of the professional limited liability company in case of law firms, or the articles of association in case of companies set up by insolvency practitioners are governed by civil law. As of 1 April 2016, there were 113 SPRLs.

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

141. Under the Terms of Reference, Romania should have in place effective enforcement provisions to ensure the availability of ownership and identity information, one possibility among others being sufficiently strong compulsory powers to access the information. This subsection of the report assesses whether the provisions requiring the availability of information with the public authorities or within the entities reviewed in section A.1 are enforceable and failures are punished in practice. Questions linked to access are dealt with in Part B.

142. Under Romanian laws, in some cases there are penalties to sanction non-compliance whilst in other instances there is no applicable penalty.

Registration requirements with the Trade Register

143. Upon incorporation, all types of companies must register with the Trade Register before starting their economic activities. Pursuant to Article 44 of Law 26/1990, a pecuniary fine ranging from RON 50 (EUR 11) to RON 500 (EUR 112) applies in case of lack of registration for natural persons and from RON 500 (EUR 112) to RON 2 000 (EUR 447) for legal persons. The fine applies to each of the representatives of the entities. The lack of registration also entails that the entity does not have any legal existence.

144. In practice, during the peer review period, no sanctions were applied under the provisions of Art. 44, Law no. 26/1990. According to the Ministry of Justice, a company gains full legal capacity and becomes a legal entity upon registration in the Trade Register. Without registration, these companies cannot operate (Art 41, Law no. 31/1990). Hence, from a Company Law perspective, incorporation enables a legal entity to sign documents, incur liabilities, carry on business, protecting the owners/founders of the company from the risk of losing their own assets. Therefore, there is no public interest

to force someone to bring a company into existence, as the main beneficiaries of the incorporation are the owners. Furthermore, the persons conducting commercial activities are jointly and personally liable for the debts of the undeclared entity.

Obligation for any entity to maintain ownership information

145. SAs, SCAs and SRL must keep a shareholder register with updated ownership information (Art. 177 and 198 Law no. 31/1990). The managers and administrators are personally and jointly liable for any damage caused by the failure to observe the aforementioned provisions (Art. 73(1) (c) Law no. 31/1990). The register can be consulted by the shareholders and creditors. In addition, the SRL must register the transfer of shares to the Trade Register.

146. There are no specific sanctions for not keeping the shareholder register up to date, apart from a general liability of the managers and administrators in case of damage caused by the failure to keep that shareholder register. Article 72 of Law no. 31/1990 provides that the obligations and responsibility of administrators is governed by the provisions applicable to the mandate contract. According to the National Trade Register, in the absence of specific legal provisions, the provisions of the Civil Code in respect of the mandate contract are applicable.

147. In addition, the lack of registration of the incorporation of a SRL and any transfer of SRL and partnership interests in the Trade Register, is subject to a fine ranging from RON 50 (EUR 11) to RON 500 (EUR 112) (Art. 44 of Law 26/1990).

148. To conclude, Romania should 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.

Tax requirements

149. Failure to register with the tax administration, where required, is subject to a fine ranging from RON 500 (EUR 112) to RON 1 000 (EUR 224), for natural persons, and fine between RON 1 000 (EUR 224) and RON 5 000 (EUR 1 119), for legal persons.

150. Although, failure to register with the tax authorities is sanctioned with a fine ranging between 1 000 (EUR 224) and RON 5 000 (EUR 1 119) (Art. 336(1), FPC) for medium-sized and large companies, and between 500 (EUR 112) and RON 1 000 (EUR 224) (Art. 336(2), FPC) for all other legal entities, these penalties do not need to be applied in practice, as the tax registration is automatically granted from the registration with the NTRO.

However, the NAFA checks the compliance of tax returns once the companies have registered.

151. The following statistics show the number of fines levied for not filing a tax return:

Table 2. **Number of fines levied for not filing a tax return**

Year	Number	Total value (EUR)
2012	701	495 000
2013	591	420 000
2014	766	558 000
2015	690	544 000
TOTAL	2 748	2 017 000

AML/CFT legislation

152. All requirements coming from the AML/CFT framework are supported by administrative sanctions, unless the offence constitutes a crime.

153. Failure to comply with the provisions regarding customer identification constitute an offense, provided that the acts are not committed so as to constitute a crime, and is sanctioned with a fine ranging from 15 000 (EUR 3 390) to RON 50 000 (EUR 11 300) (Art. 28(2) AML/CFT Law 656/2002). These sanctions shall also be applied to the legal persons.

154. Besides the above-mentioned pecuniary fines, one or more of the following complementary sanctions may be applied to the legal persons (Art. 28(4) AML/CFT Law 656/2002):

a. seizure of the goods intended for, used for or resulted from the contravention;

b. suspension of the notification, approval or authorisation to conduct a business or, as applicable, the suspension of the activity of the economic operator for a period ranging from one to six months;

c. revocation of the license or notification for certain operations or for foreign trade activities, for a period ranging from one to six months or irrevocably;

d. blocking of the bank account for a period ranging from 10 days to one month;

e. cancellation of the notification, approval or authorisation to conduct a business;

f. closing down the business.

155. At the same time, besides the above-mentioned sanctions, the supervisory authorities may also apply specific sanctioning measures, according to their competence.

156. In practice, NOPCML is the Romanian Financial Intelligence Unit with leadership role on drafting, co-ordination and implementation of the national system of combating money laundering and terrorism financing. The NOPCML receives from the reporting entities three types of reports:

- Suspicions Transactions Report;
- Cash Transaction Reports in RON or foreign currency, which exceed the threshold of 15 000 Euro;
- External Transaction Report in and from accounts, for amounts exceeding the threshold of RON equivalent of 15 000 Euro.

157. Table 3 indicates the supervisory and enforcement measures conducted by NOPCML from 2012 to 2015. The number of off-site inspections may differ from one year to another depending on the complexity and the risks of the activities carried out by the legal persons and arrangements audited by NOPCML.

Table 3. **Supervisory and enforcement measures by NOPCML**

Type of activity/Year	2012	2013	2014	2015
Off-site inspections	1 631	1 394	650	6 558
On-site inspections	192	307	193	151
Legal entities sanctioned (no.)	124	111	50	52
Sanctions applied (EUR)	242 000	278 000	104 000	96 500
Suspicious transaction reports	4 636	4 170	3 554	4 610
Cash transaction reports	10 250	9 721	7 079	8 224
External transaction reports	7 471	7 167	4 888	4 986
Value of suspended suspicious transactions (EUR)	1 500 000	28 800 000	9 300 000	2 887 035

158. Apart from the supervisory and enforcement measures, NOPCML carried out a number of 16 training workshops with the aim of instructing the reporting entities on the latest trend and best practices. The preventive programmes were organised as part of the public-private sector co-operation in order to empower the reporting entities and make them aware of the challenges surrounding the misuse of legal persons and arrangements for Money Laundering and Terrorism Financing purposes. The supervisory and enforcement measures carried out by NOPCML also involve the review of CDD practice by the regulated persons.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Foreign companies and foreign partnerships with legal personality having their place of effective management in Romania are not obliged to maintain ownership information in all cases.	Romania should require foreign companies and foreign partnership with legal personality having their place of effective management in Romania to maintain information on their ownership in all cases.
Although bearer shares that may be issued by SAs and SCAs represent only a small percentage (i.e. 0.15%) of the total amount of shares in circulation in Romania, mechanisms to ensure that the owners of such shares can be identified are not in place for all bearer shares.	Romania should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.
Although there are some mechanisms in place to ensure compliance by companies, Romanian legislation does not provide for specific sanctions in all cases for SAs and SCAs that fail to maintain ownership information.	Romania should 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.

Phase 2 rating
Partially Compliant

A.2. Accounting records

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

159. Romania's accounting obligations are in compliance with the standard. The compliance with these obligations is well-monitored by the Romanian tax authorities. Romania received 98 EOI requests on accounting information, to which it replies successfully. Peer input did not indicate any particular issue in respect of the availability of accounting information.

General requirements *(ToR A.2.1)*

160. Romanian accounting law provides for accounting requirements applicable to all legal entities incorporated in Romania and legal entities which are taxable in Romania, including foreign entities. In the case of fiducial arrangements, the fiduciary keeps separate accounting records (Art. 30(b)) of the Fiscal Code). However, no accounting requirements apply to foreign trusts which have Romanian-resident administrators or trustees.

Accounting obligations applicable under Commercial Law

161. The general accounting obligations are set out in Law no. 82 of December 1991 on Accountancy, republished, as subsequently amended and supplemented (Accounting Law). Romania's accounting law applies to all legal persons, including foreign entities conducting business in Romania (Accounting Law, Art. 1).

162. Under the Article 2 of the Accounting Law, accounting records must ensure the chronological and systematic recording, processing, publishing and preserving of information regarding financial activity in order to control the assets, debts and own capital as well as the results obtained from activity of entities. Assets and liabilities and the performance of economic operations must be recorded in the accounting books, and failure to do so is forbidden with a fine from RON 1 000 (EUR 224) to RON 10 000 (EUR 2 237) (Accounting Law, Art. 11). Moreover, any economic and financial operation completed shall be registered at the time when it is carried out in a document (Accounting Law, Art. 6).

163. The annual financial statements must provide a true image of the financial position and the financial performance of the entity (Accounting Law, Art. 9). A copy of the annual financial statements shall be submitted to the territorial units of the Ministry of Public Finance as follows; *(i)* particularly stipulated entities such as trading companies and national companies: within 150 days of the end of the financial year, *(ii)* the other legal persons: within 120 days of the end of the financial year (Accounting Law, Art. 36). In addition, the compulsory accounting records are the Register journal, the Inventory book and the General ledger carried out according to the norms elaborated by the Ministry of Economy and Public Finance (Art. 20).

164. In case of failure to keep accounting records as required under the Accounting Law, the contraventions shall be punished by fine ranging from RON 300 (EUR 67) to RON 10 000 (EUR 2 237) (Accounting Law, Arts. 41, 42).

165. In practice, the NAFA is monitoring compliance with the Accounting Law pursuant to article 42, paragraph 4 from Accounting Law no. 82/1991

(see below). Once the NAFA receives the tax returns which includes the accounting records, the NAFA communicates these accounting records to the NTRO.

Accounting obligations applicable under tax law

166. Taxpayers are obliged to keep the accounting records to determine the actual tax liabilities owed (Art. 108 FPC). Companies are also subject to transfer pricing documentation requirements. The legal provisions regarding the keeping, archiving and the language used in accounting records as set out in the Accounting Law are also be applicable to tax records (Art. 109(3) FPC). The accounting and tax records must be kept at the taxpayer's fiscal domicile or the secondary offices, as the case may be, on electronic media inclusive, or they may be entrusted for preservation to a company authorised, according to the law, to provide archiving services.

167. The rate of voluntary filing of corporate tax returns by the legal entities carrying out business activities in Romania has been steadily above 90% during the last five year. Due to NAFA's active monitoring, the compliance rate approached 95% in 2015. This is due to the use of the Key Performance Indicators which evaluates the activity of regional and territorial NAFA tax administration units. The statistics regarding the filling of the tax returns for companies are presented below:

Table 4. **Statistics regarding the filling of the tax returns for companies**

Reporting year	2012	2013	2014	2015	2016
Percentage of companies voluntarily filling tax returns	90.33%	93.03%	94.06%	94.75%	95.17%

Source: Performance indicators statistics, NAFA Data warehouse application.

168. In practice, NAFA acts through its Tax Audit Unit to monitor compliance with the tax law obligations. Tax records and accounting records must be made available to the Tax Audit Unit upon request by the audited entity and its business partners.

169. The Romanian authorities indicated that before carrying out a tax audit, tax authorities must first examine the information available in the NAFA database and records, and then verify the reliability and validity of the data submitted through the tax returns by cross-checking it with the data present in the taxpayer's accounting records. Moreover, the Tax Audit Unit to can opt to investigate records kept by third-parties in order to verify whether the entities' transactions were correctly explained in the tax returns.

170. Tax audit schedules are partly based on the risk management database, which shows the risk areas and the companies which are most susceptible to tax evasion and tax fraud. By adding data and information, knowledge (intelligence) about the risks posed by different business sectors and the companies operating in such sectors can be identified. It is this deeper knowledge that enables the Tax Audit department to optimise its activity and to promote a higher rate of voluntary compliance among taxpayers.

171. The number of tax audits and the percentage of audited taxpayers are set out in the table below, which demonstrates the efforts allocated by NAFA to audit activities.

Table 5. **Number of tax audits and the percentage of audited taxpayers**

Year	Number of tax audits	Antifraud audits/ investigations	Active taxpayers	Percentage of audited taxpayers
2012	98 625	35 946	960 848	14%
2013	86 941	30 199	971 887	12%
2014	70 912	19 429	985 323	9%
2015	61 054	30 835	1 008 543	9%

172. NAFA is the competent authority for applying sanctions in cases of non-compliance with the tax and accounting obligations among taxpayers. The sanctions applied by the Tax Audit Unit are set out below.

Table 6. **Sanctions applied by the tax audit unit**

	Accounting law non-compliance sanctions		TOTAL tax audit sanctions	
Year	Number	Value (EUR)	Number	Value (EUR)
2012	6 270	1 580 000	14 227	7 200 000
2013	4 967	1 250 000	11 530	6 130 000
2014	4 639	1 220 000	11 509	6 530 000
2015*	3 938	1 310 000	9 924	6 430 000
TOTAL	19 814	5 360 000	47 190	26 290 000

* 01.01.2015-30.06.2015.

Accounting records for foreign trusts and fiducia

173. While Romanian law does not recognise foreign trusts, the Civil Code provides for the possibility to set up fiducia arrangements as described above in the A.1.4 *Trusts and Fiducia*. Accounting information is available

on fiducial arrangements, but not on foreign trusts which have Romanian-resident administrators or trustees.

174. The Accounting Law does not expressly regulate fiduciary operations. However, under the Civil Code, the fiduciary managing the fiducia shall establish separate accounting records for the fiducia (Art. 807). In addition, under Article 30^1(b) of the Tax Code, the fiduciary must manage a separate accounting record for the fiduciary patrimonial amount and must submit quarterly reports to the settler, based on a return, income and expenses arising from the administration of patrimony under the contract. The Tax Code refers back to the Accounting Law, as accounting records of the fiducia for tax purposes must follow the rules set out in the Accounting Law, pursuant to the general principle set out in Art. 109(3) FPC.

175. In respect of foreign trusts having a professional trustee resident in Romania, the accounting record keeping obligations of the Accounting Act and the Tax Code do not apply to resident professionals acting as administrators or trustees of foreign trusts. However, as they are acting in a professional business capacity and are subject to record keeping requirements for the determination of their own income. Thus, all records that are necessary for determining whether the trust income is taxable in the hands of the trustee must be kept. This includes the nature of the assets in the trust that have generated the income. Therefore, because general tax requirements in Romania require that all taxpayers be able to provide information to the tax authorities whenever taxable income must be determined, a trustee resident in Romania should be able to provide the tax authorities with information on the records regarding trusts. However, Romanian trustees of foreign trusts themselves are not required to keep accounting records that fully reflect the financial position and assets/liabilities of the foreign trust. Therefore, Romania should ensure that such accounting records are maintained for a minimum of five years for any foreign trusts which have Romanian-resident administrators or trustees.

176. In practice, fiducia is seldom used, as only 42 fiduciary business relationships existed as at 1 April 2016, representing roughly 0.003% of the total registered legal arrangements and entities. Fiduciaries must also keep a separate set of accounting records which can be consulted by the tax authorities (Art. 30, Tax Code). Should there be a Romanian trustee of a foreign trust, he would have to fill-in a tax return including accounting records demonstrating clearly what transactions were carried out on the behalf of the foreign trusts and what is his remuneration for his activities as a trustee. The Large Taxpayer Department is in charge of the 42 fiducia. The Romanian authorities indicated that fiducia is used to hold assets for large businesses and for large transactions. Upon termination of the fiduciary agreement, the transfer of fiduciary patrimony from the trustee to the beneficiary generates income tax liabilities for the beneficiary based on the principles of source-based taxation.

177. The Romania authorities indicated that they have not encountered any EOI cases dealing with a fiduciary relationship or a foreign trust.

178. To conclude, the Romanian entities, as well as foreign entities conducting business in Romania, are required under Romanian law to keep accounting records that correctly explain the entity's transactions, enable it to determine the entity's financial and tax position with reasonable accuracy at any time and allow financial statements to be prepared. There is however a narrow gap relating to the availability of accounting records that reflects the financial position and assets/liabilities of a foreign trust of which there is a Romanian resident acting as a trustee or administrator, although this gap appears very limited in practice.

Underlying documentation *(ToR A.2.2)*

179. Accounting and tax requirements under Romania's law require underlying documentation to be available in accordance with the international standard for effective exchange of information.

180. Romania's entities as well as foreign entities conducting business in Romania are required to keep underlying documentation which shall stand at the basis of the entries in the accounts as proof (Accounting Law, Arts. 6 and 25). The provision of point A.2 in Appendix no. 1 of the Order of the Minister of Economy and Finance no. 3512/2008 on financial-accounting documents stipulates that the supporting documents must comprise the following main elements; the name of the document; the name and address of the legal entity or individual that draws up the document; date of creation of the document; the quantitative and value details corresponding to the economic-financial operation performed; the signatures of the persons accountable for the operation and his/hers name.

181. The Tax Code requires taxpayers to keep evidence providing information regarding expenses. Expenses recorded in the accounting which do are not documented are not be deductible for tax purposes (Tax Code, Art. 21 paragraph (4) f)). Further, invoices must include mandatorily the serial number which uniquely identifies the invoice, the date of issue, the name and address of the supplier and so on (Art. 319, Tax Code).

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

182. Under Romania's accounting law, accounting records and underlying documentation must be kept for at least five years, starting from the closing date of the financial year (Accounting Law, Art. 25). Non-observance of the regulations issued by the Ministry of Public Finance for keeping and

archiving is punishable with a fine from RON 300 (EUR 67) to RON 4 000 (EUR 895) (Accounting Law, Arts. 41, 42).

183. During the tax audit process, the competent authority does not record non-compliance with the above-mentioned obligation separately, as a mention is being made that the fine was applied as a result of failure to comply with the Accounting Law. Therefore, the statistics are the aggregated result of all types of violations and the subsequent pecuniary sanctions for failure to comply with accounting obligations.

Table 7. **Sanctions applied by the tax audit unit related to accounting law**

	Law 82/1991	
Year	No. of sanctions applied	Value (EUR)
2012	6 270	1 577 000
2013	4 967	1 252 000
2014	4 639	1 215 000
2015	3 938	1 308 000
TOTAL	19 814	5 352 000

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
Romanian trustees of foreign trusts are not required to keep accounting records that fully reflect the financial position and assets/liabilities of the foreign trust.	Romania should ensure that such accounting records are maintained for a minimum of five years for any foreign trusts which have Romanian-resident administrators or trustees.

Phase 2 rating
Compliant

A.3. Banking information

Banking information should be available for all account-holders.

184. Access to banking information is of interest to the tax administration when the bank has useful and reliable information about its customers' identity and the nature and amount of their financial transactions.

185. Credit institutions are, amongst others, regulated by the Emergency Ordinance No. 99 of 6 December 2006 on Credit Institutions and Capital Adequacy (Credit Institutions Ordinance) and are supervised by the National Bank of Romania. Carrying on a banking activity is regulated in Romania, and requires a banking license granted by the National Bank of Romania (Credit Institutions Ordinance, Art. 4). Banks can only carry out the activities listed in Article 18 of the Credit Institutions Ordinance, which includes acceptance of deposits, consumer credit and mortgage credit, financial leasing, brokerage services on financial market, safe custody services and portfolio management and advice.

186. Credit and financial institutions are prohibited from opening and managing anonymous accounts, namely accounts for which the identity of the holder or beneficiary is not properly known and disclosed.

Record-keeping requirements (ToR A.3.1)

187. Banks must know the legal and beneficial ownership identity of their clients. AML/CFT Law also provides that credit institutions are not allowed to open and operate anonymous accounts which are not documented regarding the identity of the holder (Art. 15 (1) AML/CFT Law). Failure to comply with this prohibition is sanctioned by a fine ranging from RON 15 000 (EUR 3 356) to RON 50 000 (EUR 11 186) (Art. 28 AML/CFT Law).

188. In addition, in the case of foreign legal persons, Article 16 of the AML/CFT Law provides that additional information such as the headquarters, the type of the company, the place of registration and the power of attorney for legal representative who carry out the transactions shall be required to open their accounts. Furthermore, the reporting of this information by the legal entities is also mandatory under the Article 9 (1) of the Regulation no. 9/2008 issued by the National Bank of Romania. Financial institutions shall keep a copy of the document for customer identification for at least five years starting with the date when the relationship with the clients comes to an end (Art. 19 (1) AML/CFT Law). Non-compliance with this provision should be sanctioned by a fine ranging from RON 15 000 (EUR 3 356) to RON 50 000 (EUR 11 186) (Art. 28 AML/CFT Law).

189. In addition, commercial banks shall require that verification of the identity of the customer takes place before the establishment of a business relationship or the carrying out of the transaction. Moreover, the commercial banks shall proceed with a risk-analysis in order to mitigate the risk that the Financial Institution is used for money-laundering and terrorist financing, pursuant to Regulation 9/2008 on "know-your-customer" rules for the prevention of money laundering and terrorist financing, as subsequently amended.

190. All transactions must be recorded by banks. Pursuant to Article 121 of the Credit institutions Ordinance, banks shall retain the copy of the contractual documents, the internal documentation of the transactions performed and the daily records of entries for every client. Under AML/CFT Law, financial institutions must keep records and registrations of all financial operations for a minimum of five years starting with the date when the relationship with the client comes to an end, respectively from the date the occasionally transaction was concluded (Art. 19 (2) AML/CFT Law). In case of non-compliance, a fine ranging from RON 15 000 to RON 50 000 (EUR 3 356 to EUR 11 186) is applicable (AML/CFT Law, Art. 28).

191. The supervisory authority of credit institutions is the National Bank of Romania (Credit Institutions Ordinance, Art. 4). The National Bank of Romania is authorised to impose sanctions and enforcement measures with respect to credit institutions if it discovers any violations of the requirements on credit institutions imposed by the Credit Institution Ordinance, laws, regulations or administrative provisions concerning the supervision or pursuit of their activities (Art. 225 Credit Institutions Ordinance).

Monitoring of financial institutions in practice

192. In the case of credit institutions, non-banking financial institutions, payment institutions and electronic money institutions, the authority monitoring compliance with these obligations is the National Bank of Romania (NBR), under the terms of AML national laws. This dedicated unit checks the internal procedures of the 36 banks in Romania. They perform a risk-assessment on the banks.

193. The Supervision Department in the National Bank of Romania is responsible for the supervision of the credit institutions in Romania. These responsibilities are carried out throughout three inspection divisions, which perform the prudential supervision of the credit institutions, and one monitoring division, which is responsible for monitoring the implementation and compliance with the AML/CTF applicable law of the credit institutions. This monitoring division has 13 employees, including eight supervisors which perform on-site inspections, four supervisors having off-site responsibilities and the head of division.

194. The responsibilities of the off-site inspectors include the assessment of the regulations issued by the credit institutions, the correspondence with the banks and other authorities in Romania, and the monitoring of the implementation at the credit institutions level, of the remedy actions established following the on-site inspections.

195. Based on the mandate granted by the NBR Board, the monitoring department ensures co-operation with: *(i)* the supervisory authorities in what concerns the enforcement of regulations on preventing money laundering and combating the financing of terrorism, in view of providing information on a mutual basis while observing the professional secrecy provisions stipulated by law; and *(ii)* the other national and international authorities involved in the application of international sanctions, in compliance with the provisions of the legal co-operation framework.

196. Under the provisions of Regulation no. 9/2008, a credit institution and other financial institutions must record the following information concerning its clients:

- For natural persons: full name, birth date and place of birth, personal ID number, domicile/residence address, nationality, name of the beneficiary, telephone number/email address; and
- For legal persons: name, legal form, registered office, name of the representatives of the company, name of the beneficial owner(s), type of business activity carried out, telephone number/email address.

197. The NBR is in charge of on-site inspections at the registered offices of the credit and other financial institutions. NBR has a supervision department with a special division in charge of the supervision of the banks. Within this department, there is a special unit dedicated to the AML application consisting of eight employees. A dedicated unit is in charge of:

- checking the compliance with know-your-client legal provisions set by law no. 656/2002 on preventing and sanctioning money laundering;
- enforcing measures to prevent and combat terrorism;
- supervising the implementation of the National Bank of Romania Regulation No. 9/2008 on “know-your-customer” rules for the prevention of money laundering and terrorist financing, as subsequently amended.

198. During these inspections, checking whether the AML/KYC requirements were in place was an essential objective, and the investigations were carried out on a sample list of clients and transactions. For the review

period[10], the dedicated unit conducted a number of inspections, as described in the table below:

Table 8. **Number of on-site inspections – National Bank of Romania**

	2012 (second semester)	2013	2014	2015 (first semester)
Banks	12	38	31	18
Sanctions applied to banks (no.)	23	24	25	N/A
Non-bank financial institutions	13	32	18	8
Payment institutions	0	3	3	2
Electronic money institutions	0	2	0	2

199. The NBR indicated that the collaboration with the banks is satisfactory. The banks are aware of the AML framework and their AML obligations. The NBR carries out seminars with the Bank associations to discuss certain compliance aspects on a regular basis.

200. Romania received 98 requests on banking information. The banking information was available in all cases.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place

Phase 2 rating
Compliant

10. 1 July 2012-30 June 2015.

B. Access to information

Overview

201. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Romania's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards are compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

202. The Romanian authorities have many sources of ownership and accounting information already in their databases, including annual statements filed by taxpayers, information recorded with the Trade Register and banking information regarding opening and closing of bank accounts. The competent authority can thus respond to some information requests received without resorting to its information gathering powers.

203. The Romanian authorities make use of their access powers available for domestic taxation purposes in order to exchange information. The Romanian tax administration has broad powers of access to accounting and banking information and to data on the ownership of legal entities, pursuant to the Fiscal Procedures Code (FPC). In particular, these powers allow the authorities to request information from any taxpayer and from third parties who may have the information sought, in order to determine the amount of income in question or to confirm the information contained in declarations. Banking secrecy is lifted in tax matters. In practice, Romania's competent authority has been able to gather information from information holders to respond to EOI requests.

204. Regarding the use of these powers to answers EOI requests, the FPC provides for the use of domestic powers to access information for EOI

purposes with other EU member States, including for banking information. Recently, Romania introduced a clear legal basis for Romania to provide information in response to EOI requests from non-EU member States[11]. Romania confirmed that no difficulty arose in practice when handling requests from non-EU jurisdictions before and after the amendment of the law.

205. Romania has in place enforcement provisions to compel the production of information including pecuniary sanctions and search and seizure power. In addition, professional privileges cannot be opposed as a ground to refuse to provide requested information to the tax authorities. In practice, no issues were found in this regard.

206. Romanian's domestic legislation does not require notification to the taxpayer prior to exchanging information. There is also no post-notification. In practice, the rights and safeguards that apply in Romania have not restricted or delayed an answer to an EOI request.

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).

207. NAFA's access powers are clearly established in the law. During the peer review period, NAFA used its access powers effectively in practice.

208. Article 287 FPC provides that the competent authority for EOI purposes with EU member States is the National Agency of Fiscal Administration (NAFA). The Government Ordinance dated 15 July 2015 amended Article 71 of the FPC to clarify, amongst others, that NAFA, as authorised representative of the Ministry of Public Finance or, where appropriate, the Minister of Public Finance, is also the competent authority for EOI purposes with respect to jurisdictions other than EU member States. Within NAFA, the International Information Exchange Unit (EOI Unit) is in charge of collecting and sending information in response to requests both from EU member partners (Order no. 353 from 19.03.2013 of the Minister of Public Finances) and from non-EU member partners (FPC, Art. 63(3)).

209. Pursuant to Article 11(2) of the Constitution, international treaties ratified by Parliament are part of national law. International treaties become part of national law once they are ratified. But, according to Article 1(3) of

11. Government Ordinance no.17 of 15 July 2015 regarding regulation of certain fiscal-budgetary measures and amending and supplementing certain acts, published in the Official Gazette of Romania no. 540/20 July 2015.

the Fiscal Code, the provisions of an international treaty would prevail over provisions of the Fiscal Code if such provisions of the Fiscal Code would be contrary to provisions of an international treaty.

210. The tax administration relies on the domestic information gathering powers granted by the FPC to gather information. The Romanian FPC dedicates a whole section (Title X, Chapter I, Section 2 Exchange of information on request) to the rules and procedures applicable to EOI on request with other EU member States. These access powers apply to all taxes and duties of any kind levied in Romania. The Government Ordinance No. 17 of 15 July 2015 amended Article 63 of the FPC to insert an express legal basis to provide information upon request under EOI agreements concluded with other jurisdictions than EU member States (new para. 4 of Art. 63 FPC). This Ordinance, which according to the Romanian authorities, merely clarified an existing practice, entered into force on 20 July 2015.

Bank, ownership and identity information *(ToR B.1.1)* ***and Accounting records*** *(ToR B.1.2)*

211. NAFA has a large range of information already available in its database, such as ownership, accounting and to a certain extent banking information. Nevertheless, NAFA can obtain information from taxpayers in Romania through the broad access powers granted established in the FPC. Access powers are general to all kind of information, except for banking information for which a specific access power is set out in the FPC.

General access powers for ownership and accounting information

212. Article 58(1) FPC sets out a general communication right which empowers the tax authorities to require the taxpayer and any "other persons with whom the taxpayer has or had economic and legal relationships" to provide the tax authorities with information necessary for the determination of Romanian taxable base. The term "taxpayer" is defined as any natural or legal person or any other entity without legal personality (either Romanian or foreign) that are liable to taxes, duties, contributions and other amounts to the general consolidated budget in Romania (Art. 1 (4) FPC).

213. The general communication right also applies to public authorities and institutions which are under the obligation to supply information and produce documents to the tax authorities upon their requests. In addition, the tax authorities are allowed to access the on-line database of these public authorities and institutions on a basis of co-operation agreements.

214. In addition to the communication right, the tax authorities hold various powers to ascertain the taxable base of a person; such as the verification

of documents (Art. 64 FPC) and on-site investigation (Art. 65 FPC). In case of refusal, the tax authorities can ask a Court for an order, and the tax authorities can be accompanied by the police. These powers can be used to obtain information.

215. The FPC also provides the tax authorities with rights of control of the tax returns. For this purpose, the tax authorities may start a tax inspection procedure. According to Article 113 FPC, tax inspections aims "to verify the legality and the conformity of the tax returns, the accuracy and exactness of the taxpayers' compliance with their obligations, the observance of the provisions of the accounting and fiscal legislation, to verify or establish, as applicable, the basis of taxations, to determine the differences in payment obligations". Under Article 113(2) FPC, the tax authorities may carry out inter alia request information from third parties, enforce protective measures and enforce sanctions, according to the legal provisions;

216. Prior to carrying out a tax inspection, the authorities must inform the taxpayer about the intended action by sending a tax inspection notice (Art. 122 FPC). The model and the content of the notice of inspection are provided in the secondary legislation (Order no. 1304/2004). This notice does not mention the reason behind the tax audit. This is a short process as the tax inspection cannot exceed three months in general, and six months in case of large taxpayers (Art. 126 FPC). Each inspection is completed by a report summarising findings of the tax audit (Art. 131 FPC). In the case of tax inspection without advanced notice (which take place in very limited cases), an official report shall be concluded (Art. 135(3) FPC).

217. In the case of tax inspection to collect information requested, on site investigation is carried out without prior notification. Tax periods falling outside of the statute of limitations should not be subject to a tax inspection (Art. 117(1) FPC). The general period for tax inspection is the last three fiscal years prior to the inspection, however, the period shall begin as of the end of the period which was previously audited with regard to large taxpayers (Art. 117 FPC). Basically, the tax audit is performed on periods that have not been controlled so that previously audited periods can no longer be subject to a new audit. However, as an exception, it may be decided to recheck previously audited period but only when the tax authority has additional evidence received from other competent authorities or any other sources of information which was not known at the time of the initial tax audit (Art. 128(2) FPC). The Romanian authorities confirmed that EOI requests from its partners should be the additional evidence to re-check previously audited period.

Obtaining information in practice

218. The EOI unit is responsible for collecting and sending information in response to EOI requests. It has direct access to the database maintained by NAFA and to other databases maintained by the other governmental authorities. Moreover, to access information not available at the database, the EOI Unit relies on other units of NAFA (such as local offices located in each county) or other governmental authorities (such as NRTO) as the case requires.

219. During the review period, Romania received 494 requests. The information was mainly gathered through local offices and no issues arose in practice.

Information available with the government authorities

220. The primary source of information for purposes of replying to EOI requests is the database maintained by the Romanian tax administration. The database contains a wide range of information including identity and ownership information on SAs, SCAs SRLs, SNCs and SCSs, which is supplied directly and automatically by the NTRO (see A.1.1 *Availability of ownership information*). It also contains tax returns and other taxpayer information such as bank account numbers and property acquisition records.

221. The EOI Unit has direct access to the database and can obtain the relevant information with regard to EOI requests received. The information obtained through the database is sometimes sufficient to successfully respond to EOI requests. The EOI Unit is also able to access to databases maintained by other government authorities such as car register and immovable property register. In addition, if requested information cannot be found, the EOI Unit can request those authorities to provide information within 30 days based on protocols in place.

Collecting information (other than banking information) from taxpayers and third parties

222. When information (other than banking information) is not available with the Romanian government authorities, the EOI Unit will proceed to collect it from taxpayers or third parties, as the case requires. In those instances, the EOI Unit will rely on the local offices of NAFA to collect information. They can adopt different procedures, as further described below.

223. The first procedure is to directly request the information from taxpayers or third party information holder with a notification based on Article 58 (1) of the FPC. The notification letter requests the relevant person(s) to come to the local tax office. The notification letter is sent by

officers in charge of EOI cases (each local office has two dedicated officials to handle EOI) and does not specify the reasons why information is sought, but simply lists the information requested and the timeframe for the taxpayer/information holder to visit the local tax office with the requested information.

224. In case the information is not obtained by means of a notification letter, the local tax officers in charge of EOI may request audit units within the local tax offices to gather information. There are several ways such as using verification right (FPC, Art. 64) and conducting on-site visit (FPC, Art. 65). Another tool available to tax authority is to conduct tax inspections (FPC, Art. 113). This involves the issuance of inspection notice by the audit unit to the taxpayer/information holder to request the information, which must be provided within 15 days (in the case of large taxpayers, within 30 days). This notice also does not refer to the EOI request.

225. The competent authority of Romania indicated there were no major difficulties in obtaining information requested during the review period. According to the EOI Manual, the basic timeline for the local office to send collected information to the EOI Unit is three months. However, complex requests involving either a lot of requested information or a great number of taxpayers took more time to process and led to some delays.

226. Other delays occurred in the following cases:

- the information sought was in the possession of the judicial or similar bodies, NAFA had to wait until the prosecution document was issued or the judicial proceeding ended; and
- the requested information related to companies expunged from the NTRO. In such cases, the requested information was hard to recreate and the information was provided from the data available at NAFA's or other state bodies' database.

Access to banking information

227. The legal framework and EOI practice regarding access to banking information conform to the international standard. During the review period, Romania received 494 EOI requests and was able to provide an answer in all cases. Peers that provided input to this review have not identified any issue regarding the ability of Romania to collect information.

228. Regarding access to banking information, Article 61 FPC sets out a general obligation for banks to provide information on a periodical basis on natural persons, legal persons or any other entity without legal personality that open or close accounts, the legal status and domicile or location of such persons. Until the end of 2015, the provision was made on a bi-monthly basis; with reference to the accounts opened or closed during the prior month and

shall be sent to the Ministry of Public Finance. From January 2016, banks have to provide the information on a daily basis.

229. In addition, banks are required upon request of the tax administration to communicate all turnovers and/or balances of the bank accounts, the identification data of the persons with the right of signature, as well as whether the debtor has rented or not safety deposit boxes. The request by the tax authorities shall be made for each holder separately in case of joint accounts. Article 61(1) of the FPC provides that the requested banking information can only be used to fulfil the specific tasks of the Romanian tax authorities. Since January 2016, the EOI unit can request information from financial institutions electronically.

Access to banking information in practice

230. During the review period, banking information was requested by Romania's treaty partners in 98 cases.

231. The procedure to accessing banking information is as follows:

- the EOI Unit first verifies whether the relevant information is available at the tax database. Basic banking information is stored such as bank accounts of taxpayers as a result of the periodical reporting by banks.
- If the information is not available in the tax database, the EOI Unit requests the information from the bank. If NAFA needs to confirm the contents of the provided information from the bank, it may contact the taxpayer through the audit unit. However, NAFA does not contact the taxpayer if the requesting partners asked Romania in the EOI request to avoid contacting the taxpayer.

232. The Romanian authorities indicated that the EOI Unit can collect banking information even though the name of the account holder is not provided by its treaty partner as far as other identity information is provided (such as TIN, the account number or date of birth). The Romanian Authorities indicated that there was one case during the review period, the name of the account holder was not provided but the EOI Unit successfully identified the bank from the code of the account number provided and successfully obtained information from the bank.

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

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

Use of domestic access powers for EOI purposes

234. Domestic access powers involving the taxpayer or any other parties (e.g. right of communication, rights of inspection) set out in section B.1.1 shall be used to determine the Romanian taxable base. There are no specific limitations in respect of information that is provided automatically by the taxpayer to the tax administration under the requirements set out in Article 59 FPC (Periodical supply of information). Information submitted periodically by the taxpayers or other parties directly to the Romanian tax administration consists of information on deliveries/supplies and acquisitions carried out on national territory by persons registered for VAT. To the extent an EOI request only relates to information already available with the Romanian tax authorities due to the requirements set out in Article 59 FPC, the Romanian tax administration does not need to use its access powers to answer an EOI request.

235. However, if the Romanian tax administration does not have the requested information in its own database, Article 289 FPC obliges the Romanian competent authorities to use their domestic access powers and procedures to answer EOI requests from other EU member States (FPC, Arts. 58, 61, 68-70, and 113). The access powers can be applied in respect of all taxes and duties of any kind levied in Romania. More generally, the FPC dedicates a whole section (Title X, Chapter I, Section 2 Exchange of information on request) to the rules and procedures applicable to EOI on request with other EU member States. Article 288 and following of the FPC provides for a clear obligation of the competent authorities of Romania to provide information on request of the requesting EU member States.

236. Until recently, there was no clear legal basis for providing information set out in the FPC regarding EOI with jurisdictions other than EU member States. Article 71 of the FPC provides for a general duty of the Romanian tax authorities to "collaborate with similar tax bodies of other countries" based on international conventions or based on reciprocity. Romanian authorities clarified that they interpreted Article 71 of the FPC such that the same treatment had to be applied to information requests received from non-EU member States as applicable to those received from the EU member States, even for DTCs that did not contain a provision similar to Article 26(4) of the OECD Model Tax Convention. They further confirmed that internal procedures in place used by the tax administration did not make any procedural differences between the requests of information notwithstanding the source of the request. Under Article 26 (4) of the OECD Model Tax Convention, contracting parties are obliged to use information gathering measures to obtain and provide information without regard to a domestic tax interest. However, 81 out of 86 DTCs concluded by Romania do not contain provisions similar to Article 26(4) of the OECD Model Tax Convention. For

these 81 DTCs, the absence of a provision similar to Article 26 (4) could be an issue only with respect to 32 jurisdictions, because Romania is a Party to the Multilateral Convention and is an EU Member State (see Section C.1.4 *Absence of domestic tax interest*) and the Multilateral Convention and the domestic provisions governing EOI with EU member States expressly provide for the use of all relevant domestic information gathering powers.

237. However, to close this uncertainty, the Government Ordinance No. 17 of 15 July 2015 introduced an express obligation under Article 71(4) FPC to provide "information at the request of the requesting authority of the jurisdictions with which Romania committed by a legal instrument of international law, other than the EU member States of the European Union". The addition of this new provision in Article 71 of the FPC inserts a clear legal basis for Romania to provide information in response to EOI requests from non-EU member States. However, in contrast to EOI with EU member States, this new Article 71 FPC is quite general and does not establish the EOI modalities, except in respect of deadlines for submission of information, for which the conditions of EOI with EU member States apply. Romania confirmed that this amendment ensures that the same domestic access powers are granted to the competent authorities with respect to EOI requests from EU member States and non-EU member States.

238. Concerning the lifting of bank secrecy to answer EOI requests, Article 289 FPC obliges the Romanian competent authorities to use their domestic access powers and procedures to answer EOI requests from other EU member States. The access powers can be applied in respect of all taxes and duties of any kind levied in Romania. Until recently, no legal provision explicitly allowed the Romanian tax authorities to use its domestic powers to answer EOI requests received under EOI agreements concluded with jurisdictions other than EU member States. Hence, it was not completely clear that the lifting of bank secrecy could apply to jurisdictions that are not EU member States before the amendment of July 2015 was introduced.

239. Previously, it was therefore relevant to look at the treaty provisions with these jurisdictions that are not EU member States. In respect of international tax agreements, the Fiscal Code gives precedence of international tax agreements over the rules set out in the Fiscal Code. Under Article 26(5) of the OECD Model Tax Convention, bank secrecy cannot form the basis for declining a request to provide information and a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

240. Only five out of 86 DTCs concluded by Romania included provisions similar to Article 26(5) of the Model Tax Convention. Out of the 82 jurisdictions whose DTCs with Romania did not contain language similar

to Article 26 (5) of the OECD Model Tax Convention, 50 jurisdictions are covered by the Multilateral Convention. For the remaining 32 jurisdictions, in the absence of specific provisions allowing the Romanian tax authorities to use its domestic powers to answer EOI requests received under EOI agreements concluded with jurisdictions other than EU member States, it was not clear that the Romanian tax administration had the power to access banking information to answer EOI requests under EOI agreement that do not contain Article 26(5) of the OECD Model Tax Convention (see Section C.1.3 *Obligation to exchange all types of information*). Nevertheless, as stated above Article 71 of the FPC provides for a general duty of the Romanian tax authorities to "collaborate with similar tax bodies of other countries" based on international conventions or based on reciprocity and the Romanian authorities interpret this as requiring them to use their domestic power in the same manner as they use them for requests from EU member States, even for DTCs that do not contain a provision similar to article 26(4) and (5) of the OECD Model Convention. Furthermore, their internal procedures do not distinguish between EOI requests based on the instrument of the request.

241. However, to close any uncertainty, the Government Ordinance no. 17 of 15 July 2015 introduced a general obligation under article 71(4) FPC to provide "information at the request of the requesting authority of the states with which Romania committed by a legal instrument of international law, other than the EU member States of the European Union". The addition of this new provision in Article 71 of the FPC inserts a clear legal basis for Romania to provide information in response to EOI requests from non-EU member States. However, in contrast to EOI with EU member States, this new Article 71 FPC is very general and does not establish the EOI modalities, except in respect of deadlines for submission of information, for which the conditions of EOI with EU member States apply. Romania confirmed that this amendment grants the same domestic access powers to the competent authorities with respect to EOI requests from EU member States and non-EU member States.

Use of domestic access powers for EOI purposes in practice

242. The Romanian authorities confirmed that no difficulties arose when handling EOI requests from non-EU States before and after the amendment made to Article 71 of the FPC in July 2015. The amendment clarified that there is no difference in the processing of EOI requests from EU member States and non-EU member States. This was already the case in practice. The Romanian authorities use their information gathering power in the same manner for all EOI requests. Romania indicated that it received 151 requests from non-EU member States during the peer review period, of which 81 requests (56%) were answered within 90 days.

243. No issue has been raised by peers in relation to the ability of the tax authorities to obtain information absent a domestic tax interest and banking information.

Compulsory powers *(ToR B.1.4)*

244. Jurisdictions should have in place effective enforcement provisions to compel the production of information. There are administrative and criminal sanctions available to the NAFA in case of non-compliance with obligation to provide the requested information. In addition to summoning the taxpayer the NAFA can exercise search and seizure powers.

245. The Romanian tax authorities have broad compulsory and enforcement powers to compel the production of information.

Pecuniary sanctions

246. The tax authorities are allowed to impose fines in case of non-compliance. In the case of failure to provide or provision of false information in response to an information request from the tax authorities requested under Article 58 FPC, a fine ranging from RON 1 000 (EUR 224) to RON 8 000 (EUR 1 790) is applicable for natural persons, and from RON 4 000 (EUR 895) to RON 27 000 (EUR 6 040) is applicable for legal persons (Art. 338(1)(r) FPC).

247. In the case of failure to provide or provision of false information within the context of a verification of documents (Art. 64 FPC) and on-site investigation (Art. 65(3) FPC), a fine ranging from RON 6 000 (EUR 1 342) to RON 8 000 (EUR 1 790) for natural persons, and RON 25 000 (EUR 5 593) to RON 27 000 (EUR 6 040) is applicable for legal persons(Art. 336(1)(c) FPC).

248. With respect to banking information, the banks' failure to observe their obligations related to the provision of information and of the settlement obligations provided by the FPC constitutes a civil offence and it is sanctioned by a fine ranging from RON 1 000 (EUR 224) to RON 5 000 (EUR 1 119) (Art. 336 (1)(i) FPC).

Compulsory powers in practice

249. The table below shows the number of cases and the amount of sanctions applied during the peer review period for domestic cases where the information holders do not comply with a request for information by NAFA (Article 58 of the FPC). No EOI related failures occurred during the peer review period.

Table 9. **Sanctions applied by tax audit unit under Article 58 of the FPC (domestic cases only)**

Year	Number of cases sanctioned	Amount of sanction (EUR)
2012 (Second half)	5	19 000
2013	3	7 416
2014	1	5 620
2015 (First half)	0	0
Total	9	32 036

250. The table below shows the number of domestic cases and the sanctions applied in the case of failure to provide or provision of false information within the context of a verification of documents (Art. 64 FPC) and on-site investigation (Art. 65(3) FPC). No EOI-related failure occurred during the peer review period.

Table 10. **Sanctions applied by tax audit unit under Article 64 and 65 of the FPC (no EOI Cases)**

Year	Number of cases sanctioned	Amount of sanction (EUR)
2012 (Second half)	215	582 000
2013	158	461 000
2014	174	518 000
2015 (First half)	168	523 000
Total	715	2 084 000

Search and seizure

251. As discussed in section B.1.1, the on-site inspection procedure is intended to gather proof in certain serious cases of fraud that are exclusively of a tax nature. This procedure allows the authorities to inspect all premises, even private premises, and to seize all documents (copies of computer files, hard drives, etc.) in order to assess the taxable income (Art. 113 FPC). Within the tax inspection procedure, the tax authorities can carry out unannounced audit, which consists in the activity of verification of facts and documents, without previously notifying the taxpayer, and crossed tax audit, which consists in the verification of documents and taxable operations of the taxpayer in correlation to those held by other persons; the crossed audit may also be an unannounced audit (Arts. 115 and 116 FPC).

252. During the review period, the Romanian authorities have reported having been able to collect information for EOI purposes with the co-operation

of the taxpayers/information holders involved and therefore without the need of using enforcement provisions.

Secrecy provisions (ToR B.1.5)

253. Jurisdictions should not decline on the basis of secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism.

Bank secrecy

254. Romanian law[12] provides for bank secrecy in respect of all the facts, data or information at the disposal of credit institutions which refer to the person, property, activity, business, personal or business relationships of the clients or information related to the client's accounts – balances, turnovers, operations performed, the services provided to them or the agreements concluded with them.

255. Also, any person who has administrative and/or management duties or who participates in the activity of a credit institution is bound to keep confidential any fact, data or information referred to above which he/she found out during the exercise of his/her responsibilities related to the credit institution and he/she is not entitled to use or disclose, during his/her activity or after the termination thereof, facts or data which, if they become public would damage the interests or prestige of a credit institution or of a client thereof. These provisions also apply to the persons who obtain information of the type of that mentioned above from reports or other documents of the credit institution.

256. The cases in which bank secrecy can be lifted are set out in Article 113 (2) of the Ordinance. Information subject to bank secrecy may be disclosed "at the written request of other authorities or institutions or ex officio, if such authorities or institutions are entitled by special law to require and/or receive such information and the information which can be provided by credit institutions are explicitly stated, in order for these authorities and institutions to fulfil their specific tasks." Pursuant to article 61 of the FPC, the tax authorities are entitled to require banking information to fulfil their specific tasks. Moreover, bank secrecy is not opposable to the NOPCML (AML/KYC law, Art. 7(3))

12. Part I, Title II, Chapter II – "Banking secret in the banking field and in the relationships with the clients" in the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved as amended and supplemented through the Law no. 227/2007, as subsequently amended and supplemented (Art. 111-Art. 116).

257. During the review period, banks always complied with their obligation to provide banking information to NAFA. No peer raised issue on this point.

Professional Privilege

258. Under many professions, the professional (being a lawyer, accountant or notary) must protect what his client has confided in him as a secret. A violation of the duty to protect a professional secret is defined as a severe violation of a professional's duty in practicing its advisory profession (for example, Art. 8 (5) of the Lawyer Statute (Decision no. 64/2011 of the National Bar Association of Romania), Art. 73 letter k) of Law no. 36/1995 on public notaries and notarial activity, Section 140 of National Code of Ethics for Professional Accountants).

259. Article 67(1) of the FPC lists the persons that have the right to refuse to supply information. This list includes priests, lawyers, notaries public, fiscal consultants, court executors, auditors, chartered accountants, doctors, nurses and psychotherapists. These persons may refuse to supply information regarding the data they became aware of during their activity, "except for information with regard to the carrying out of the fiscal obligations set forth by the law as their duty". These persons, except for priests, may provide information, upon the consent of the person in relation to whom the information was requested.

260. In addition, Art. 59 (4) FPC reduces further the scope of the professional privilege in the tax context, as it provides that the tax authorities may "for the purposes of clarifying and determining the fiscal situation of the taxpayer, request information and documents relevant for tax purposes or to identify the taxpayers or the taxable basis, as applicable, and the notary public, lawyers, court executors, police bodies, customs bodies, community public services for driving licenses and vehicle registration, the public community services for simple passport issuing, the community public services of public records, as well as any other entity that holds information and documents with regard to taxable or chargeable goods, as applicable, or to persons having the capacity of taxpayer, shall be obliged to supply them free of charge". The Romanian authorities have confirmed that this provision is being interpreted as being applicable for the purposes of providing information under EOI requests, such that these above-mentioned professionals may not oppose professional secrecy in these situations.

261. During the review period, there was no case in which tax authority sought information which was subject to professional secrecy for EOI purposes. In addition, the National Lawyers Association extended its willingness to co-operate with the tax administration within the legal framework provided by the FPC. No peer raised issue on this point.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

B.2. Notification requirements and rights and safeguards

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

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

262. The *Terms of Reference* provides that rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

263. The Romanian Law does not require the notification to the person who is the object of an EOI request. In addition, when requesting information from a person, the Romanian tax authorities do not have to inform the person of the purpose of the request.

264. With respect to the rights and safeguards, the tax authorities must inform the taxpayer if it they intend to carry out a tax inspection by sending a tax inspection notice (Art. 122 FPC). This is a short process as the tax inspection cannot exceed three months in general, and six months in case of large taxpayers (Art. 126 FPC). The tax authorities are not required to inform the taxpayer of the reason for the tax inspection.

265. Each inspection is completed by a report summarizing findings of the tax audit (Art. 145). In the case of tax inspection without advanced notice (which take place in very limited cases), an official report shall be concluded (Art. 135(3)). Tax periods falling outside of the statute of limitations should not be subject to a tax inspection (Art. 117 (1)).

In practice

266. During the review period, Romania generally obtained the information requested by its treaty partners from its own database or directly from taxpayers through the procedures established under articles 58, 64 and 65 of

the FPC. In addition to the above-mentioned measures, banking information was gathered based on article 61 of the FPC.

267. The Romanian authorities indicated that they never notify the taxpayer of the existence of an EOI request. To collect the requested information, no information is provided regarding the EOI request or the reasons for initiating information gathering procedures (no mention is made in the notification or during the tax inspection).

268. 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.

269. Peers that provided input to this review have not raised issues concerning rights and safeguards applicable in Romania.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

C. Exchanging information

Overview

270. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Romania, the legal authority to exchange information is derived from double taxation conventions (DTCs), TIEAs, the Multilateral Convention and EU instruments. This section of the report examines whether Romania has a network of information exchange that would allow it to achieve effective exchange of information in practice.

271. Romania has an extensive EOI network covering 127 jurisdictions through 86 DTCs (covering 87 jurisdictions), three TIEAs and the Multilateral Convention and EU mechanisms for exchange of information. Almost all of Romania's agreements meet the international standard. All Romania's EOI agreements are in force except for one TIEA.

272. Romania's EOI network covers all of its significant partners including its main trading partners, all OECD members and all G20 countries. Nevertheless, Romania should continue its programme of updating its older agreements and entering into new agreements with all relevant partners. During the course of the assessment, no jurisdiction advised that Romania had refused to enter into negotiations or conclude an EOI agreement.

273. The confidentiality of information exchanged with Romania is protected by obligations implemented in the information exchange agreements, complemented by domestic legislation which provides for tax officials to keep information secret and confidential. Breach of this confidentiality obligation may lead to the tax officials concerned to be fined or imprisoned. In practice, no issues were found in this regard.

274. The NAFA is designated as the Romanian competent authority for EOI purposes. There are no legal restrictions on the ability of Romania's competent authority to respond to requests within 90 days of receipt by providing the requested information or by providing an update on the status of the request.

275. Romania has allocated sufficient resources to its EOI unit and has put in place adequate EOI procedures. During the review period (from 1 July 2012 to 30 June 2015), Romania received 494 requests related to direct taxes from 39 jurisdictions, to which it replied generally in a satisfactory manner. However, the EOI Unit was not able to answer within 90 days in about 45% of the cases, and did not systematically provide a status update to its EOI partners. Overall, peer input given for this review was positive. The Romanian authorities should 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.

C.1. Exchange of information mechanisms

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

276. Thus far, Romania has concluded 89 bilateral EOI agreements (three TIEAs and 86 DTCs covering 87 jurisdictions), of which 88 are in force. The Romanian authorities have taken steps to renegotiate all its DTCs that would not include the latest version of article 26 of the OECD Model Convention. The Romanian authorities sent a letter to the following jurisdictions asking for renegotiation: Algeria, Belarus, Bangladesh, Democratic People's Republic of Korea, Ecuador, Egypt, Ethiopia, Former Yugoslav Republic of Macedonia, Iran, Jordan, Kuwait, Lebanon, Malaysia, Morocco, Namibia, Pakistan, Philippines, Qatar, Sri Lanka, Serbia, Montenegro, Syria, Tajikistan, Thailand, Turkey, Turkmenistan, Viet Nam, and Zambia. This section of the report explores whether these agreements allow Romania to effectively exchange information.

277. In addition to its bilateral agreements, the Multilateral Convention increased Romania's EOI relationships to 127 jurisdictions. This Convention entered into force for Romania on 1 November 2014.

278. As an EU member state, Romania also exchanges tax information under various other multilateral mechanisms, including:

- *Council Directive 2011/16/EU* of 15 February 2011 on administrative co-operation in the field of taxation, replacing *Council Directive 77/799/EEC* concerning mutual assistance by the competent authorities of the EU member States of the EU in the field of direct taxation and taxation of insurance premiums.
- *Council Regulation (EU) 904/2010* of 7 October 2010 on administrative co-operation and combating fraud in the field of value added tax.

279. When more than one legal instrument may serve as the basis for exchange of information – for example where there is a bilateral agreement with an EU member state which also applies *Council Directive 2011/16/*

EU – the problem of overlap is generally addressed within the instruments themselves. There are no domestic rules in Romania requiring it to choose between mechanisms where it has more than one agreement involving a particular partner and thus the competent authority is free for any exchange to invoke all of the available mechanisms or to choose the most appropriate one.

280. International treaties become part of national law once they are ratified. However, according to Article 1(3) of the Fiscal Code, the provision of an international treaty prevails over provisions of the Fiscal Code if such provision is contrary to the provisions of an international treaty.

Foreseeably relevant standard *(ToR C.1.1)*

281. The international standard for exchange of information envisages information exchange upon request to the widest possible extent, but does not allow "fishing expeditions," i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 26(1) of the Model Tax Convention and Article 1 of the OECD Model TIEA.

> The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

282. Romania's DTCs generally follow the Model Tax Convention and its commentary as regards the scope of information that can be exchanged. Five DTCs use the term "foreseeably relevant". The vast majority of Romania's DTCs use the term "necessary" and one (with Czech Republic) uses the term "relevant" in lieu of "as is foreseeably relevant". The Commentary to Article 26(1) of the Model Tax Convention refers to the standard of "foreseeable relevance" and states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing "foreseeably relevant" with "necessary". Romania interprets the formulations "necessary" or "relevant" as equivalent to "foreseeably relevant".

283. The DTCs with Ethiopia, Montenegro and Serbia limit the EOI to information that is "necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention". Accordingly, these DTCs meet the standard based on aforementioned interpretation.

284. The DTCs with Kuwait, Malaysia, the United Arab Emirates and the United States limit the EOI to information that is "necessary (foreseeable relevant/relevant) for carrying out the provisions of the Convention" only. However, the DTC with Kuwait does not specifically provide for the exchange of information in aid of the administration and enforcement of domestic laws. Therefore it is recommended that Romania renegotiate this agreement so that that it provides for effective exchange of information.

In practice

285. The Romanian authorities interpret the criteria of foreseeable relevance to the widest possible extent and no concerns in this respect have been raised by its peers.

286. During the review period, Romania did not decline to respond to any EOI request on the basis that the requested information was not foreseeably relevant.

287. If information needed to process the request is missing, the officers in the EOI Unit will first attempt to obtain the missing information using their own database. Subsequently, it will request clarifications to the requesting jurisdiction.

288. During the review period, Romania mainly asked additional information in a few cases where there was no sufficient information provided in order to correctly identify individuals such as date of birth, place of birth, owner of immovable property. However, those requests for further information were not related to a specific type of requests. The Romanian authority asked for additional information to requesting jurisdictions in order to obtain clarification and complete description of the request, only if the missing information could not be collected using internal source.

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

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

290. Article 26(1) of the Model Tax Convention indicates that "the exchange of information is not restricted by Article 1", which defines the personal scope of application of the Convention. There are 26 DTCs in force that do not explicitly provide that the EOI provision is not restricted by

Article 1. However, in principle, the absence of this specific provision does not restrict the EOI as long as the agreement allows for exchange of information necessary for carrying out the provisions of the domestic laws of the Contracting States, to the extent that the domestic laws apply to non-residents also. This is the case in respect to 25 out of those 26 DTCs. These 25 DTCs are in line with the standard on this particular point. In the case of the DTC with Kuwait, it is not possible to exchange information in respect of all persons, and EOI is restricted to the purposes of carrying out the Convention. Therefore it is recommended that Romania renegotiate this agreement so that it provides for effective EOI.

291. In practice, no issues have arisen in this respect during the review period.

Obligation to exchange all types of information (ToR C.1.3)

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

293. As discussed in Section B.1.1 *Access to Bank, Ownership and Identity information*, until recently the FPC did not explicitly prescribe that Romanian domestic access powers could be used to answer EOI requests received from requesting jurisdictions under EOI agreements concluded with jurisdictions other than EU member States.

294. While Romanian tax authorities stated that they applied the same standard to their agreements without Article 26(4) on the basis of reciprocity, some uncertainty remained concerning the scope of the Romanian information access powers in this respect. This resulted in uncertainties regarding the application of its domestic access powers to answer EOI requests with 32 jurisdictions out of 127 EOI relationships.

295. However, to close this uncertainty, the Government Ordinance no. 17 of 15 July 2015 introduced a specific obligation under Article 71(4) FPC to provide "information at the request of the requesting authority of the states with which Romania committed by a legal instrument of international law, other than the EU member States of the European Union". The addition of this new provision in Article 71 of the FPC inserts a clear legal basis for Romania to provide information in response to EOI requests from non-EU

member States. However, in contrast to EOI with EU member States, this new Article 71 FPC is very general and does not establish the EOI modalities, except in respect of deadlines for submission of information, for which the conditions of EOI with EU member States apply.

296. In addition, at least one of Romania's treaty partners (Lebanon) currently has restrictions in accessing bank information in the absence of a provision corresponding to Article 26(5) of the OECD Model Tax Convention, which limits the effective EOI under these DTCs. The Romanian authorities have sent a letter to Lebanon to renegotiate the DTC in line with the international standard.

297. In practice, Romania has never declined a request because the information was held by a bank, other financial institutions, nominees or persons acting in an agency or fiduciary capacity or because the information related to an ownership interest. This has been confirmed by peers. With regard to the practice under the newly amended Article 71 of the FPC, there were no difficulties to process requests from non-EU member States after the amendment in July 2015 as mentioned above (Section B.1.3). Romania reported that 151 requests were received from non-EU member States.

Absence of domestic tax interest (ToR C.1.4)

298. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

299. As discussed in Section B.1.1 *Bank, Ownership and Identity information*, until recently, the FPC did not explicitly prescribe that Romanian domestic access powers could be used to answer EOI requests received from requesting jurisdictions under EOI agreements concluded with jurisdictions other than EU member States.

300. This raised uncertainties regarding 32 EOI relationships where the absence of provision similar to Article 26(4) OECD Model Tax Convention, could create restrictions on the exchange of information. However, to close this uncertainty, the Government Ordinance dated 15 July 2015 introduced a general obligation under Article 71(4) FPC to provide "information to the requesting authority of the states with which Romania committed by a legal instrument of international law, other than the EU member States of the European Union". In contrast to EOI with EU member States, this new Article 71 FPC is very general and does not establish the EOI modalities,

except in respect of deadlines for submission of information, for which the conditions of EOI with EU member States apply.

301. In practice, Romania is able to use all its domestic information gathering measures for EOI purposes regardless of a domestic tax interest. Peers have indicated no issue in this respect.

Absence of dual criminality principles (ToR C.1.5)

302. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

303. There are no dual criminality requirements in any of Romania's DTCs and TIEAs.

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

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

305. Each of Romania's EOI relationships provides for exchange of information in both civil and criminal tax matters.

306. The Romanian authorities confirmed that processes involved in the collection of information are the same regardless of whether the request involved civil or criminal investigation.

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

307. In some cases, a contracting party may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such formats may include depositions of witnesses and authenticated copies of original records. Contracting parties should endeavour as far as possible to accommodate such requests. The requested party may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

308. There are no restrictions in the exchange of information provisions in Romania's DTCs or laws that would prevent Romania from providing information in a specific form, as long as this is consistent with its own administrative practices.

309. Peer input indicates that Romania provided the requested information in adequate form and no issues in this respect have been reported.

In force *(ToR C.1.8)*

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

311. Exchange of information agreements can be concluded by the President of Romania (Art. 91 (1) of the Constitution). Concluded treaties are presented to the parliament for ratification. Romania has 86 DTCs (covering 87 jurisdictions) and two TIEAs in force. Romania has signed one TIEA with Isle of Man that is not yet in force.

312. Out of 89 bilateral agreements (covering 90 jurisdictions), only the TIEA with Isle of Man is not yet in force. Romania is in the process of carrying forward this remaining TIEA to bring into force.

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

313. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

314. Once being ratified by the Parliament, international agreements form part of Romanian legislation as a law (Constitution, Art. 11 (2)). Article 11 (3) of the Constitution regulated that if the provisions of international agreements are contrary to the Constitution, its ratification shall only take place after the revision of the Constitution.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

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

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

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

316. Romania's network of EOI relationships comprises 86 bilateral DTCs (covering 87 jurisdictions) and three TIEAs, of which all DTCs and two TIEAs are in force. Romania is a Party to the Multilateral Convention, which entered into force in Romania on 1 November 2014. These bilateral and multilateral agreements create EOI relationships with 127 jurisdictions which include:

- all of its major trading partners (Germany, Italy, France, Hungary and Turkey);
- all OECD Member States.

317. During the course of the assessment, no jurisdiction has advised that Romania had refused to enter into negotiations or concluded an EOI agreement.

318. In the second half of 2015, Romania re-negotiated the DTCs with China, Moldova, Spain and the United Kingdom. The updated DTC with the People's Republic of China (China) and a Protocol for amending the DTC with Uzbekistan were signed in July 2016. The DTCs with Spain and the United Kingdom are in the process of approval for signature. Finally, the second round of negotiations regarding a DTC with Moldova is scheduled for the second half of 2016.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Romania should continue to develop its exchange of information network with all relevant partners.

Phase 2 rating
Compliant

C.3. Confidentiality

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

319. In Romania, confidentiality is ensured in respect of EOI requests, both by law and in practice.

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

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

International agreements

321. All exchange of information articles in Romania's EOI agreements have confidentiality provisions modelled on Article 26(2) of the Model Tax Convention, which must be respected by Romania as a party to these agreements. Confidentiality of the provided information in line with the standard is also provided for in Article 22 of the Multilateral Convention. The confidentiality provisions contained in the international agreements of Romania are directly applicable in Romania pursuant to Article 11 of the Constitution which provides that "Treaties ratified by Parliament, according to the law, are part of national law."

Romanian domestic law

322. The FPC establishes that the tax authority, civil servants within the tax body including the persons that are no longer in this capacity and experts shall be obligated to keep secrecy of information they hold as a result of exercising their job duties (Art. 11(1), (4), Art. 63 FPC). The information on taxes,

duties, contributions and other amounts owed to the general consolidated budget can only be disclosed to identify authorities in Article 11(3) of the FPC, such as public authorities for purposes of carrying out the obligations provided by law and tax authorities of other countries under conditions of reciprocity based on the international treaties. Unlawful disclosure of confidential information which was obtained in the capacity as civil servants is subject to a penalty ranging from a minimum of three months to a maximum of three years of imprisonment (Art. 304, Criminal Code).

323. The competent authority has a comprehensive policy to protect the confidentiality of the information received from foreign EOI partners. The internal operational procedure PO46 regulates the governing EOI data safeguards, such as access to the database, unauthorised access and information treatment under international treaties for EOI purposes. When the competent authority sends the documents to the other authorities, they are sent by the special post service. In addition, the competent authority also stamps and watermarks all the documents sent to the local offices and also the documents sent to requesting jurisdictions. The text of the stamp or watermark is clearly applied on documents specifying the regime and rules governing the access of this kind of data. In case the document sent electronic way, secure internet emails are used.

324. The EOI Unit maintains an internal system and an excel database, in which it records information on EOI requests and the progress status of the requests. Access to these databases is strictly limited to the officers in the EOI Unit. The physical requests including any annexes are stored in the fireproof shelves in the office of the EOI Unit and after five years it will be transferred to the other secured premises following the internal guideline.

325. The EOI Unit is located in Bucharest, in the building of NAFA, which is only accessible to authorised officials. The activities of the EOI Unit concerning EOI (i.e. receiving and replying to EOI requests, gathering information from internal database, taxpayers or other information holders) do not give rise to any circumstance where the person who is subject of an EOI request, or any other person, would have the right to obtain additional information, nor to inspect the files maintained by the EOI Unit.

326. Although taxpayers have a general right to inspect their files stored in local offices in Romania, the Romanian authorities advised that the information required to be disclosed is limited to what a taxpayer already knows such as information on tax returns, the result of tax audits which have already been notified by the tax authorities to the taxpayer.

327. The Romanian authorities indicated that breach of tax official's confidentiality duty was well monitored and that there was one case during the review period when a disciplinary sanction was applied for a minor offence

to a tax official for unauthorised access to internal database of NAFA, though it was not related to EOI cases. The Romanian authorities also indicated that there have been no cases where information received by the competent authority from EOI partners has been made public.

Notices to the holder of the information

328. As described in the section B.2.1, in order to obtain the requested information through procedures under Articles 58 (1) or 113 of the FPC, NAFA sends a letter or a tax inspection notice to information holders. The letter/notice indicates that the legal basis on which it is served, the list of information sought, specified timeline of visiting local offices/tax inspection. No information concerning the EOI requests or the requesting jurisdiction is included in the notice. Moreover, the Romanian authorities have indicated that taxpayers would not be able to access the EOI requests when appealing the decision following the actions taken by NAFA to collect information.

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

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

330. No issues regarding the confidentiality of information have been raised by Romania's exchange of information partners.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

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

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

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

331. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise.

332. The limits on information which must be exchanged under Romania's DTCs mirror those provided for in the international standard. That is, information which would disclose any trade, business, industrial, commercial or professional secret or trade process; or would be contrary to public policy, is not required to be exchanged.

333. "Professional secret" is not defined in the DTCs. The relevant domestic legislation would be then applicable.

334. In practice, during the review period, there was no case in which tax authority sought information which was subject to professional secrecy for EOI purposes.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

C.5. Timeliness of responses to requests for information

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

335. Romania has an EOI unit and organisational procedures in place to handle EOI requests. During the peer review period, the EOI Unit received almost 500 requests, to which it replied generally in a satisfactory manner. However, the EOI Unit was not able to answer within 90 days in about 45% of the cases, and did not systematically provide a status update to its EOI partners. Overall, peer input given for this review was positive.

Responses within 90 days (ToR C.5.1)

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

337. Thus, jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or offering an update on the status of the request. There is nothing in Romanian law that would prevent the Romanian authorities from responding to requests within 90 days of receipt, or at least providing a progress report concerning the procedure.

338. Romania has specific legal or regulatory requirements in place regarding timeliness of responses in the context of EOI with other EU member States.

339. Article 290 FPC provides for the timing rules in the context of EOI with EU member States. Under this article, NAFA is bound to reply to an EOI request from an EU Member State "as quickly as possible" and in any case no later than 6 months from the date of receipt of the request. If NAFA is already in possession of that information, it is bound to send the information to the requesting EU member States within two months of the date of receipt of request.

340. In addition, NAFA must notify the requesting EU Member State of any deficiencies in the request, as well as of the need for any additional background information within one month of receipt. If NAFA is unable to respond to the request by the relevant time limit, it shall inform the requesting authority from another Member State immediately and in any event within three months of the receipt of the request, of the reasons for its failure to do so, and the date by which it considers it might be able to respond. Finally, if NAFA is not in possession of the requested information and is unable to respond to the request for information or refuses to do so on the grounds allowed under the EOI agreement, it must inform the requesting EU jurisdiction of the reasons thereof immediately and in any event within one month of receipt of the request. According to the new paragraph (4) of Art. 71 FPC introduced by Law no. 207/2015 regarding the FPC, the same deadlines for submission of information set out in Art. 290 FPC apply in respect of EOI with non-EU member States, unless the provision of the international treaty provides for other deadlines.

341. Romania received 494 requests related to direct taxes during the review period (from 1 July 2012 to 30 June 2015) from 39 jurisdictions; its main partners are France, Germany, Hungary and Italy. Romania's response times are indicated in the table below:

		2012 July-Dec		2013 Jan-Dec		2014 Jan-Dec		2015 Jan-Jun		Total	
		num.	%	num.	%	num.	%	num.	%	Num.	%
Total number of requests received *		84	-	149	-	181	-	80	-	494	-
Full response:**	≤ 90 days	45	53.6	83	55.7	97	53.6	42	52.5	267	54.0
	≤ 180 days (cumulative)	65	77.4	108	72.5	139	76.8	60	75.0	372	75.3
	≤ 1 year (cumulative)	76	90.5	125	83.9	156	86.2	74	92.5	431	87.2
	> 1 year	8	9.5	24	16.1	25	13.8	6	7.5	63	12.8
Declined for valid reasons		0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Failure to obtain and provide information requested		0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Requests still pending at date of review		0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

* Romania counts requests by the number of the taxpayers involved. One request with three different individuals, Romania counts them as three requests. All further requests for information on the same matter where the original request has not yet been fully satisfied are not counted as separate requests as Romania considers them as "clarifications" within the same case.

** The time periods in this table are counted from the date of receipt of the request to the date on which the final response was issued. It does not take into account partial responses provided in the meantime or any delays resulting from the need to seek clarifications of requests from a requesting jurisdiction.

342. The number of EOI requests increased steadily from 2012 to 2014. The Romanian authority indicated that ownership information was the type of information requested the most during the review period (282 requests), followed by accounting information (98 requests) and banking information (98 requests).

343. Overall, Romania was able to provide a final response within 90 days to 54% of the requests, within 180 days to 75.3% of them and 87.2% of the requests were responded to within one year. 12.8% of the requests were responded to after more than one year. Input received from Romania's peers confirms that Romania did not respond in all cases to requests for information within 90 days of receipt by providing the information requested or an update on status of the request.

344. The Romanian authorities indicated that requests not answered within 90 days related to information which were not readily available in the NAFA database.

345. In situations where the EOI Unit did not have the information in its own database, the EOI Unit needed to count on local offices to gather information such as conducting on-site investigation which resulted in getting answers to EOI request after a 90-day period.

346. Although this did not create delays during the peer review period, possible delays may be linked to criminal investigation. NAFA's policy is to deal with fraud by use of the civil fraud investigation procedures wherever appropriate. However, certain cases of greater gravity (e.g. terrorist financing) must be referred to the prosecutor's office to initiate a criminal tax investigation. In such cases, NAFA and other institutions will assist the prosecutor in gathering the required intelligence. During the collection of evidence stage, all information must be kept confidential to the public, but may be shared with other foreign jurisdictions if the EOI agreements allow for such exchange of information. Disclosing sensitive information may impede the development of the criminal investigation, hence the prosecutor will exchange information on criminal tax investigations only if a legitimate interest can be shown and only if there is a legal basis. When the case goes into prosecution stage (i.e. judge hearing), NAFA can then participate in the exchange of information. Therefore, if an EOI request of information is linked with a case under criminal investigation, the EOI reply is pending and waiting for the investigation to be finished.

347. During the peer review period, in some cases, the competent authority had to wait until the end of taxable year when the information had to be gathered by accountants in order not to let taxpayers know about the EOI request.

348. The competent authority indicated that the EOI Unit was not able to collect all the information requested in some cases due to the facts and circumstances of the cases (for example where the taxpayer was not found in Romania and where the company was not active any more). In these cases, which represented less than 2% of the total EOI requests received, the Romanian authorities collected relevant information from its internal database and other possible sources such as records maintained by other state authorities and third parties to provided information as far as they could and then sent it to requesting jurisdictions. No negative peer input was provided in this respect.

349. Where a final response was not given within 90 days, the competent authority sent status update to the EOI partners but not on a consistent basis. If the final reply was expected to be sent shortly (no longer than 1-2 weeks) after the 90-day period, no status update was sent. Some peers expressed that they did not receive a status update from the Romania competent authority or received such update only upon request. It is recommended that Romania systematically provides requesting jurisdictions with a status update when requests cannot be responded to within 90 days.

350. During the peer review period, Romania sent 176 EOI requests to other jurisdictions.

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

351. Administration of the exchange of information under Romania's treaty network is the responsibility of Romania's competent authority, i.e. the Minister of Finance or his/her authorised representative.

352. The delegated competent authority is NAFA and the EOI Unit within the General Directorate for Tax Information. The latter is under the direct co-ordination of the President of NAFA. The EOI Unit is in charge of administering all requests received or sent by Romania. The General Directorate for Tax Information also co-ordinates local tax offices (regional units and county units) that are involved in EOI.

353. The NAFA includes 8 regional tax units, which cover 47 county tax units.

Organisation of EOI

354. The EOI Unit is responsible for liaising with foreign authorities and the local tax offices. This includes the following functions: receiving all EOI requests, checking whether these requests are complete and meet the foreseeable relevance standard, identifying the information holder, liaising with the local tax offices, and ensuring that the response to the EOI request is complete and actually sending the reply to the request.

355. The contact details of Romania's competent authority are communicated during treaty negotiations, periodical meetings organised by the EU Commission and various tax related international events. They are also available on the European Commission's website and on the Global Forum's competent authority database.

356. Where necessary, Romanian competent authority can communicate with its EOI partners via emails, telephone or fax and has done so in practice.

Handling of EOI requests

357. Administrative procedures PO46 provides guidelines on how to handle EOI requests. It is available on NAFA's intra-net for all tax officials, and serves as an EOI Manual. The EOI Manual covers the activities of the EOI Unit and of all departments involved in the EOI. The Romanian authorities indicated that the EOI Manual is regularly updated to reflect new legal provisions or practice.

358. Pursuant to the EOI Manual, when EOI requests are received in paper format, they are initially handled by the NAFA's register office. It records the elements of the EOI requests (e.g. jurisdictions and date of the reception),

and assigns an official registration number to the request. The requests are subsequently assigned to the EOI Unit through the General Directorate. Once the request reaches the EOI Unit (from this point the procedures will be the same for requests sent by emails), the head of the EOI Unit designates a case officer to handle the request. The officer records the request in the internal system and excel database. It indicates the following elements: date of the request received, internal number, name of the persons concerned, requesting jurisdiction and local tax office in charge. Any relevant information may be added to the database at a later stage; such as status of the case, date of the partial/final replies, acknowledgements and observations.

359. The Romanian authorities indicated that a new record system is being developed, which will incorporate more data about the request, providing reports, showing on-time status of the request, automatic reminders etc.

360. The case officer assesses the legal and factual grounds of the requests. The Romanian competent authority reported that it has never denied a request of information. Whenever there were unclear elements in the EOI request, the case officers always asked for additional information to the requesting jurisdiction in order to obtain a complete description of the case.

361. After checking the initial aspects, the case officer gathers information about the request through internal database. If needed, the case is then submitted to a local tax office along for gathering of more information. There are two officers in local tax offices dedicated to EOI. In principle, they gather information by themselves, however in some cases they request the Audit department to conduct tax investigations to collect the requested information. Once the requested information is provided by the local tax office, the case officer will assess the comprehensiveness and exhaustiveness of the information.

Resources and training

362. The EOI Unit comprises one head of the Unit and eight officials who are dedicated to handle inbound and outbound EOI requests. They have different levels of experience in the tax administration ranging from nine to ten years. Their experiences include the EOI as well as work in the audit field and also in the IT field. To work within the EOI Unit, it is required to have a degree in economics or in law, high level knowledge of English and IT skills. Officers in the EOI Unit participated to EOI-related trainings and seminars held by the Global Forum and the European Commission, and share the knowledge obtained with colleagues within the Unit. The officers in the Unit provide annual trainings to tax officers working at the regional level.

363. The Romanian authorities indicated that the EOI Unit is constantly seeking to increase the number of tax officers to ensure that they can fully

answer the EOI requests they receive. By the end of the year, the Central Liaison Office will hire an additional number of two employees in order to accommodate a potential increase in the number of EOI requests and the introduction of AEOI mechanisms.

Absence of restrictive conditions on exchange of information (ToR C.5.3)

364. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Other than those matters identified earlier in this report, there are no further conditions that appear to restrict effective exchange of information in Romania. There are no legal or regulatory requirements in Romania that impose unreasonable, disproportionate or unduly restrictive conditions.

Determination and factors underlying recommendations

Phase 1 determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
Although peers have been generally satisfied with their EOI relationships with Romania, Romania's competent authority has in many instances been unable to answer incoming requests or provide updates on the status of requests within 90 days.	Romania should 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.

Summary of determinations and factors underlying recommendations

Overall Rating
Largely Compliant

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1.)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Foreign companies and foreign partnerships with legal personality having their place of effective management in Romania are not obliged to maintain ownership information in all cases.	Romania should require foreign companies and foreign partnership with legal personality having their place of effective management in Romania to maintain information on their ownership in all cases.
	Although bearer shares that may be issued by SAs and SCAs represent only a small percentage (i.e. 0.15%) of the total amount of shares in circulation in Romania, mechanisms to ensure that the owners of such shares can be identified are not in place for all bearer shares.	Romania should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.
	Although there are some mechanisms in place to ensure compliance by companies, Romanian legislation does not provide for sanctions in all cases for SAs and SCAs that fail to maintain ownership information.	Romania should 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.

Phase 2 Rating: Partially Compliant		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2.)*		
Phase 1 determination: The element is in place.	Romanian trustees of foreign trusts are not required to keep accounting records that fully reflect the financial position and assets/liabilities of the foreign trust.	Romania should ensure that such accounting records are maintained for a minimum of five years for any foreign trusts which have Romanian-resident administrators or trustees.
Phase 2 Rating: Compliant		
Banking information should be available for all account-holders. *(ToR A.3.)*		
Phase 1 determination: The element is in place.		
Phase 2 Rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1.)*		
Phase 1 determination: The element is in place.		
Phase 2 Rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2.)*		
Phase 1 determination: The element is in place.		
Phase 2 Rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1.)*		
Phase 1 determination: The element is in place.		
Phase 2 Rating: Compliant		

The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2.)*		
Phase 1 determination: The element is in place.		Romania should continue to develop its exchange of information network with all relevant partners.
Phase 2 Rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3.)*		
Phase 1 determination: The element is in place.		
Phase 2 Rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4.)*		
Phase 1 determination: The element is in place.		
Phase 2 Rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5.)*		
Phase 1 determination: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		
Phase 2 Rating: Largely Compliant	Although peers have been generally satisfied with their EOI relationships with Romania, Romania's competent authority has in many instances been unable to answer incoming requests or provide updates on the status of requests within 90 days.	Romania should 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.

Annex 1: Jurisdiction's response to the review report[13]

Romania would like to express its appreciation to the assessment team for their tremendous level of involvement in making sure they report a realistic perspective of the situation in Romania and for their constructive comments throughout the assessment process. Romania would also wish to thank the PRG members for taking their time and sending us valuable input for which allowed us to put forward the best draft Phase 2 Peer Review report. This effort has been vital in enabling us to implement internationally agreed standards of transparency and exchange of information in the tax area. Romania fully acknowledges the recommendations written in the peer review report and will commit its efforts in tackling the issues raised in the shortest time possible.

The work of the Global Forum and of the PRG Members is of a critical importance in ensuring that corporate vehicles are not misused for illicit purposes, including money laundering, tax fraud, terrorist financing, and other illegal activities. With more and more countries signing up for instruments such as CRS, DAC2 and FATCA, we are reaching a whole new era of international cooperation. This unprecedented level of transparency will ensure a fair and correct taxation and will further discourage the use of legal persons and legal arrangements for illicit purposes.

As an EU-member state, Romania has experienced over the past years a change of paradigm towards identifying the ultimate beneficial owner of a business. The future implementation of the 4th AML Directive illustrates a tougher stance towards money laundering and terrorist financing and opens ground for a closer collaboration between the Financial Intelligence Units and the Ministries of Finance throughout the European Union. We envision that in the upcoming months and years, Romania will move closer to identifying the persons who are ultimately responsible for tax evasion, tax avoidance, aggressive tax planning, and money laundering.

Romania fully supports the work of the Global Forum and as a result has put transparency and exchange of information for tax purposes on the top of

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

its agenda for the years to come. As such, Romania will continue to expand its tax treaty network and continue updating the tax treaties with its existing partners. International cooperation and co-ordination is vital in creating a global legal and regulatory framework which is efficient in tackling the misuse of legal persons and legal arrangements.

Annex 2: List of Romania's exchange of information mechanisms

Multilateral and bilateral exchange of information mechanisms

Romania exchanges information under:

- Convention on Mutual Administrative Assistance in Tax Matters as amended by its 2010 Protocol (Multilateral Convention), which entered into force for Romania on 1 November 2014.
- EU Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation. This Directive came into force on 1 January 2013. It repeals Council Directive 77/799/EEC of 19 December 1977 and provides inter alia for exchange of banking information on request for taxable periods after 31 December 2010 (Art. 18). All EU members are required to transpose it into national legislation by 1 January 2013. The current EU members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Croatia, Cyprus[14], the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

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

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

- EU Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between EU member States.
- Council Regulation (EU) No. 904/2010 of 7 October 2010 on administrative co-operation and combating fraud in the field of value added tax (recast of the Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative co-operation in the field of value added tax).
- Council Regulation (EC) No. 2073/2004 of 16 November 2004 on administrative co-operation in the field of excise duties.
- 87 DTCs and three TIEAs out of which all DTCs and two TIEAs are in force (see the table below).

Table of Romania's exchange of information relations

The table below summarises Romania's EOI relationships with individual jurisdictions as of 5 August 2016. These relations allow for exchange of information upon request in the field of direct taxes. In case of the Convention on Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention), Romania is a Party to the Multilateral Convention, which entered into force for Romania on 1 November 2014. The date when the agreement entered into force indicates the date when the Convention.

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Albania	DTC	11-May-94	20-Oct-95
		Multilateral Convention	Signed	01-Nov-14
2	Algeria	DTC	28-Jun-94	11-Jul-96
3	Andorra	Multilateral Convention	Signed	Not yet in force in Andorra
4	Anguilla[a]	Multilateral Convention	Extended	01-Nov-14
5	Argentina	Multilateral Convention	Signed	01-Nov-14
6	Armenia	DTC	25-Mar-96	24-Aug-97
7	Aruba[b]	Multilateral Convention	Extended	01-Nov-14
8	Australia	DTC	02-Feb-00	11-Apr-01
		Multilateral Convention	Signed	01-Nov-14

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
9	Austria	DTC	30-Mar-05	01-Feb-06
		Multilateral Convention	Signed	01-Dec-14
10	Azerbaijan	DTC	29-Oct-02	29-Jan-04
		Multilateral Convention	Signed	01-Sep-15
11	Barbados	Multilateral Convention	Signed	Not yet in force in Barbados[e]
12	Bangladesh	DTC	13-Mar-87	21-Aug-88
13	Belarus	DTC	22-Jul-97	15-Jul-98
14	Belgium	DTC	04-Mar-96	17-Oct-98
		Multilateral Convention	Signed	01-Apr-15
15	Belize	Multilateral Convention	Signed	01-Nov-14
16	Bermuda[a]	Multilateral Convention	Extended	01-Nov-14
17	Bosnia and Herzegovina	DTC	29-Apr-86	21-Oct-88
18	Brazil	Multilateral Convention	Signed	Not yet in force in Brazil[f]
19	British Virgin Islands[a]	Multilateral Convention	Extended	01-Nov-14
20	Bulgaria	DTC	01-Jun-94	12-Sep-95
		Multilateral Convention	Signed	01-Jul-16
21	Cameroon	Multilateral Convention	Signed	15-Oct-15
22	Canada	DTC	08-Apr-04	31-Dec-04
		Multilateral Convention	Signed	01-Nov-14
23	Cayman Islands[a]	Multilateral Convention	Extended	01-Nov-14
24	Chile	Multilateral Convention	Signed	Not yet in force in Chile[g]
25	China (People's Republic of)	DTC	16-Jan-91	05-Mar-92
		Multilateral Convention	27-Aug-13	1-Feb-16
26	Colombia	Multilateral Convention	Signed	01-Nov-14
27	Costa Rica	Multilateral Convention	Signed	01-Nov-14
28	Croatia	DTC	25-Jan-96	28-Nov-96
		Multilateral Convention	Signed	01-Nov-14
29	Curaçao[b]	Multilateral Convention	Extended	01-Nov-14
30	Cyprus[k]	DTC	16-Nov-81	08-Nov-82
		Multilateral Convention	Signed	01-Apr-15

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
31	Czech Republic	DTC	08-Nov-93	10-Aug-94
		Multilateral Convention	Signed	01-Nov-14
32	Democratic People's Republic of Korea	DTC	23-Jan-98	25-Aug-00
33	Denmark	DTC	13-Dec-76	28-Dec-77
		Multilateral Convention	Signed	01-Nov-14
34	Ecuador	DTC	24-Apr-92	22-Jan-96
35	Dominican Republic	Multilateral Convention	Signed	Not yet in force in Dominican republic
36	Egypt	DTC	13-Jul-79	05-Jan-81
37	El Salvador	Multilateral Convention	01-Jun-2015	Not yet in force in El Salvador
38	Estonia	DTC	23-Oct-03	29-Nov-05
		Multilateral Convention	Signed	01-Nov-14
39	Ethiopia	DTC	06-Nov-03	09-May-09
40	Faroe Islands[c]	Multilateral Convention	Extended	01-Nov-14
41	Finland	DTC	27-Oct-98	04-Feb-00
		Multilateral Convention	Signed	01-Nov-14
42	Former Yugoslav Republic of Macedonia	DTC	12-Jul-00	16-Aug-02
43	France	DTC	27-Sep-74	27-Sep-75
		Multilateral Convention	Signed	01-Nov-14
44	Gabon	Multilateral Convention	Signed	Not yet in force in Gabon
45	Georgia	DTC	12-Dec-97	15-May-99
		Multilateral Convention	Signed	01-Nov-14
46	Germany	DTC	04-Jul-01	17-Dec-03
		Multilateral Convention	Signed	1-Dec-15
47	Ghana	Multilateral Convention	Signed	01-Nov-14
48	Gibraltar[a]	Multilateral Convention	Extended	01-Nov-14
49	Greece	DTC	17-Sep-91	07-Apr-95
		Multilateral Convention	Signed	01-Nov-14
50	Greenland[c]	Multilateral Convention	Extended	01-Nov-14

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
51	Guatemala	Multilateral Convention	Signed	Not yet in force in Guatemala
52	Guernsey[a]	TIEA	12-Jan-11 17-Jan-11	22-Jan-12
		Multilateral Convention	Extended	01-Nov-14
53	Hungary	DTC	16-Sep-93	14-Dec-95
		Multilateral Convention	Signed	01-Mar-15
54	Iceland	DTC	19-Sep-07	21-Sep-08
		Multilateral Convention	Signed	01-Nov-14
55	India	Multilateral Convention	Signed	01-Nov-14
		DTC	08-Mar-13	16-Dec-13
56	Indonesia	DTC	03-Jul-96	13-Jan-99
		Multilateral Convention	Signed	01-May-15
57	Iran	DTC	03-Oct-01	30-Oct-07
58	Ireland	DTC	21-Oct-99	29-Dec-00
		Multilateral Convention	Signed	01-Nov-14
59	Isle of Man[a]	TIEA	04-Nov-15	
		Multilateral Convention	Extended	01-Nov-14
60	Israel	DTC	15-Jun-97	21-Jun-98
		Multilateral Convention	Signed	Not yet in force in Israel
61	Italy	DTC	14-Jan-77	06-Feb-79
		Multilateral Convention	Signed	01-Nov-14
62	Jamaica	Multilateral Convention	Signed	Not yet in force in Jamaica
63	Japan	DTC	12-Feb-76	09-Apr-78
		Multilateral Convention	Signed	01-Nov-14
64	Jersey[a]	TIEA	01-Dec-14	05-Feb-16
		Multilateral Convention	Extended	01-Nov-14
65	Jordan	DTC	10-Oct-83	02-Aug-84
66	Kazakhstan	DTC	21-Sep-98	21-Apr-00
		Multilateral Convention	23-Dec-13	01-Aug-15
67	Kenya	Multilateral Convention	Signed	Not yet in force in Kenya

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
68	Korea	DTC	11-Oct-93	06-Oct-94
		Multilateral Convention	Signed	01-Nov-14
69	Kuwait	DTC	25-Jul-92	05-Oct-94
70	Latvia	DTC	25-Mar-02	28-Nov-02
		Multilateral Convention	Signed	01-Nov-14
71	Lebanon	DTC	28-Jun-95	06-Apr-97
72	Liechtenstein	Multilateral Convention	Signed	Not yet in force in Liechtenstein
73	Lithuania	DTC	26-Nov-01	15-Jul-02
		Multilateral Convention	Signed	01-Nov-14
74	Luxembourg	DTC	14-Dec-93	08-Dec-95
		Multilateral Convention	Signed	01-Nov-14
75	Malaysia	DTC	26-Nov-82	07-Apr-84
76	Malta	DTC	30-Nov-95	16-Aug-96
		Multilateral Convention	Signed	01-Nov-14
77	Mauritius	Multilateral Convention	Signed	1-Dec-15
78	Mexico	DTC	20-Jul-00	15-Aug-01
		Multilateral Convention	Signed	01-Nov-14
79	Moldova	DTC	21-Feb-95	10-Apr-96
		Multilateral Convention	Signed	01-Nov-14
80	Monaco	Multilateral Convention	Signed	Not yet in force in Monaco
81	Montenegro[d]	DTC	16-May-96	01-Jan-98
82	Montserrat[a]	Multilateral Convention	Extended	01-Nov-14
83	Morocco	DTC	02-Jul-03	17-Aug-06
		Multilateral Convention	Signed	Not yet in force in Morocco
84	Namibia	DTC	25-Feb-98	05-Aug-99
85	Nauru	Multilateral Convention	Signed	Not yet in force in Nauru[h]
86	Netherlands	DTC	05-Mar-98	29-Jul-99
		Multilateral Convention	Signed	01-Nov-14
87	New Zealand	Multilateral Convention	Signed	01-Nov-14

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
88	Niue	Multilateral Convention	Signed	Not yet in force in Niue[i]
89	Nigeria	DTC	21-Jul-92	18-Apr-93
		Multilateral Convention	Signed	01-Sep-15
90	Norway	DTC	14-Nov-80	27-Sep-81
		Multilateral Convention	Signed	01-Nov-14
91	Pakistan	DTC	27-Jul-99	13-Jan-01
92	Philippines	DTC	18-May-94	27-Nov-97
		Multilateral Convention	Signed	Not yet in force in Philippines
93	Poland	DTC	23-Jun-94	15-Sep-95
		Multilateral Convention	Signed	01-Nov-14
94	Portugal	DTC	16-Sep-97	14-Jul-99
		Multilateral Convention	Signed	01-Mar-15
95	Qatar	DTC	24-Oct-99	06-Jul-03
96	Russian Federation	DTC	27-Sep-93	11-Aug-95
		Multilateral Convention	Signed	01-Jul-15
97	San Marino	DTC	23-May-07	11-Feb-08
		Multilateral Convention	Signed	1-Dec-15
98	Saudi Arabia	DTC	06-Apr-11	01-Jul-12
		Multilateral Convention	Signed	1-Apr-16
99	Senegal	Multilateral Convention	Signed	Not yet in force in Senegal
100	Serbia[d]	DTC	16-May-96	01-Jan-98
101	Seychelles	Multilateral Convention	Signed	1-Oct-15
102	Singapore	DTC	21-Feb-02	28-Nov-02
		Multilateral Convention	Signed	1-May-16
103	Sint Maarten[b]	Multilateral Convention	Extended	01-Nov-14
104	Slovenia	DTC	08-Jul-02	28-Mar-03
		Multilateral Convention	Signed	01-Nov-14
105	Slovak Republic	DTC	03-Mar-94	29-Dec-95
		Multilateral Convention	Signed	01-Nov-14
106	South Africa	DTC	12-Nov-93	29-Oct-95
		Multilateral Convention	Signed	01-Nov-14

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
107	Spain	DTC	24-May-79	26-Jun-80
		Multilateral Convention	Signed	01-Nov-14
108	Sri Lanka	DTC	19-Oct-84	28-Feb-86
109	Sudan	DTC	31-May-07	14-Nov-09
110	Sweden	DTC	22-Dec-76	08-Dec-78
		Multilateral Convention	Signed	01-Nov-14
111	Switzerland	DTC	25-Oct-93	27-Dec-94
		Multilateral Convention	Signed	Not yet in force in Switzerland
112	Syrian Arab Republic	DTC	24-Jun-08	04-Jun-09
113	Tajikistan	DTC	06-Dec-07	02-Mar-09
114	Thailand	DTC	26-Jun-96	03-Apr-97
115	Tunisia	DTC	23-Sep-87	19-Jan-89
		Multilateral Convention	Signed	01-Nov-14
116	Turkey	DTC	01-Jul-86	15-Sep-88
		Multilateral Convention	Signed	Not yet in force in Turkey
117	Turkmenistan	DTC	16-Jul-08	21-Aug-09
118	Turks and Caicos[a]	Multilateral Convention	Extended	01-Nov-14
119	Uganda	Multilateral Convention	Signed	Not yet in force in Uganda[j]
120	Ukraine	DTC	39-Mar-96	17-Nov-97
		Multilateral Convention	Signed	01-Nov-14
121	United Arab Emirates	DTC	11-Apr-93	23-Jan-96
122	United Kingdom	DTC	18-Sep-75	22-Nov-76
		Multilateral Convention	Signed	01-Nov-14
123	United States	DTC	04-Dec-73	26-Feb-76
		Multilateral Convention	Signed	Not yet in force in United States
124	Uruguay	DTC	14-Sep-12	22-Oct-14
		Multilateral Convention	Signed	Not yet in force in Uruguay
125	Uzbekistan	DTC	06-Jun-96	17-Oct-97
126	Viet Nam	DTC	08-Jul-95	24-Apr-96
127	Zambia	DTC	21-Jul-83	29-Oct-92

Notes: a. Extension by United Kingdom

b. Extension by the Kingdom of the Netherlands

c. Extension by the Kingdom of Denmark

d. Romania continues to apply the Yugoslavia treaty signed on 16 May 1996 in relations with Montenegro and Serbia respectively.

e. Barbados deposited its instrument of ratification to the Multilateral Convention on 4 July 2016. The Multilateral Convention will enter into force for Barbados on 1 November 2016.

f. Brazil deposited its instrument of ratification to the Multilateral Convention on 2 June 2016. The Multilateral Convention will enter into force for Brazil on 1 October 2016.

g. Chile deposited its instrument of ratification to the Multilateral Convention on 7 July 2016. The Multilateral Convention will enter into force for Chile on 1 November 2016.

h. Nauru deposited its instrument of ratification to the Multilateral Convention on 28 June 2016. The Multilateral Convention will enter into force for Chile on 1 October 2016.

i. Niue deposited its instrument of ratification to the Multilateral Convention on 6 June 2016. The Multilateral Convention will enter into force for Chile on 1 October 2016.

j. Uganda deposited its instrument of ratification to the Multilateral Convention on 26 May 2016. The Multilateral Convention will enter into force for Uganda on 1 September 2016.

k. See footnote 14.

Annex 3: List of all laws, regulations and other relevant material

Civil and commercial legislation

Emergency Ordinance No. 99 of 6 December 2006 on Credit Institutions and Capital Adequacy, approved with amendments and supplements by Law no.277/2007, as subsequently amended and supplemented

Law no. 26 of 5 November 1990, republished, regarding the Trade Register, as subsequently amended and supplemented

Law No 31 of 16 November 1990, republished, Law on companies, as subsequently amended and supplemented

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

Law No.93/2009 on Non-Bank Financial Institutions (as amended and supplemented by Government Emergency Ordinance no.42/2011, Law no.287/2011, Law no.187/2012 and Law no.255/2013)

Law no. 287 of 17 July 2009, republished, regarding the Civil Code

Ordinance No. 26 of 30 January 2000 on associations and foundations, as amended and completed

Tax legislation

Law no. 227/2015, regarding the Fiscal Code

Law no. 207/2015, republished, on the Fiscal Procedure Code, as amended and completed

Miscellaneous

Law No. 656 of 7 December 2002, republished, on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating the financing of terrorism, as amended

Regulation no. 9/2008 on “know-your-customer” rules for the prevention of money laundering and terrorist financing, as subsequently amended.

The Constitution of Romania, as republished.

Criminal Code

Annex 4: Authorities interviewed during the on-site visit

Ministry of Finance

National Agency for Fiscal Administration

Association of Notaries

Financial Supervisory Authority,

National Bank

National Office for Prevention and Control of Money Laundering

National Trade Register Office

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