

# Romania

## Overall findings

### Overall determination on the legal framework: Not In Place

Romania's legal framework implementing the AEOI Standard is not in place in accordance with the requirements of the AEOI Terms of Reference. While Romania's international legal framework to exchange the information with all of Romania's Interested Appropriate Partners (CR2) is consistent with the requirements, its domestic legislative framework requiring Reporting Financial Institutions to conduct the due diligence and reporting procedures (CR1) has significant deficiencies in areas that are fundamental to the proper functioning of the AEOI Standard. Most significantly, there are deficiencies in relation to the scope of Financial Accounts and Reportable Accounts and the due diligence procedures to identify them and the framework to enforce the requirements.

The methodology used for the peer reviews and that therefore underpins this report is outlined in Chapter 2.

## Conclusions on the legal framework

### General context

Romania commenced exchanges under the AEOI Standard in 2017.

In order to provide for Reporting Financial Institutions to collect and report the information to be exchanged, Romania:

- enacted Law No. 70/2016;
- introduced Order No. 1939/2016 and Order No. 4142/2017;
- amended Law No. 207/2015 on the Fiscal Procedure Code; and
- enacted Law No. 129/2019 for preventing and combating money laundering and terrorist financing as amended by Emergency Government Ordinance No. 111/2020, which came into effect on 15 July 2020.

Under this framework Reporting Financial Institutions were required to commence the due diligence procedures in relation to New Accounts from 1 January 2016. With respect to Preexisting Accounts, Reporting Financial Institutions were required to complete the due diligence procedures on High Value Individual Accounts by 31 December 2016 and on Lower Value Individual Accounts and Entity Accounts by 31 December 2017.

With respect to the exchange of information under the AEOI Standard, Romania:

- is a Party to the Convention on Mutual Administrative Assistance in Tax Matters and activated the associated CRS Multilateral Competent Authority Agreement in time for exchanges in 2017;
- has in place European Directive 2011/16/EU on Administrative Cooperation in the Field of Taxation as amended by Directive 2014/107/EU; and
- has in place European Union agreements with five European third countries.<sup>1</sup>

## Detailed findings

The detailed findings for Romania are below, organised per Core Requirement (CR) and sub-requirement (SR), as extracted from the AEOI Terms of Reference ([www.oecd.org/tax/transparency/documents/aeoi-terms-of-reference.pdf](http://www.oecd.org/tax/transparency/documents/aeoi-terms-of-reference.pdf)).

**CR1 Domestic legal framework: Jurisdictions should have a domestic legislative framework in place that requires all Reporting Financial Institutions to conduct the due diligence and reporting procedures in the CRS, and that provides for the effective implementation of the CRS as set out therein.**

<b>Determination: Not In Place</b>
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Romania's domestic legislative framework is not in place as required as it does not contain several key aspects of the CRS and its Commentary. Significant deficiencies have been identified in relation to the due diligence procedures to identify Reportable Accounts (SR 1.2) and the framework to enforce the requirements (SR 1.4). Most significantly, the definition of the term Controlling Persons and the due diligence procedures to identify Controlling Persons are incomplete and there are deficiencies in the framework to address non-compliance.

**SR 1.1** Jurisdictions should define the scope of Reporting Financial Institutions consistently with the CRS.

Romania has defined the scope of Reporting Financial Institutions in its domestic legislative framework in accordance with the CRS and its Commentary. While two deficiencies have been identified with respect to the definition of Financial Institutions, as there is nothing to suggest they will lead to an incorrect interpretation, they are considered to be relatively minor and their impact to not to be material.

### Recommendations:

Romania should amend its domestic legislative framework to require the term Investment Entity to be interpreted consistently with the similar language defining "financial institution" in the Financial Action Task Force Recommendations.

Romania should amend its legislative framework to fully incorporate the term "managed by" in relation to the definition of Investment Entity.

**SR 1.2** Jurisdictions should define the scope of Financial Accounts and Reportable Accounts consistently with the CRS and incorporate the due diligence procedures to identify them

Romania has not incorporated the due diligence procedures that must be applied to identify Reportable Accounts in a manner that is consistent with the CRS and its Commentary as significant deficiencies have been identified. Most significantly, Romania's legislative framework:

- incorporates an incomplete definition of the term Controlling Persons and does not fully incorporate the due diligence procedures to identify Controlling Persons;
- does not fully incorporate the provisions regarding the requirement that the residence address shall be "current";
- does not set out the definition of the term "passive income" as required; and
- does not include the requirement to re-determine the status of a Preexisting Entity Account where there is a change of circumstances that causes the Reporting Financial Institution to have reason to know that the self-certification or other documentation associated with the account is incorrect or unreliable.

The due diligence rules are material to the proper functioning of the AEOI Standard.

**Recommendations:**

Romania should amend its domestic legislative framework to require Reporting Financial Institutions to always identify and determine the reportable status of Controlling Persons in accordance with the AEOI Standard.

Romania should amend its domestic legislative framework to fully incorporate the definition of the term Controlling Persons in accordance with the AEOI Standard, including by incorporating the elements set out in the Commentary.

Romania should amend its domestic legislative framework to require Reporting Financial Institutions to use only a “current” residence address when applying the residence address test, in particular by specifying that if mail has been returned as undeliverable, then the address cannot be considered “current”.

Romania should amend its domestic legislative framework to fully incorporate the definition of Documentary Evidence for the purposes of the residence address test.

Romania should amend its domestic legislative framework to define “passive income” in accordance with the AEOI Standard.

Romania should amend its domestic legislative framework to require Reporting Financial Institutions apply the specified procedures where they have reason to know that the original self-certification obtained is incorrect or unreliable.

Romania should amend its domestic legislative framework to require Reporting Financial Institutions to apply the change of circumstance procedures in relation to Preexisting Entity Accounts in accordance with the AEOI Standard.

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**SR 1.3** Jurisdictions should incorporate the reporting requirements contained in Section I of the CRS into their domestic legislative framework.

Romania has incorporated the reporting requirements in its domestic legislative framework in accordance with the CRS and its Commentary. While a deficiency has been identified with respect to the reporting of the currency denomination, it is considered to be relatively minor as the CRS XML Schema will compel the reporting of a currency type.

**Recommendations:**

Romania should amend its domestic legislative framework to require Reporting Financial Institutions to identify the currency in which each account is denominated.

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**SR 1.4** Jurisdictions should have a legislative framework in place that allows for the enforcement of the requirements of the CRS in practice.

Romania does not have a legislative framework in place to enforce the requirements in a manner that is consistent with the CRS and its Commentary as significant deficiencies have been identified. More specifically, Romania’s legislative framework:

- does not include rules to prevent Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the due diligence and reporting procedures as required;
- does not include rules requiring Reporting Financial Institutions to keep records in accordance with the requirements;
- does not include a framework for enforcement to address non-compliance in accordance with the requirements; and
- does not include measures to ensure that valid self-certifications are always obtained in accordance with the requirements.

These are key elements of the required enforcement framework and are therefore material to the proper functioning of the AEOI Standard.

**Recommendations:**

Romania should amend its domestic legislative framework to include rules to prevent Financial Institutions, persons and intermediaries from adopting practices intended to circumvent the due diligence and reporting procedures. While it is acknowledged that the mandatory reporting requirements in place will facilitate the identification of such practices, additional rules are needed to prevent such practices.

Romania should amend its domestic legislative framework to require Reporting Financial Institutions to keep records of the steps undertaken and any evidence relied upon for the performance of the due diligence procedures in accordance with the AEOI Standard.

Romania should amend its domestic legislative framework to include sanctions for failure to apply the due diligence and reporting procedures, rather than being limited to failures leading to incorrect reporting.

Romania should amend its domestic legislative framework to include strong measures to ensure that valid self-certifications are always obtained for New Accounts in accordance with the requirements.

***CR2 International legal framework: Jurisdictions should have exchange relationships in effect with all Interested Appropriate Partners as committed to and that provide for the exchange of information in accordance with the Model CAA.***

<b>Determination: In Place</b>
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Romania's international legal framework to exchange the information is in place, is consistent with the Model CAA and its Commentary and provides for exchange with all of Romania's Interested Appropriate Partners (i.e. all jurisdictions that are interested in receiving information from Romania and that meet the required standard in relation to confidentiality and data safeguards). (SRs 2.1 – 2.3)

**SR 2.1** Jurisdictions should have exchange agreements in effect with all Interested Appropriate Partners that permit the automatic exchange of CRS information.

Romania has exchange agreements that permit the automatic exchange of CRS information in effect with all its Interested Appropriate Partners.

**Recommendations:**

No recommendations made.

**SR 2.2** Such an exchange agreement should be put in place without undue delay, following the receipt of an expression of interest from an Interested Appropriate Partner.

Romania put in place its exchange agreements without undue delay.

**Recommendations:**

No recommendations made.

**SR 2.3** Jurisdictions should ensure that the exchange agreements in effect provide for the exchange of information in accordance with the requirements of the Model CAA.

Romania's exchange agreements provide for the exchange of information in accordance with the requirements of the Model CAA.

**Recommendations:**

No recommendations made.

## Comments by the assessed jurisdiction

First of all, we would like to express our gratitude for the support provided throughout the assessment process. We acknowledge the proposed recommendations. At the same time, we would like to note that Law No. 129/2019 and Emergency Government Ordinance No. 111/2020 that came into effect on 15 July 2020, as referred to above, has in our view already addressed the recommendations made under Sub-Requirement 1.2 relating to the definition and the due diligence procedures to identify Controlling Persons. While we understand that this has been brought to the attention of AEOI Peers too late to have it reflected in this year's report, we look forward to seeing these recommendations removed in accordance with the peer review process in the next year's report.

In relation to the other recommendations, eight months ago we started the process of re-evaluation of the legal framework currently in place. Alongside this measure, we have established an inter-institutional working party with the main objective to rethink the way the AEOI Standard is implemented.

However, the current pandemic has changed not only the way we live, but also how we work. On this note, maintaining a regular schedule for the working party meetings has been very troublesome, to the point that for extended periods of time we had to suspend the activity of the group.

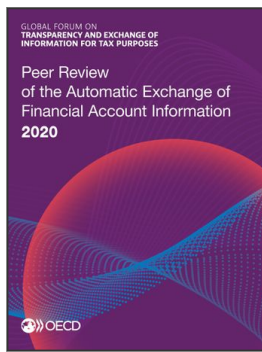
On top of this, the pandemic called for immediate reactions at a policy level, therefore we were forced to prioritise imminent and urgent matters in order to help the economy maintain a relatively stable evolution.

We intend to keep the technical experts of the Secretariat up to date on the evolution of the national legislation implementing the CRS.

We re-affirm our commitment to continue our work to address the outstanding recommendations and have this reflected in the next year's report.

## Note

<sup>1</sup> Andorra, Liechtenstein, Monaco, San Marino and Switzerland.



From:

## Peer Review of the Automatic Exchange of Financial Account Information 2020

Access the complete publication at:

<https://doi.org/10.1787/175eeff4-en>

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### Please cite this chapter as:

OECD (2020), "Romania", in *Peer Review of the Automatic Exchange of Financial Account Information 2020*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9af6df81-en>

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